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Buyse, A.; Glasius, M.

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Human Rights



Antoine Buyse¹ and Marlies Glasius²
¹Netherlands Institute of Human Rights (SIM),
Utrecht University, Utrecht, The Netherlands
²Department of Political Science, University of
Amsterdam, Amsterdam, The Netherlands

Definition

Human rights, as the term expresses, are inalienable, universal basic rights inhering in the individual by virtue of being human. Such rights can be understood normatively as moral entitlements, empirically as objects of political struggle, or positively, as legal rights based on international law. In the latter case, the rights catalogued in the two almost universally ratified core conventions, the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social, and Cultural Rights (ICESCR), are common points of reference. Many human rights organizations and movements operate on the basis of a moral or political understanding of human rights, but often primarily refer to existing legal norms in their advocacy work, as the latter are directly connected to obligations to which states have bound themselves.

Introduction

The notion of rules to protect citizens from arbitrary power is historically connected with the concept of civil society. In turn, civil society has been instrumental in pushing for human rights protection through nationally and internationally agreed norms and institutions. Ideas akin to human rights can be found in different cultures throughout history, but for better or worse, the most influential modern conception of human rights has been that within the Western Enlightenment tradition and related to the social contract. Thomas Hobbes and John Locke are considered as the founding fathers of the notion of civil rights and the notion of civil society alike. The two terms expressed different aspects of the guiding idea that a ruler did not have a divine right to do with his subjects as he pleased, but rather, that people came together voluntarily and negotiated a hypothetical social contract to form a civil society, in which the rights and obligations of the citizens and the ruler were clearly outlined.

With the exception of Kant, the Enlightenment thinkers thought of this rule-bound society only in national terms. However, the post-World War notion of universal human rights, coupled with a thickening network of international rules directly affecting citizens, has given birth to the utopia of a global rule-bound society, which remains connected to global civil society in the modern sense of the whole of border-crossing, nonprofit, nongovernmental entities. It may be intuitive that the emergence of a

global civil society is dependent on the development and observation of the international rule of law. The opposite connection is less obvious, but the history of human rights, of which only a small portion will be described here, has equally been a product of the activities of people outside government, much more than is commonly imagined.

Historical Background

The first catalog of individual rights proclaimed by citizens themselves, as opposed to rulers, was the Declaration of the Rights of Man and of the Citizen adopted by the French National Assembly in 1789. The idea of individual rights became an important ingredient in the foundation of constitutional states in Europe, and catalogs of civil and political rights found their way into many national laws and constitutions in Europe and the Americas. In the nineteenth and early twentieth centuries, the struggles to abolish slavery, to protect religious or national minorities, and to establish social rights for workers can all be seen as precursors to the broader human rights movements that followed later. In all these cases, changes originated through campaigns and advocacy by groups in civil society.

The Holocaust and other gross atrocities associated with the Second World War gave birth to the idea that national guarantees of these rights were not enough, and they needed to be formulated and protected at the international and global level. It was due to the lobby of a small number of nongovernmental organizations (NGOs) that human rights were included in the Charter of the United Nations. At the request of the General Assembly, a group of lawyers led by (non-jurist) Eleanor Roosevelt drafted the “Universal Declaration of Human Rights,” adopted in 1948, a short and readable document avoiding legal jargon. Its legal status is controversial: it was meant to be a mere declaration as a “common standard of achievement for all peoples and all nations,” not a treaty. But some would argue that, having been reaffirmed so often by so many states, it has passed into customary law.

The Universal Declaration was meant to be the prelude to the swift adoption of a comprehensive

UN treaty on human rights. But the Cold War rift stymied these efforts for nearly 20 years. Ideologues in the Soviet Union and its satellite states began to realize that the idea of human rights, including freedom of expression, freedom of assembly, and freedom to enter and leave one’s country posed a threat to their political systems. Instead of rejecting human rights outright, they began to argue that economic and social rights, such as the right to food, health, housing, and education deserved priority over civil and political rights. Developing countries were also attracted to this argument. The United States on the other hand adamantly opposed, and continues to oppose, the suggestion that such “aspirations” have equal status to civil and political rights. Therefore, two treaties were eventually adopted in 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). While ratification of these two treaties initially ran along the dividing lines of the two Cold War blocks, nowadays both treaties enjoy almost universal ratification.

