

## Responding to Criticisms of Human Rights Approaches

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In the theoretical and practical deliberations on development ends and means, and on good governance, there are several arguments against employing human rights considerations, let alone grounding moral reflections on human rights. These arguments – summarized in the eight topics below – challenge the theoretical and practical soundness of human rights. Before examining the relevance and application of human rights to any specific development goal and to good governance, it's important first to address these foundational concerns.

### **1) Intrinsic or instrumental value: Are human rights intrinsically valuable, or are they only instrumentally valuable as a means to achieve other goals?**

If the latter, then it would appear that human rights are subordinated to other moral considerations. Controversy continues as to whether human rights should be held to be intrinsically valuable, instrumentally valuable, both, or neither. As to the latter possibility, Amartya Sen observes candidly that from the perspective of traditional economics, moral rights or freedoms command little interest – at best perceived as purely legal entities of instrumental use only. This view is, of course, not surprising, given the dominance of utilitarianism and consequentialism to economic theory, which allows nothing but utility to have intrinsic value.

Are human rights intrinsically valuable as a goal? As defined by Peter Singer, “something is of intrinsic value if it is good or desirable in itself”. If human rights, or the features of human life that they protected, were judged to be intrinsically important then this would give preeminent value to such things as life, liberty, human expression, freedom of expression, and so on. UNDP's *Human Development Report 2000* accepts as a given, without argument, the premise that human rights – or better, the features of human life they promote and protect – are intrinsically valuable. But HDR 2000 also unquestioningly accepts and describes the instrumental value – meaning valuable as a means to some other end or purpose – of human rights, and the manner in which the realization of one right may well involve causal links to the realization of other rights.

There may also be what Sen calls a “constructive aspect” between rights: The exercise of basic political rights make it more likely not only that there would be a policy response to economic needs, but also that the conceptualization – including comprehension – of “economic needs” itself may require the exercise of such rights. Sen's point is that the political process – and the process by which our values and priorities are identified and shaped – depends for its quality and effectiveness on the degree to which people are able to have access to information, engage in open discussion and debate, express dissent, deliberate, and make choices based on reflection.

Most philosophers agree that human rights are means, particularly means to the achievement of human dignity. Others, but not all, argue that human rights can be conceived as both means and ends. Those who hold that human rights are intrinsically valuable as ends may also view them as

means to such goals as sustainable development, and/or poverty eradication. Ken Booth takes the argument so far as to view human rights as a means to being human, claiming that since human beings are socially made beings, human rights are a part of what constitutes their social identity at this place in human history. “We have human rights not because we are human, but because we want the species to become human”.

I take the position that human rights norms are often good means to promote and protect features of human life that are both intrinsically valuable and instrumentally contribute to other features that are intrinsically valuable. The means-ends debate has particular relevance to the practical application of human rights. I have noted my support for the intrinsic value of human rights as ends, while still contending that such a status does not preclude their function as means to other valuable goals, such as sustainable development and/or poverty eradication. But is there an argument for only considering human rights primarily an end, and less so (or not at all) instrumentally?

This question might best be stated in a different manner. If one takes the position – which I do not – that less developed societies are unable to respect human rights, then the conception of human rights as an instrumental means for development becomes questionable, at least until that society attains some “threshold” where the moral weight of human rights protections becomes operative. Before and after this threshold is reached, the end goal of development remains the achievement of a “civilized” society characterized by the full protection and promotion (within reason) of those valuable features of people’s lives that human rights address. But in the pre-threshold state of affairs under this conception, deliberations on policy formulation, development, and governance would be directed at the creation and maintenance of a general “enabling environment,” and less specifically (or not at all) at human rights as a means to the ultimate end of a the “civilized” society described above. Under this view, human rights might be perceived in two ways. First, human rights might be considered merely as an attribute of a “more developed” state of affairs, in which there is a discernable lack of threats to certain valuable features of a person’s life.

Alternatively, human rights retain their descriptive sense as an attribute of a “more developed” society, but at a certain stage – some moral threshold – they also become an effective and additional means to guide that society’s development and governance.

