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Sabine C. Carey, Mark Gibney and Steven C. Poe
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Introduction

This book is designed for a class on human rights or for the treatment of this subject in related courses. In our view, 'human rights' is one of the most important and most interesting subjects. After all, the study of human rights is essentially about how we treat all other people with whom we share this planet. In its essence, striving for the respect of human rights is a quest for human dignity. Human rights are about recognizing, honouring and protecting the human dignity of each one of the six billion people on this planet. When human rights are not protected, the victim's human dignity is thereby ignored. But what this also does is to deny the humanity in all of us.

In this book, we work under the assumption that students study human rights because they are deeply interested in making a positive contribution to the world. Our goal is to build on this interest and this passion. Along with this, our strong sense is that students want to 'get into' human rights immediately and we have structured this book with this goal in mind. In that way, this book is less theoretical and less historical than other books in this realm, and every effort has been made to focus on the humanity on which human rights is based.

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The reader will also find a much different and more challenging conceptualization of human rights compared with the 'standard treatment' of human rights in other textbooks. The dominant approach is to recognize the universality of human rights, but then to go in the opposite direction by limiting the responsibility for protecting human rights solely to the territorial state. Under this approach, human rights will almost always be little more than a litany of 'horribles' carried out in distant lands by and against 'others'. Our approach to human rights is decidedly different. Much of what we present throughout this book is the notion that not only are human rights universal – but so is the obligation or the duty to protect and enforce these rights. Human rights are based on the notion of shared humanity but also of shared responsibility. In our view, any other approach to human rights is not deserving of the name.

Another distinguishing feature of this book is our use of quantitative methods. At a minimum, human rights brings together law, politics, history, economics, ethics, religion and morality, but we are also of the mind that the study of human rights is greatly enhanced through scientific method, including statistical analysis. Although this might sound off-putting at first – or worse, induce maths anxiety – you will soon discover how useful, informative (and even easy) this approach to human rights can be. Another novel aspect of our book is that not only do we provide suggestions of further books on the subjects covered in each chapter, but we also put together an extensive list of films that deal with the politics of human rights and emphasize, in a different way, the importance of human rights in order to respect and protect our human dignity.

In Part I we examine the nature of human rights as well as the different responsibilities to protect these rights. Chapter 1 provides a brief overview of the religious and philosophical roots of human rights and gives a short introduction to the main players in the human rights system. Chapter 2 focuses on the responsibilities of states to protect civil and political rights, as well as economic, social and cultural rights, while Chapter 3 discusses specific examples of state responsibilities, both domestic and international, in protecting human rights.

Part II introduces some quantitative measures of human rights to show how the respect for, and violation of, human rights can be traced

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across time and be compared across countries. In Chapter 4 we provide an overview of where different types of human rights are most at risk, using maps and tables when appropriate. In Chapter 5, we put forward several reasons why human rights are violated and empirically test these arguments, using quantitative analysis. Of course, no prior knowledge of these analytical tools is necessary in order to understand our arguments and presentation of results. We conclude this chapter with a brief case study of human rights in Nigeria, a country that has gone through the gamut of human rights practices (both good and bad) over the past few decades.

Part III focuses on how to restore human dignity when serious human rights violations have occurred. In Chapter 6 we discuss ways of halting ongoing human rights violations by presenting various humanitarian interventions, but also several 'non-interventions', since the 1970s, and we introduce the promising new project Responsibility to Protect. Chapter 7 focuses on the manner in which societies might re-establish trust and security in the aftermath of atrocities. We discuss and compare the retributive and restorative approach to justice, but we also highlight the difficult circumstances in which societies that try to establish transitional justice find themselves. Finally, in a brief conclusion, we highlight some of the progress that has been made in realizing the respect for human rights.

We end this introduction with a note about our co-author who is no longer with us. Steve Poe was a dear friend and trusted mentor to both of us. Steve not only recognized and honoured the dignity in all people, but his life was an embodiment of these values. In so many ways and for so many people, Steve was the personification of human rights.

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part I

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Human rights and state responsibilities

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chapter 1

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The concept of human rights

We live in revolutionary times. For nearly all of human history, there was no such thing as 'human rights'. Rather, individuals had whatever 'rights' their own government decided to bestow upon them. But what if a state granted few rights – or worse, if it engaged in cruel and barbaric behaviour against its own citizens? Unfortunately, until a relatively short period of time ago, this was viewed as a purely 'domestic' or 'internal' matter between a government and its own people, and was thus treated as being outside the purview of the rest of the international community.

All this has changed, at least in theory. Certainly, the greatest impetus for the present-day human rights revolution was the Holocaust, when an estimated 6 million Jews were cruelly and systematically killed during the Second World War. Here was undeniable and incontrovertible proof that citizenship might offer absolutely no protection against a government that sought to make war on a particular group of people within a given society. Yet what the horrors of the Holocaust also showed was that this laissez-faire attitude regarding how a government treated its own citizens was simply no longer acceptable. Thus what emerged from what was arguably the darkest period in all human history was the present-day human rights revolution.