Alongside these two comprehensive treaties, a number of other human rights treaties were also adopted in the postwar years. The first category is that of regional treaties, including the European Convention on Human Rights and the European Social Charter, the Inter-American Convention on Human Rights, and the African Charter on Human and Peoples’ Rights. A second category comprises specialist or thematic global treaties, such as the Convention Against Torture, the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Rights of Migrant Workers, the Convention on the Rights of Persons with Disabilities, and the Convention on Enforced Disappearances.

While national and international movements and organizations have invoked human rights since the Enlightenment, the first international organization explicitly created as a human rights NGO would be the Fédération Internationale des Ligues des Droits de l’Homme (FIDH), founded with 20 national chapters in 1922. The International Commission of Jurists, founded in 1952

primarily to denounce human rights violations in the Soviet Union, quickly transcended its Cold War foundations to challenge human rights violations on both sides of the Iron Curtain. Amnesty International was founded in 1961 by British lawyer Peter Benenson to draw attention to “forgotten prisoners of conscience,” and emphasizing impartiality in the Cold War struggle.

In the 1960s, a number of states from the Global South, trying to go beyond the Cold War divide, put human rights on the agenda of interstate diplomacy. They not only championed self-determination but also fought against racial discrimination and religious intolerance (Jensen 2016). In the next decade, US Congressmen introduced legislation linking possible US aid to a state’s human rights record, which provided an opening for civil society activists to testify in Congress. The Carter administration subsequently introduced annual human rights reports published by its State Department.

The détente between the great superpowers led to the adoption in 1975 of the Helsinki Accords, which included the principle of respect for human rights alongside nonintervention in internal affairs. This gave birth to civil society organizations on both sides of the Iron Curtain devoted to monitoring respect for human rights in the Soviet Republics and its satellites: Moscow Helsinki Watch in the Soviet Union, Charter 77 in Czechoslovakia, Helsinki Watch (the forerunner of Human Rights Watch) in USA, and the Helsinki Committees in many European countries.

At the United Nations, a division of human rights was established in 1977, of which the Dutchman Theo van Boven was the first director. Egregious violations by South American regimes sparked the establishment of a Working Group on Disappearances, and subsequently, also Special Rapporteurs on particular countries and topics. There are currently 44 thematic procedures and 12 countries under special scrutiny. These mechanisms provide great scope for civil society involvement, as they are typically led by independent experts, usually academics, and most substantial input comes from civil society since the

UN lacks the resources to actively investigate. However, the strongest possible response by the Human Rights Council, the successor of the Human Rights Commission, is ritual condemnation in a resolution. Also, at the UN, committees attached to the two main treaties, ICCPR and ICESCR, and to the thematic treaties monitor state implementation. Again, these are composed of independent experts and have gradually allowed ever more civil society input, but they attract even less attention than the Human Rights Council.

The end of the Cold War gave new impetus to the international human rights movement in the early 1990s. In 1993, the Vienna World Conference on Human Rights was held and the UN General Assembly established the post of UN High Commissioner of Human Rights. This position is the voice for human rights in the UN and beyond – it coordinates the work of the organization, including through country-field offices, and supports the work of the treaty body mechanisms and the special procedures.

This new international architecture, with explicit recognition of human rights norms by both superpowers and a host of regional and international human rights monitoring mechanisms, in turn gave rise to what Keck and Sikkink (1998) have called “transnational advocacy networks”: loose coalitions of civil society actors that appeal to norms beyond the state (i.e., human rights) in order to seek redress for state violations. The climate for human rights and its defenders has deteriorated in the last two decades, both as a result of terrorism and the ensuing state reaction framed as the “war on terror” after 2001, as well as the stagnation of democratization and the rise of new authoritarian practices by states. This has also affected the efficacy and even safety of human rights networks. Some have argued that the system has now become ill-adapted to new geopolitical realities and shifting concerns to such an extent that we should speak of the end-times of human rights (Hopgood 2013), but such critiques have also been heavily criticized themselves for being one-sided (Lettinga and Van Troost 2016).

Civil Society Activity

The activities of individuals and organizations in civil society in relation to human rights can be divided into three kinds: shifting norms; making law; and monitoring implementation.

Norm-shifting. The rise of the human rights paradigm itself, partly at the expense of state sovereignty, can, of course, be considered as an important normative shift for which civil society has been at least partly responsible. And in turn, state ratification of human rights treaties has often helped to mobilize domestic civil society to pressure states to uphold those commitments (Simmons 2012).