Such threshold thinking about an ideal society – in which the enabling environment has been created that somehow guides development in such a way that all human rights ultimately are respected and enforced – is admittedly utopian. By comparison, the goal of facilitating a society’s arrival at the moral threshold at which human rights thinking – and the express reference to human rights in public policy – becomes instrumentally effective initially appears to be a more plausible target, but only until one has to determine and justify the basis for the threshold. Where does one set the threshold in determining when an enabling environment (focused, one assumes, on other means leading to development, such as economic growth) has resulted in a state of affairs in which human rights are respected and enforced *enough*? Would this determination require different threshold conditions for each recognized human right? These questions make

As I will describe in more detail later, this emphasis on the “enabling environment” and the plausible answers very difficult, and for this reason I suggest that the threshold condition problem is commonly ignored in arguments advocating that development policy and governance ignore human rights. These arguments concentrate instead on the creation and evolution of the “enabling environment” – the social bases – leading progressively to an end-state ideal of a society in which the protections offered by human rights are simply unnecessary, because no threats exist to the valuable features of people’s lives that human rights address and promote. My challenge is simply that one cannot and should not concentrate on creating the enabling environment for development unless one refers to human rights values and some future state of affairs.

I contend that it is both arbitrary and inaccurate to argue that society must achieve some (undefined but – one assumes – intuitively perceived) threshold condition of civilization before governance and decision-making on the common good is appropriately subject to the direct influence of human rights values. The value systems of even primitive, poor, or repressive societies demonstrate many attributes – at least among minorities or dissenters – of respect for the claims and obligations that arise under many human rights. As development progresses – due perhaps in some measure and at some stage to conscious development efforts to bring about or consolidate a human rights culture in this respect – a society gradually grows in its capacity to both respect and institutionalize human rights as a means to guide development in that society’s laws, practices, and deliberations.

**2) Too burdensome: Are the burdens imposed by human rights too rigid, prescriptive, or inflexible to make human rights a viable basis for deliberative discourse or for practical implementation?**

One popular view of a human right is that it prescribes an absolute or exceptionless demand that cannot be overridden or waived in relation to other normative or practical considerations. Consider the practical development challenges implicit in the rapid urbanization in the South that I described in some detail at the beginning of chapter three. Given this context, many would argue that a rights-based development strategy would unduly burden nations and their constituent cities and towns with too many demands – which are exceptionless and forbid trade-offs. Are not the existing challenges already sufficiently daunting, without adding a longer or shorter list of human rights as absolute side constraints? The UNDP HDR 2000 lists seven rights-based freedoms, the Universal Declaration of Human Rights includes thirty Articles, and the International Bill of Human Rights recognizes thirty-eight distinct rights. These are very high thresholds indeed, if one assumes that all rights must be respected and promoted, and no trade-offs be permitted between them. There is no question that advocating for the simultaneous achievement of *all* human rights is exceedingly ambitious, given the record to date of frequent neglect of even civil and political human rights. If too many human rights demands are placed on the international, national, or local political agendas, will the topic lose traction due to the enormity of the changes required? Who should bear the duty of responding to a long list of human rights? Rights entail duties, yet libertarians such as Robert Nozick – who advocate for a minimalist state with few duties – worry that the claims of such rights impose far too many additional obligations on the state. Political realists also resist the impositions of international

treaties that attempt to prescribe exceptionless human rights performance standards (domestic and international) to the state. One outspoken critic of such cosmopolitan views, Charles Krauthammer, believes that the obligations of human rights (and humanitarian concerns in general) pertain appropriately only to the individual, not the state, and emphatically not to a “superpower” state.

There are strong arguments, which I support, in favor of allowing for trade-offs in deciding to which human rights – or the features of human life they promote and protect – to give priority. See my discussion on Sen’s concept of *imperfect duties*. “Achievement” as discussed earlier in this chapter, includes the recognition that all persons possess the human right, that the human right is universally respected in that society, that appropriate policies and laws enforce that human right, and that persons really enjoy the “substance” of the right. Sometimes this challenge is formulated as the inflation problem: adding too many human rights is like printing excessive amounts of money – the money loses its original value. Here the problem is not stringency or inflexibility but sheer number of moral concerns.

There are two challenges raised by the “too burdensome?” question. In answering the multiplicity of human rights challenge, I would distinguish basic from nonbasic human rights, although I contend that the full range of human rights continues to exercise moral authority under the concept of imperfect duties. In my answer to the inflexibility of the human rights challenge, I argue that human rights are always *prima facie* or presumptive, always overridable in relation to more pressing rights, other normative considerations, or other practical considerations such as survival or national self-interest. But the burden remains on those who would override human rights – the justifications must be good and persuasively weighty.

