

# Economic globalisation and universal human rights

## Overview of the relationship

The phenomena of human rights and the global economy are two of the most prominent and influential features of international relations. Like star actors sharing the same scene, they jostle for attention, try to pull rank and sometimes undermine each other, all the while knowing – if they are wise – that their best prospects for individual success lie with ensuring that the other succeeds too. Certainly, human rights and the global economy might appear at first, and even later, to be a rather odd couple, destined to disagree and diverge, with one concerned with human well-being, the other with economic well-being. But the two intersect often and increasingly so in terms of their goals, their operations and their institutions. This book focuses on these points of intersection from the particular perspective of advancing the aims of human rights, by asking: in what ways does, can and should the global economy support and assist human rights, and in what ways do, can and should human rights instruct the global economy? The ambiguity in the use of ‘civilising’ in the book’s title is meant to convey both of these perspectives – that is, the civilising influence of globalisation itself (it can provide the means for individuals to live better lives), and the civilising influence of human rights that can temper the inequities (or ‘market failures’ as they are euphemistically called) that unbridled globalisation would otherwise produce.

This avowedly human rights perspective is adopted not just because of my professional predilection, though that is certainly a factor, and despite the fact that my intended light dips into the waters of economic theory and practice ended up more sobering dunks. Rather, more significantly, it is because human rights represent more ends than means, whereas with the economy it is the other way around. At their barest minimum human rights are the features of an individual’s life lived with irreducible levels of safety, comfort, freedom, dignity and respect. And beyond the individual, collectively they constitute integral components of the health,

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order and good governance of whole communities and states, and indeed of the entire globe – being ‘the foundation’, as the Universal Declaration of Human Rights (UDHR) puts it, ‘of freedom, justice and peace in the world’.

The various goals of the global economy on the other hand are pursued not for their own ends, but rather as means – almost invariably, essential means – to achieve broad social and personal ends, including such self-actualising ends as human rights prescribe. This is, of course, a view that one would expect to hear from human rights advocates and globalisation sceptics, but importantly it is also how many economists and other key players in the global economy perceive the circumstances. The deepening and widening of the global economy are not ends in themselves; rather they are teleological activities that serve other, broader ends. The provision of economic aid, the expansion of global trade and the establishment and development of commercially robust economics are, or can be, mechanisms for stimulating chain reactions that increase individual and aggregate wealth, alleviate poverty, promote opportunities and freedoms, and strengthen governance. Therein and thereby the objectives of human rights are served. Authoritative statements on the functions of the global economy to this effect are readily made. Thus, for example, in respect of trade, Dani Rodrik argues that it ‘is useful only insofar as it serves broader developmental and social goals’;<sup>1</sup> in respect of aid, Roberto Dañino, the former General Counsel of the World Bank, proclaims that as ‘the Bank’s mission is the alleviation of poverty through economic and social growth’, so he sees this conception as having ‘an especially strong human rights dimension’;<sup>2</sup> and of free market capitalism, Milton Friedman maintained that ‘economic freedom is . . . an indispensable means toward the achievement of political freedom’.<sup>3</sup>

In this quest, however, I am also concerned not to court extremes. Thus, on the one hand, I maintain that too much must not be demanded of the economy. That is, I will point out the limits of what the economy can and must do for human rights, and argue for curtailing the tendency within human rights advocacy to over-reach both what human rights can

1 Dani Rodrik, *The Global Governance of Trade: As If Development Really Mattered* (New York: UNDP, October 2001), p. 29.

2 Roberto Dañino, ‘Legal Aspects of the World Bank’s Work on Human Rights: Some Preliminary Thoughts’, in Philip Alston and Mary Robinson (eds.), *Human Rights and Development: Towards Mutual Reinforcement* (Oxford and New York: Oxford University Press, 2005), p. 514.

3 Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1982), p. 8.

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legitimately claim and what the global economy can sustainably deliver. The quest is to civilise the economy, not obliterate it. On the other hand, keen as I am to seek out what the economy can do for human rights, I do not want to deny that human rights can and do usefully aid economic ends. Amartya Sen's seminal work on the two-way relationship between (economic) development and (political) freedom eloquently and convincingly argues the case for just such instrumentalism.<sup>4</sup> The point that I am making is that even in this case when, for example, freedom of information, or the wider provision of education or health services, or the securing of an independent judiciary can be seen directly to impact on the well-being of the economy, that impact typically registers in ways that reinforce the very human rights used at the outset – that is rights to free speech, education, health and a fair trial. Fundamentally, the economy must be seen as a vehicle, not the destination.