A smaller concrete example of norm-shifting relates to the increasing acceptance of economic and social rights. From the 1980s onwards, both grassroots groups active in the field of social justice and academics including economists, philosophers, and lawyers began to draw attention to and justify these types of rights: by proving that fulfillment of the right to food or the right to housing is not correlated to the absolute stock of food or housing, by making moral arguments based on need, by elucidating the scope and content of the rights, or by exposing violations such as slum clearances or failure to distribute food stocks. Since then, economic and social rights, while by no means universally accepted, have become a point of reference for many organs of the United Nations, for mainstream human rights NGOs, and for development NGOs, which have often adopted a rights-based approach. Many of the thematic global human rights treaties, such as the Convention on the Rights of the Child, include both civil and political as well as economic, social, and cultural rights. At the national level, legal victories have been achieved in relation to the rights to food, health, and housing in South Africa, India, and Latin America. More recently, new synergies have emerged with medical practitioners on the right to health, and with anti-privatization and anti-dam activists on the right to water, and new methodologies have been elaborated, such as budget analysis and the development of indicators (Glasius 2006). A lot of this work has been dedicated to securing a minimum

core of basic subsistence rights for the largest possible group of people. Some have argued that this made the human rights movement lose sight of another social justice issue, namely, the growing economic disparity in wealth between the rich and the poor (Moyn 2018).

Another example of human rights norm-shifting by civil society relates to violence against women. With this new and increasingly influential framing, not only political violence against women (such as organized rape during conflict), but also communal violence (such as widow-burning or honor killings) and even domestic violence have been defined as human rights violations.

Law-making. Civil society involvement occurs both at the domestic level, for instance, the Human Rights Act in UK, and internationally. While the two core conventions were almost entirely negotiated by state representatives, later treaties have been much more heavily influenced by civil society. This can be seen through two examples.

First, civil society had a large role in the establishment of the International Criminal Court in 2002, arguably one of the most important institutional developments in the fight against impunity of the gravest human rights violations. The Coalition for an International Criminal Court, a group of organizations dealing with this issue, was highly professional and enjoyed a high level of respect from, and a close working relationship with, state delegates. At the final negotiations in Rome in 1998, it was divided into teams, all closely monitoring the daily negotiations. But the influence of the civil society coalition cannot be solely ascribed to its professionalism. The ethical orientation of the civil society delegates, who collectively dwarfed any single state delegation, helped to shape the nature of the negotiations: they moved what was perceived as the middle ground by making utopian proposals; they limited the scope for secret negotiation and actually imposed a norm of transparency to which states subsequently began to appeal; their lines of reasoning constrained state representatives to make reasoned arguments based on conceptions of the global common good; and their presence

strengthened the position of small and poor states (Glasius 2005).

Second, civil society was also instrumental in the creation and shaping of the Convention on the Rights of Persons with Disabilities, adopted in 2006. As early as 2000, five international NGOs working in the field of disability called upon states to negotiate such a Convention. Again, NGOs monitored and influenced the process of negotiations and were also instrumental in the very high pace of ratification of the treaty, helping its entry into force as soon as 2008, less than 2 years after its adoption.

Monitoring. The greatest challenge in relation to human rights remains implementation. Monitoring implementation is the core activity of most domestic and international human rights organizations alike. They do so by reviewing, assessing, and reporting on what domestic authorities do, with national constitutions or international human rights law as benchmarks. This may help to put issues on national or international policy agendas. But they also make use of regional and global human rights institutions. NGOs can lodge international complaints when their own human rights are violated. In addition, they can ask to be allowed to intervene as third parties in the procedures of, e.g., the European Court of Human Rights. Globally, civil society can give input in the United Nations' Universal Periodic Review, a state-led peer-review mechanism that monitors human rights protection by all UN member states (McGaughey 2017). Input is also regularly provided to UN special rapporteurs and to the expert bodies set up under the various global human rights treaties.

These various roles do not come without dangers. Both organized civil society as well as individual human rights defenders may face resistance, threats, regulation, or even violence as a result of their work. To clarify the roles, rights, and responsibilities of civil society in relation to human rights, the United Nations General Assembly adopted the Declaration on Human Rights Defenders, in 1998. Since 2000, there has also been a special rapporteur attached to this non-binding, yet authoritative document. More recently the protection of human rights defenders

and civic space more generally have become one of the key areas of work of the Office of the UN High Commissioner for Human Rights.