**3) Rhetorical flourishes: Some argue that the claims of human rights are not persuasive – and can therefore be dismissed – because they are idealistic, utopian, rhetorical, or hard to comprehend.**

Despite progress on the articulation of various justifications in support of human rights theory, some political realists (as well as utilitarians in ethical theory) dismiss such moral positions on the theoretical indivisibility and equality of human rights as largely exercises in rhetoric, and ultimately inconsequential, expendable, or derivable from more basic moral notions: Realism is conflict-oriented and state-centered, dismissing law and morality as encumbrances upon the rational calculation of national interests, which should be associated as objectively as possible with the power and wealth maximization of a given political actor and not be deflected by sentimental considerations associated with adherence to the norms of law and morality. Skeptics and cynics point out that even though most countries have signed the Universal Declaration of Human Rights, many of these countries demonstrate on a regular basis a flagrant and disheartening propensity to ignore these commitments. Such critics point out that the global political situation remains a sobering reminder of massive and persistent human failures to respect the dignity and value of each human life, despite the many initiatives underway to strengthen the appreciation for human rights and to address violations of human rights. Amnesty International regularly reports that the majority of sovereign states routinely practice some form of torture. Unless there is a global enforcer of human rights, will human rights remain ineffectual? As Thomas Hobbes famously noted, covenants without swords are but words.

Without a global power above the state to demand human rights performance, will human rights only be recognized and become influential with respect to domestic public policy when countries reach a certain level of development and stability? Chris Brown takes this view, saying that only as states become civilized will they achieve the Universal Declaration's standards. Standards do not civilize states, argues Brown. While I accept the limitations of imposed standards, I argue that consideration ought to be given to the opposite premise – that good development is dependent on first achieving a much higher and more consistent standard of respect for human rights.

Does this discrepancy in human rights ideals and actual performance make the Universal Declaration inconsequential, or at least not persuasive? If so, this would undermine the UNDP's human rights approach, whose seven essential freedoms are grounded on the Universal Declaration. Jack Donnelly believes that states that fail to respect their human rights commitments can be pressured by other states and by public opinion gradually to improve their behavior and move closer to adherence to their formal commitments. Richard Falk, however, argues that adding the claims of human rights to the development agenda (as means and ends) detracts from other worthy development objectives, is too utopian, or at least imposes too heavy a burden on resource-poor economies. Sen questions what might motivate adherence to human rights principles and cautions that the self-interested motivations of people seldom allow room for full moral acceptance of rights that are valued and supported, such as human rights: "Even a partial and limited move in that direction in actual conduct can shake the behavioral foundations of standard economic theory". And Chris Brown argues that human rights are in some senses fictional, yet he claims that they are *valuable fictions* – they are associated with a way of life and a set of values that most people in the world are attracted to.

Richard Rorty approaches this debate from a very different perspective. In his view, rhetorical pronouncements intended to impart moral *knowledge* or better beliefs are ineffectual; Rorty claims that only through an "education of the sentiments" by which a society develops its consciousness of human solidarity will human rights values be instilled as a guide to actual behavior. This view seems to explain the observations of Sakiko Fukuda-Parr, the former Director of the Office of the Human Development Report at the United Nations Development Programme. Having overseen the production of the *Human Development Report 2000*, and thereby being uniquely well placed to view any consequent institutional changes arising out of this Report, she expresses dismay at how little impact the rhetoric, and the intellectual and moral arguments featured in the *Human Development Report 2000*, have generated. In her view, the interest in human rights at the UN and the World Bank is actually waning. Despite the persuasiveness of the rhetoric and intellectual arguments, the development community has failed to understand and institutionalize many of the principal arguments of that *Human Development Report*.