### *Complexity*

Working out whether and how the dimensions of the global economy affect human rights is conceptually complicated and practically challenging. Alongside the vital role of states, the institutions of the global economy with which this book is primarily concerned – such as the World Bank and the International Monetary Fund (IMF), the World Trade Organization (WTO), and transnational corporations (TNCs) – all clearly make strategic interventions in society. The crucial question is, as Sally Wheeler puts it, 'whether the strategic intervention is a desirable one or not'.<sup>5</sup> In the present context, I am concerned with assessing this desirability in terms of human rights, accepting the manifest difficulties of the task.

An instructive example of the complexity of the problem, but one that also demonstrates the need to understand better the relations between human rights and the global economy, can be found in burgeoning levels of Chinese economic investment in and support of such failed, pariah or authoritarian states as Myanmar, North Korea, Sudan and Zimbabwe, where human rights abuses are brazen and rampant. China's economic relations with Myanmar illustrate the point well.

China is now by far the largest provider of aid to Myanmar. Since the 1980s, Western aid has shrunk dramatically following the Junta's

4 Amartya Sen, *Development as Freedom* (New York and Oxford: Oxford University Press, 1999), chapter 2.

5 Sally Wheeler, *Corporations and the Third Way* (Oxford and Portland, OR: Hart Publishing, 2002), p. 45.

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tyrannical suppression of the country's democracy movement in 1989, and now even Japanese aid has dried up since 2003 (save emergency support) following the re-arrest of the opposition leader Daw Aung San Suu Kyi and the brutal treatment of her supporters. It has been reported that China's aid contribution of \$100 million in 2005 accounted for roughly 75 per cent of all aid received that year by Myanmar, and unofficially it has been estimated that, in the decade to 2007, Beijing's assistance to Yangon<sup>6</sup> amounted to more than \$1 billion.<sup>7</sup> China is also the greatest source of Myanmar's imports, accounting for 34 per cent of total imports in 2006, nearly all of it across their 1,384 mile shared border. Foreign direct investment by Chinese businesses is also significant; indeed it is dominant in infrastructure projects, with, for example, many major road, river, port, dam and oil pipeline construction projects having been awarded to Chinese corporations, and the current construction of nearly all hydro-electric power plants in Myanmar is being undertaken by Chinese firms.<sup>8</sup> The relative absence of Western corporations due to trade and investment embargoes has left the field open to China. The overall result has been that the traditional linkages between China and Myanmar have strengthened considerably since the early 1990s, largely on the back of these economic ties, as well as, importantly, enhanced military cooperation.

The types of human rights questions that these economic circumstances raise are intricate and multilayered and relate to all three aspects of the global economy with which this book is concerned – namely, trade, aid and commerce (herein chapters 2, 3 and 4, respectively). The Myanmar military government's long-standing record of abuse of human rights is both brutal and systematic regarding political freedoms in particular, but also, crucially, in respect of the failure to provide basic economic and social rights through appalling economic mismanagement as much as oppression and malign discrimination.<sup>9</sup> In such circumstances, can we

6 Though, in further illustration of the warped thinking of the Junta, the capital was in fact officially and suddenly moved in 2005 from Yangon to Pyinmana, a jungle town 320 kilometres to the north, for reasons that were never properly articulated.

7 Reuters, 'RPT – Factbox – Trade, Aid, Heroin: Myanmar's Links to the Outside', 29 September 2007, at [www.reuters.com/article/asiaCrisis/idUSBKK302022](http://www.reuters.com/article/asiaCrisis/idUSBKK302022).

8 Toshihiro Kudo, *Myanmar's Economic Relations with China: Can China Support the Myanmar Economy?* Discussion Paper 66 (2006), Institute of Developing Economies (Japan), pp. 13–15; and Earth Rights International, 'China in Burma: The Increasing Investment of Chinese Multinational Corporations in Burma's Hydropower, Oil & Gas, and Mining Sectors' (September 2007), at [www.earthrights.org/files/Reports/BACKGROUNDER%20China%20in%20Burma.pdf](http://www.earthrights.org/files/Reports/BACKGROUNDER%20China%20in%20Burma.pdf).

9 See the Reports to the UN Human Rights Council of the UN Special Rapporteur on the situation of human rights in Myanmar, Paulo Sérgio Pinheiro, of February

see China's substantial economic engagement being anything other than supportive of the military regime's human rights abuses; indeed, might we see it as complicit in such abuse? After all, China's trade relations with Myanmar, its corporate investments and its provision of aid are all conducted without any reference to, let alone criticism of, the Junta's human rights record,<sup>10</sup> even after the most recent crackdown on Buddhist monks in October 2007, and the Junta's abject neglect of the plight of millions of people following the devastation of cyclone Nargis in May 2008, both of which attracted unprecedented international condemnation.<sup>11</sup> Alternatively, can it not be argued that there are human rights benefits that flow from these Chinese investments, at least in terms of their capacity to secure basic economic and social rights?