Key Issues

Universality

The history of the concept of human rights – like the concept of civil society – lays it open to the charge of being inappropriate in non-Western cultural and political contexts. The debate about universality is held at three different levels: the academic, the governmental, and the civil society level.

At the academic level, both philosophers and anthropologists have challenged the purported universality of human rights; the first from a theoretical standpoint and the second from their views of the lived experience of non-Western peoples (see, e.g., Bell 2000). While there are trenchant critics of human rights in academia, much of the academic debate is oriented towards a constructive dialogue, with human rights theorists like Donnelly (1989) and An-Na'im (1992) pleading for the construction of an "overlapping consensus" on human rights values.

At the governmental level, a particularly sophisticated response to criticisms of human rights violations emerged from Singapore since the late 1980s: instigated by former Prime Minister Lee Kuan Yew, "Asian values" privileging harmony and consensus were counterposed to human rights. This Asian values rhetoric has been subsumed by broader claims positing the importance of "traditional values" against human rights, for example, by Russia and China, but also the governments of Hungary and Turkey in the late 2010s.

In civil society itself, the universality debate has in practice focused on very specific issues: primarily the rights of sexual minorities, female genital mutilation, and the relation of human rights to sharia law. At times, actors within civil society such as religious organizations have actively tried to oppose the critical scrutiny or positions taken by human rights organizations. In other instances, they have been allies. Within

the UN, clashes between the universal and cultural particularism have played out since the end of the 1990s in the debates surrounding resolutions on the defamation of religion (as pitted against broader freedom of expression) and the definition of “gender” in various legal contexts.

Indivisibility and Hierarchy

At the first big UN human rights conference after the Second World War, in 1968 in Tehran, states adopted the formula that “human rights and fundamental freedoms are indivisible.” In Vienna, this was expanded to “all human rights are universal, indivisible, and interdependent and inter-related.” This mantra was a response to the historic controversy between civil and political rights on the one hand, and economic, social, and cultural rights on the other. The position taken by the Soviet Union during the Cold War, that economic and social rights were the only important human rights, has no basis in Marxist thought (which is suspicious of rights language) and was never taken seriously at the level of civil society debate.

The converse notion that economic and social rights are not really (human) rights, but only aspirations, or a lower order of rights, has attracted much more debate. In classic liberal thought, individual rights are the key to a decent political system that transcends despotism, and as such they trump matters of normal political debate and policy choice. However, the classical canon did not include rights to health, housing, or education, and many self-defined liberals would place all welfare issues in the “policy choice” rather than in the “inalienable rights” category. Hence, the pairing of “economic and social” with “rights” had few champions on either side of the Cold War ideological divide (Glasius 2006).

Since the end of the twentieth century, the debate has been shifted by efforts of legal scholars to dispel the notion that civil and political rights only require negative state obligations to abstain, whereas economic and social rights require positive obligations to provide. Instead, they argued that all rights entail three types of obligations: to respect, to protect, and to fulfill (Eide et al. 2001; Baderin and McCorquodale 2007). This trinity of

obligations has been widely cited by judges and has made its way into the wording of the South African Constitution.

Yet, it is intuitive, on the basis of needs, that not all rights, or more accurately not all aspects of rights, are equally vital. Paid holidays are not as essential as food. The reluctance to barter with human rights, and particularly with economic and social rights, has laid human rights activists open to the charge of being maximalist and unrealistic. In practice, choices are made. This is most clearly expressed in the idea that each right has a “minimum core content” to be implemented regardless of circumstances.

Non-state Actors

In a globalized world, more decisions affecting people’s lives are made by entities other than states than was the case in the decades immediately after the Second World War, when human rights law was largely developed. In many developing countries, for instance, large parts of the health care system may be paid for by foreign donors and implemented by local NGOs, but responsibility for the right to health still lies with the government. In other states, developed and developing alike, basic health care, education, and utility services have been partly privatized, but the relevant human rights obligations still lie with the state. In a number of countries, armed groups terrorize people or even control large territories. The state has the human rights obligation to safeguard people from harassment, but this obligation is rendered meaningless without some minimum capacity to maintain law and order. As a result of all these developments, a human rights regime that imposes obligations solely on states has become deeply unsatisfactory.