Rhetoric has a role in motivating people, but the responsible use of rhetoric entails having a cogent and defensible argument to back up the rhetoric. This is certainly true when the subject is human development, as noted by the United Nations Development Programme: But to divorce the rhetoric from the substance of an approach goes entirely against the tradition of the human development literature, which has been committed, right from the beginning, to standing on

articulated concepts and exacting argumentation, rather than concentrating on moving language and stirring phrases not matched by explicit defense. I reject realism's amoral premise that states are aloof from moral considerations. This claim, I argue, is contrary to the experience of most people, who derive important guidance from moral values and principles and who wish their nations to express these values. I find some persuasiveness – but no proof – in the notion that a country might only respect human rights upon achieving a more advanced level of development, yet I question the unit of analysis. Might not an urban society take the lead in demonstrating – through policy and action – a respect for human rights? Why consider a nation as a moral monolith? Similarly, the more intimate scale of an urban society reinforces a city government's obligations of accountability; I contend that this proximity (spatially and socially) could lead to much greater alignment between human rights-based local policies and human rights-based government performance.

I argue that the notion of human rights as a moral “hook” and the existence of the international human rights regime provides an initial basis for disadvantaged local people – and some civil society organizations – to advocate for including human rights protections and promotion within their own development and governance policies. As human rights protections gradually find expression in local and national laws and policies, and in deliberations on governance, the poor and disadvantaged might seek primary recourse within their own legal and political systems for achieving their development aspirations. I regard Chris Brown's comments on human rights as *valuable fictions* as largely a rhetorical device, helpful only in the sense that one might consider all moral values in the same light. The concept of *valuable fictions* simply avoids the debate on metaphysical and other justifications for moral values, including human rights. My primary argument, which I will develop in chapters six and seven, is that human rights inspire and empower people – specifically poor people in the urban South – to assert their demands for a form of development that respects their human dignity. I reject Rorty's strict separation of sentiment and argument; instead I contend that a human rights approach contains argument and sentiment, moral intuition and articulated moral principles.

**4) The legitimacy critique: Do human rights exist on their own inherent moral merits, or are these rights acquired only through the legislation of a sovereign state?**

Sen states the argument, which he later refutes, as follows: Human beings in nature are, in this view, no more born with human rights than they are born fully clothed; rights would have to be acquired through legislation, just as clothes are acquired through tailoring. There are no pre-tailoring clothes; nor any pre-legislation rights. Sen and others correctly counter this critique by viewing human rights as a set of ethical claims, which need not be identified with legislated legal rights. In some cases, human rights have influence where legal rights would be inappropriate. For example, the moral right of a wife to share equally with her husband in making important decisions affecting the family would not lend itself to police enforcement, but still carries weight without being legislated. Similarly, the human right to be treated with dignity and respect does not translate into specific legislation.

**5) The coherence critique: Rights entail duties. Under this view, asserting a claim based on a human right becomes incoherent unless a specific duty (and duty-bearer) is identified and that duty is somehow enforced.**

Otherwise, notes Sen wryly: Human rights, in this understanding, are heartwarming sentiments, but they are also, strictly speaking, incoherent. Thus viewed, these claims are best seen not so much as rights, but as lumps in the throat.

This critique also entails concerns about the realism or practicality of assigning duties on those unable to discharge them. In particular, considerable controversy surrounds the demands placed by human rights advocates on the governments of resource-poor countries. Does a lack of essential development resources invalidate human rights claims? To respond to this critique, philosophers and ethicists have relied on the concept of imperfect duties, which I discussed previously. Claiming a human right entails imposing a duty on certain others, a duty to act positively or to refrain from negative, destructive, or humiliating actions. In many instances these duties place an unrealistic burden on the duty-bearer, and have led many to question the efficacy of human rights claims entirely. The concept of imperfect duties, and the related concept of the progressive satisfaction of human rights claims over time, helps to quell such criticism; the specific details of how and when a duty will be discharged – or the weight of that duty – are left open. Under this view, leaving such duties undischarged is acceptable only if there is firm evidence that the duty-bearer is making some efforts and achieving some progress – even over the long term – gradually to identify the requisite resources and means to satisfy the claim. The concept of imperfect duties does not lend itself simply to ignoring human rights claims because such claims cannot immediately be satisfied.

Ignoring human rights is not a responsible option, but neither is an approach based upon resolving certain human rights claims through a “quick fix” recourse to economic or social handouts. Instead, human rights claims should properly be viewed as claims to a certain “...set of social arrangements, norms, institutions, laws, an enabling economic environment – that can best secure the enjoyment of these rights”. Sometimes it takes a long time to get these in place and enable them to make a difference in people’s lives. Individuals and institutions don’t have a duty to be successful, especially not in the short run, but they do have the duty to build – often slowly and incrementally – institutions that eventually improve the prospects of human rights compliance.