In contrast to China, the prevailing attitude of the West to Myanmar has been one of censure and ostracisation. But do the economic sanctions imposed by Europe and the United States, for example, better serve the protection and promotion of human rights in Myanmar? Undoubtedly a critical message is delivered through the combination of: (i) nearly all Western nations severing nearly all economic ties (ii) few Western corporations remaining in the country (the oil giants Total and Chevron being notable exceptions), and (iii) the World Bank and IMF having suspended their operations in the country. But has that message led to an improvement in human rights in the country itself? Some argue that it has not, and that what is needed is more not less investment in the ailing economy;<sup>12</sup> others say that it has, or at least that the importance of the message and the pressure it exerts is worth any added hardships. Certainly my own experiences of working on human rights programmes in the country between 2000 and 2003 do not provide me with any clear

2007 (A/HRC/4/14) and March 2008 (A/HRC/7/18), available at [www.ohchr.org/EN/Countries/AsiaRegion/Pages/MMIndex.aspx](http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/MMIndex.aspx).

10 For example, China (together with Russia) vetoed a Security Council resolution on Myanmar in January 2007 (draft resolution S/2007/14), which reiterated 'deep concern at large-scale human rights violations in Myanmar' and called on 'the Government of Myanmar to cease military attacks against civilians in ethnic minority regions'; at <http://daccessdds.un.org/doc/UNDOC/GEN/N07/208/48/PDF/N0720848.pdf?OpenElement>.

11 Notably, at the very same time as the 2007 crackdown China secured the exploration rights to three more offshore gas fields belonging to Myanmar; see 'Our Friends in the North', *The Economist*, 9 February 2008, p. 29.

12 This was at least part of the thinking behind the US Congress deciding to ditch planned legislation that would have imposed sanctions on Chevron on account of its continued commercial interests in the country; see AFP, 'US Lawmakers Ease Pressure on Chevron in Myanmar', 15 July 2008; at [http://afp.google.com/article/ALeqM5gIfBA1VguKfnTN\\_CqHMP0JzFlvhg](http://afp.google.com/article/ALeqM5gIfBA1VguKfnTN_CqHMP0JzFlvhg).

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idea of which path will surely lead to improvement in the human rights situation there and which not.<sup>13</sup>

Of course the number and variety of circumstances in which human rights intersect with the global economy – for good and ill – are beyond counting. My purpose in choosing this particular China/Myanmar example is simply to illustrate the potential depth and breadth of such relations, and the fact that their complexity can be such that there are no necessarily easy answers. The inherent difficulties in charting clear ways forward are the principal reason why a book like this is needed in the first place, and it is a theme that I return to repeatedly throughout its pages. That said, however, I endeavour in the following chapters not just to examine and explain the nature and format of the relationship, but also to draw out conclusions, arguments and pointers towards how the best of the relationship can be retained, and the worst removed, or at least curtailed.

### Shared histories, separate paths

Since the time when human society developed sufficiently for systematic interactions between peoples, communities and continents to occur, the dominant themes, aside from war, have been trade (including exchange and bartering) and diplomacy, widely defined as political, interpersonal and cultural relations. Together, these two themes constitute the bedrocks of the global economy and universal human rights.

Law, politics and philosophy have long shared interests in the purpose and form of the essentially private mercantile relations between citizens, as well as the public relations between states and their citizens. The common ground between the two orbits has traditionally not been seen as substantial or significant, although certainly it can be said that from its earliest incarnations *lex mercatoria* has been concerned with order and fairness (in commercial relations),<sup>14</sup> and to that extent it mirrors certain essential aspects of *lex publica* (constitutional, administrative and criminal law). There do exist examples of very specific and practical instances of overlap. For example, the precursors to today's ubiquitous notion of

13 See David Kinley and Trevor Wilson, 'Engaging a Pariah: Human Rights Training in Burma/ Myanmar' (2007) 29(2) *Human Rights Quarterly* 368.

14 Gunther Teubner, 'Global Bukovina: Legal Pluralism in the World Society', in Teubner (ed.), *Global Law Without a State* (Aldershot and Brookfield, VT: Dartmouth, 1997), pp. 5–6; and David Kinley, 'Human Rights, Globalization and the Rule of Law: Friends, Foes or Family?' (2002–3) 7(2) *University of California, Los Angeles, Journal of International Law and Foreign Affairs* 239.

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corporate social responsibility (CSR) can be found in the practices of the Quaker industrialists in the North of England during the late nineteenth century. Iconic Victorians such as Titus Salt, Joseph Rowntree and John Cadbury all took particular, if somewhat puritanical, care for the health, welfare and education of their workers both inside and outside their factories, far beyond the commercial norms of that time. At the same time and with much the same intentions and ends, Jamsetji Tata was constructing his industrial empire in Bombay, India, based on Parsi-inspired, humanist ideals that yielded the same concerns about the welfare of workers.