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What are human rights?

The legal philosopher Michael Perry has summed up the essence of human rights by positing that there are certain things that ought never to be done to people and certain other things that should be done (Perry 1998). These 'things', then, are human rights and these rights are best spelled out in a number of international human rights instruments, most notably what has been termed the 'International Bill of Human Rights'. The first and most important component is the 1948 Universal Declaration of Human Rights (UDHR), which is often termed the 'Magna Carta' of human rights instruments. Not only did the Universal Declaration proclaim that all people have human rights – political and civil rights as well as economic, social and cultural rights – but it was the UDHR that set everything else in motion. In the words of Johannes Morsink, who has written the definitive account of the drafting history, the UDHR has 'profoundly changed the international landscape, scattering it with human rights protocols, conventions, treaties and derivative declarations of all kinds. At the end of the twentieth century there is not a single nation, culture, or people that is not in one way or another enmeshed in a human rights regime' (Morsink 1999: x).

The Universal Declaration is just that: a declaration. Thus it is not binding international law, although a strong argument could be made that it has now reached the status of customary international law, in the sense that its provisions are something that states feel they must abide by. However, the effort to then transform the UDHR resulted in two separate treaties, rather than a single entity: the International Covenant on Economic, Social and Cultural Rights (Economic Covenant), and the International Covenant on Civil and Political Rights (Political Covenant), which comprise the other two legs of the International Bill of Human Rights. Why was the UDHR broken down into two separate treaties? The 'standard' story is that this reflects Cold War tensions, with the Western democracies championing civil and political rights and the communist states supporting economic, social and cultural rights. However, Daniel Whelan's recent scholarship (2010) goes far in exposing this as myth. What Whelan has found instead is that there was near-universal support for both

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sets of rights, but also a general recognition that the two sets of rights were 'different' from one another – different in terms of the substance of the right involved, different in terms of the enforcement of those rights and, finally, different in terms of the levels of international assistance and co-operation that would be needed to protect these rights, especially with respect to economic, social and cultural rights. Thus, after extensive debate on the matter, the decision was made to have two separate treaties.

The larger point is that there is universal (or near-universal) agreement on the substance of what constitutes 'human rights'. Given below is a partial list of these rights taken from the UDHR:

a right to life, liberty and security of the person (Art. 3)

freedom from torture or cruel, inhuman or degrading treatment or punishment (Art. 5)

a right to equal protection against discrimination (Art. 7)

a right to an effective remedy for violations of fundamental rights (Art. 8)

freedom from arbitrary arrest, detention or exile (Art. 9)

a right to a fair and public hearing by an independent and impartial tribunal in criminal proceedings (Art. 10)

a right to freedom of movement (Art. 13)

a right to seek and enjoy asylum in other countries (Art. 14)

freedom of thought, conscience and religion (Art. 18)

a right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (Art. 23)

a right to education that is directed at the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms (Art. 26)

a right to social security, and the realization through national effort and international co-operation of the economic, social and cultural rights indispensable for a person's dignity and the free development of her personality (Art. 22)

the right to a social and international order in which rights and freedoms can be fully realized (Art. 28)

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Box 1.1. **Children's rights**

Much is often made of the near-universal ratification of the Convention on the Rights of the Child (Children's Convention). Under the treaty, states parties obligate themselves to provide children with many of the same rights that adults have under other international treaties. Unfortunately, the perfunctory manner in which the treaty has been ratified – but then essentially ignored in practice – serves as a perfect example of much that is wrong with our present system of human rights protection. First, the treaty contains a provision that obligates states to take positive steps to make the Convention known. Article 42 provides: 'States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.' This, however, has seldom happened, as evidenced by the fact that studies show that few children (and few adults, for that matter) know the first thing about the Children's Convention.

Yet there is at least some indication of important change, and this is the second point. In their book *Empowering Children: Children's Rights Education as a Pathway to Citizenship*, Howe and Covell (2005) report on the transformative effect that children's rights education can have. One of the biggest concerns with the notion of children having human rights is that they would not understand that with rights come certain responsibilities. However, studies from school districts in Belgium, Canada and the United Kingdom show that the reality is just the opposite:

> Rather than understanding that responsibilities are inevitably concomitants of rights, and rather than understanding rights as a foundation for democracy, children who have not received children's rights education tend to believe that having rights means being able to do what you want. Thus, a lack of, or avoidance of, rights education may be more likely to promote a culture of personal entitlement rather than a culture of democratic values. (Howe and Covell 2005: 15)

How does being a rights bearer manifest itself concretely? One of the nicest (and most stunning) examples involves the seemingly time-honoured practice of bullying. Remarkably enough, what studies show is that when children think of themselves as rights-bearers, bullying ceases almost altogether. The reason is that bullying is seen as a violation of human rights and children develop mechanisms to protect their own human rights – but also the rights of their classmates.

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