**6) The cultural critique: Many argue that human rights are an imposition of Western values, even an extension of Western imperialism.**

If human rights are based on ethics, whose ethics apply? These critics question why the ethical standards and principles that underlie human rights should be actually or ideally universal across all cultures and all societies. Aren’t there significant differences, they argue, in operative human values and ethics that make the definition of human rights meaningful only within the context of a specific group or society?

There may be significant differences between values that are valid and values that are actually operative in people’s lives. One set of values that are valid for everyone – for example, that all human beings should be treated with respect – does not preclude the existence of enormous differences in operative values.

This criticism opens the door to a perennial debate in philosophy and ethics between universalism and particularism (or relativism). How does one select and justify the choice of moral values from the different values evident in many societies?

This question raises several fundamental divisions of thought within development ethics, which David Crocker summarizes in three meta-ethical views: *universalists*, *particularists*, or a position based on cross-cultural consensus, embracing elements of both. This dilemma of choice between moral values is echoed in large measure by Ken Booth's critique on what he terms "*culturalism*," in which he questions whether the demands of cultural authenticity and relativism are a permanent impediment to progress on the universal acceptance of human rights. Does culture (or cultures) become the trump card in any debate about human rights? Many arguments on moral values assert that each culture is unique, and that its behavior, social order, operative moral norms, and development priorities differ from those in other cultures and can only be understood and addressed by reference to the particular beliefs, traditions, rationalities, and values of that culture. Others such as Crocker counter that this view is extreme, arguing that we can accept great diversity with respect to operative moral norms, and still work to evolve agreement about cross-culturally valid norms. And we must also be careful what we are referring to as a "culture," as Booth remarks:

Culturalism assumes there is an objective reality to cultural authenticity, but it can be shown in practice that these ostensible Archimedean points are invariably contested from *within*, and human rights are supposed to be *relative* to the traditions and outlooks of particular cultures, to what, or whom, within that disputed culture are human rights supposed to be relative? ... For some reason, these days, culture is privileged above all, and especially when human rights is the subject. Against those who assert that human rights must be embedded in an ethical community, I would say: which "ethical community" – that of culture (which usually means traditionalism) or that of class, gender, nation, generation, or some other category such as the "poor", "the hungry", "the oppressed", "the marginalized" – the victims? To whom or what has human rights relativism to be relative? Extreme relativism also can make it problematic to challenge the traditional status quo – and that culture's distribution of winners and losers in wealth and power. For example, traditional societies may encourage a fatalistic view of one's place in society, as seen with the caste system in India, and can make – through their prevalence – certain practices seem acceptable, such as domestic violence. Another challenge to the universality of human rights comes from those who perceive the claim that human rights have universal validity as nothing more than a means of extending the political power, influence and cultural values of the North (or "West"). The related challenge is that the North may advocate human rights, yet the North itself offers few exemplary models of consistent human rights-based governance. For example, after September 11th, the United States has returned to its Cold War penchant of supporting repressive regimes if they support the United States in combating international terrorism. Human rights become a casualty of wars, both hot and cold.

Peter Baehr successfully refutes the claims of cultural imperialism by the North, however. His argument, which I support, is that it is the critics in the South who are paternalistic by claiming that people in the South are either not ready or see no cultural relevance for human rights and the associated political freedoms. Still, the view persists that human rights concepts are part of a Western political agenda, and that human rights are unsuitable for development objectives in

non-Western societies. Donnelly has explored the arguments of cultural relativism in considerable detail, articulating a range of positions from radical cultural relativism (culture is the *sole* source of validity of a moral right), to strong cultural relativism (culture is the *principal* source of validity of a moral right), and finally to weak cultural relativism (culture is an *important* source of validity of a moral right). Donnelly accepts that while human rights are based in human nature, human nature is to a certain extent culturally defined. In a move that I find persuasive, Donnelly argues for the latter position, weak cultural relativism, allowing for a deviation in universal human rights standards primarily in the manner in which they are implemented. Donnelly also offers a very interesting test on the premise of the universalism of human rights in the context of implementation:

Rights are formulated with certain basic violations, or standard threats to human dignity, in mind. Therefore, the easiest way to overcome the presumption of universality is to demonstrate that the anticipated violation is not standard in that society, that the value is justifiably not considered basic in that society, or that the object of the right is guaranteed by an alternative mechanism...Such a test can be met only rarely today.