Civil society has in recent decades been particularly active in trying to construct sometimes moral and sometimes legal human rights obligations for a range of non-state actors. For military combatants, for instance, human rights obligations can be derived from the law of armed conflict, which impose obligations on all parties and confer legitimacy in return. In relation to corporate actors, the legal system is still very deficient. A UN Special Rapporteur has developed the

so-called Ruggie Principles, which spell out the obligations of businesses in relation to human rights and some strides have been made in voluntary regulation, such as through the UN Global Compact. Several attempts to conclude a binding treaty on the issue have failed and new negotiations were ongoing in the late 2010s. Within national systems, more progress has been achieved, for example, by way of labor regulations, anti-discrimination law, and even criminal law.

The literature on human rights obligations of non-state actors has expanded enormously (see Clapham 2006; Ssenyonjo 2011). It may be philosophically defensible that there should be a relation between an entity or individual's power, i.e. their ability to affect people's lives, and the extent to which they have human rights obligations. According to this line of thinking, many actors may have concurrent rather than exclusive responsibilities to uphold human rights. But in practice, allocating such responsibility is extremely complex.

Shrinking Civic Space

One of the key issues affecting civil society today is the issue of shrinking civic space. Civic space – the layer between state, business, and family in which citizens organize, debate, and act – seems to be structurally and purposefully squeezed in a very large number of countries since the mid-2000s. This phenomenon is not limited to the renewed rise of authoritarianism or to populism in hybrid democracies (Van der Borgh and Terwindt 2014), but also manifests itself in well-established democracies, e.g., in their anti-terror policies. It may be argued that the backlash against civil society by powerful actors shows how successful civil society has become in scrutinizing corruption, abuse of power, and, particularly, violations of human rights.

This backlash against civil society manifests itself in three ways. First, at the normative and institutional level. States restrict NGO access to foreign funding, impose very burdensome reporting obligations through administrative and tax laws, or even specifically prohibit NGO activity in certain fields or areas. Secondly, in

discourse: civil society organizations and human rights defenders are vilified, both by governments, media, and social media “trolls” as pawns of foreign interests, extremists or terrorists. Thirdly, in the actual practical space civil society has, some NGOs are threatened or violently targeted. But this practical space may also be squeezed in non-violent, yet extremely intense ways, such as confiscation of the administration of NGOs, arbitrary checks or searches, or even de-registration or dissolution (Buyse 2018).

The squeezing of civic space directly affects the human rights of individuals and civil society organizations, primarily the freedoms of speech, assembly, and association. Thus, respect for these human rights serves as yardsticks to assess the extent of civic space. By the same token, human rights mechanisms, both at the national and international level may serve as tools to counter the pressure. And as is apparent from many of our examples, civic space in which people can organize, debate, and act is in turn crucial for the development and monitoring of human rights norms. But this progressive symbiosis between civic space and respect for human rights is not a given. It is today at risk of being supplanted, at local or global levels, by a vicious cycle between shrinking space and increased violations of human rights. How resilient civil society is to resist these pressures is a crucial issue for the years to come.

Future Directions

The connections between human rights and civil society will continue to yield crucial yet complex problems, both for research and practice. A first issue relates to the varied landscape of civil society, ranging from formally established civil society organizations with structural membership and funding to ad hoc, semispontaneous gatherings, movements, or protests. Whereas the latter seem to be increasingly visible, the precise scope of their rights is yet unclear due to their amorphous and shifting character. This relates to a second issue, the interplay between the rights of individual protesters or other human rights defenders and

the “collective” rights of legal persons such as NGOs. Thirdly, the general shift away from a purely state-focused human rights system of accountability to one that more broadly encompasses all types of non-state actors means that (parts of) civil society can be bearers of both human rights as well as obligations. Fourthly, the increasing pressure on the rights of civil society requires a rethink of the positivist and progressive ideas of human rights proliferation and norm cascades and an in-depth analysis of “reverse transitions”. These complex problems necessitate more cooperation across disciplines concerning linkages between human rights and civil society to arrive at a truly multidisciplinary analysis that spans political science, law, history, anthropology, sociology, and many other fields.

Cross-References

- ▶ [Amnesty International](#)
- ▶ [Civil Society History: Enlightenment](#)
- ▶ [Federation Internationale des Ligues des Droits de L’Homme \(FIDH\)](#)
- ▶ [Freedom of Association](#)
- ▶ [Global Civil Society](#)
- ▶ [Hobbes, Thomas](#)
- ▶ [Human Rights Watch](#)
- ▶ [Locke, John](#)
- ▶ [NGOs and International Relations, UN](#)

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