Ken Booth offers yet further arguments in support of the actual (and justified) universalism of human rights, observing that there already exists a significant level of universality in these terms, and that a high degree of value commensurability exists between communities and across cultures. Booth also argues that a consensus already exists among all people – perceived from our animal nature and social character – of what constitutes a wide range of human wrongs. He further contends that universal ethical communities appropriate to human rights considerations already exist, based not on territory or culture but on the multiple identities all people have as parents, oppressed women, white collar workers, poor people, etc., and – with reference to Rorty – out of our common experience as human beings.

Most international treaties have taken the position that there is an adequate degree of commonality in operative norms within all human societies sufficient to support human rights, even without any definitive proof of this claim. And contrary to much anthropological practice and development theory, where relativism carries considerable weight, the premise of the universality of human rights is the predominant practical position in the international dialogue between nation-states and within civil society. As stated by Mary Robinson, the United Nations High Commissioner for Human Rights, in the UNDP *Human Development Report 2000*:

Universality is, in fact, the essence of human rights: all people are entitled to them, all governments are bound to observe them, all state and civil actors should defend them. The goal is nothing less than all human rights for all.

It is clear, then, that various views exist on the universality of human rights. Upon reflection, I have adopted a position in line with Donnelly, that of weak cultural relativism, accepting the universality of human rights principles while still allowing for and encouraging a wide margin of local determination in the manner in which human rights are implemented. Besides his *culturalism* critique described above, Booth identified two further challenges to human rights theories, which – together with *culturalism* – he refers to as “tyrannies that oppress the theory and practice of human rights”. I turn to these additional challenges.

**7) Presentism: Should the social world be viewed as the status quo, a natural state not likely to change? Or is humanity constantly evolving, reflected in part by progress in achieving a moral consensus on the universality of human rights?**

By this, Ken Booth suggests that our moral perceptions may be narrowed by an unquestioning acceptance of the immutability of the status quo, and he challenges us to discern an evolving moral trend moving towards a cosmopolitan worldview in which all humanity is one moral community. Many theorists argue forcefully that there are no reasonable grounds, based at least on an examination of the status quo, upon which to conceive of a global moral community existing now. Hence there can be no valid appeal to universal values to support the claims of human rights because valid appeals presuppose a global moral community. Booth takes the discussion out of the present sense, turning the argument back to the critics: The argument is not that a strong universal rights culture will happen, only that there are no grounds – historically or anthropologically – for saying that it will not. Booth's arguments rest on two principal observations. First, he contends that no one can predict with any accuracy what will be the social and cultural impact on moral values of the complex process of globalization now in force. Second, he suggests that humanity is not entirely passive, challenging us with the thought that "we might be what we strive to become". Under this thinking, it may be possible to view the attainment of human rights consciousness not as some moral threshold defining the boundaries of civilization, but instead as an indicator of a richer and continuous moral evolution of the human species.

**8) Positivism: Some argue that claims of the universalism of human rights be dismissed as irrelevant or inconsequential, compared to reliance on scientific, values-free objectivity, and existing power relationships.**

Ken Booth contends that positivism – through its premise of values-free, apolitical, objective thinking, and its close affinity to realism in international relations theory – reinforces the status quo and the values of the status quo. Jack Donnelly also notes that positivism – and the realist – considers human rights to be irrelevant. The realist defines national interests in terms of power and the sanctity of domestic jurisdiction, not an international moral standard. Booth replies by observing the status quo with a different lens, noting that there already exists a considerable global consensus on human rights. There is also a significant degree of commensurability in the values held by different societies, and growing evidence of a trend towards the gradual emergence of a global ethical community. And the articulation of a human rights vision may play a role in broadening and deepening this global community. Even on the basis of the common experience of being human, as noted by Rorty, a commonality of human sentiment binding us all into a universal wholeness is gradually becoming evident, offset to some extent perhaps by a gradual erosion of our widely dispersed moral resources and moral identity.