Furthermore, as my colleague Justine Nolan and I have written elsewhere, throughout the late twentieth and early twenty-first centuries, the growth of both global economic intercourse and universal human rights standards has been materially aided by three common phenomena of the times:

The first of these is de-colonisation, especially during the immediate post-war years up until the mid-1970s. The subsequent attainment of independent statehood by many former colonies provided their peoples with the opportunity not only to realise the key human right of self-determination, but also to engage in international relations in their own right. The second important phenomenon has been the rapid growth of international organisations and international regimes covering a vast array of subject areas. These legal regimes and the international institutions they gave birth to have certainly hastened the spread of global interrelations in all these fields. Conspicuous and variously powerful intergovernmental organisations (IGOs), such as the United Nations, the ILO, the OECD, the IMF, the World Bank and regional development banks, as well as the WTO and regional trading blocs, have a pervasive impact – both ways – on the protection and promotion of human rights within the global economy. Third, the enormous advances in speed and capacity in technology, especially as regards travel, telecommunications, and technology transfer over the last twenty years or so, have facilitated ever-expanding means by which we interconnect with each other across countries, continents and cultures.<sup>15</sup>

Intriguingly, however, there is one philosophical phenomenon of particular significance which, though important to the ultimate flourishing of both the global economy and human rights, has not been seen as necessarily linking the two through a common conceptual heritage. I refer here to the emergence of liberalism out of the crucible of the Enlightenment, and its promotion of the ideals of rationality, liberty, rights, and government

15 David Kinley and Justine Nolan, 'Trading and Aiding Human Rights: Corporations in the Global Economy' (2007) 25(4) *Nordic Journal of Human Rights* 353, at 355–6.

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under social contract, rather than by divine or aristocratic right. Both human rights and the global economy ‘appeal to the sacred principles of liberty’, as Bertrand Russell put it, but the appeal made by capitalism (the global economy), as he continued, acidly, is reducible to the maxim that ‘the fortunate must not be restrained in the exercise of tyranny over the unfortunate’.<sup>16</sup> At its outset, capitalism was selective about the rights it embraced. From the body of individual rights and freedoms that evolved out of the political theory of human rights of Locke and other Enlightenment thinkers, capitalism elevated property rights above all others. As property rights were not evenly distributed – indeed, not held at all by the vast majority of people – so capitalism, at least from the Industrial Revolution until the Second World War, entrenched inequality and disadvantage. So, Michael Freeman points out, one of the ‘common criticisms’ of human rights theory is that it:

begins by proclaiming universal equal rights, but, by endorsing capitalist relations of production, ends by justifying, not only unequal property rights, but also unequal enjoyment of *all* human rights.<sup>17</sup>

Freeman does not subscribe to this view, which he rightly notes is at the core of the Marxist critique of individual rights. But he does see the consequentialist problems for human rights caused by the pre-eminence of property rights in capitalist thinking. The decoupling of property rights from social responsibility that was a central tenet of Adam Smith’s belief in the power of the free market, Freeman argues, necessarily further disadvantages the poorest in any such economic order. ‘The completely free market and an unconstrained right to property is therefore incompatible with the right to subsistence’,<sup>18</sup> Freeman maintains.

That said, many, including Freeman, have noted that Adam Smith’s free market ideology was, in fact, more nuanced than this. A member of the Enlightenment himself, Smith was driven by the concern to develop a theory of social justice that would ultimately aid the poor. This meant, first, maximising productive capacity that would provide the means to do so. This, for Smith, was best secured by allowing the invisible hand of a free market of competitive self-interest to direct the economy (this is the theme of his iconic treatise, *The Wealth of Nations*). And second,

16 Bertrand Russell, *Sceptical Essays* (Allen & Unwin, 1977), p. 132.

17 Michael Freeman, ‘Beyond Capitalism and Socialism’, in Janet Dine and Andrew Fagan (eds.), *Human Rights and Capitalism: A Multidisciplinary Perspective on Globalisation* (Gloucester: Edward Elgar, 2006), p. 13.

18 *Ibid.* p. 21.



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not being able to rely on the 'soft power of humanity' alone to curtail naked self-interest, there was a need for 'reason, principle, conscience'<sup>19</sup> to be employed to ensure the wider dispersal of wealth that the relative few have been able to extract from the market.

The free market economists who have inherited Smith's mantle – be they in lecture halls, think-tanks, Treasury departments, or the secretariats of multilateral trade or aid agencies – do not always do justice to their patron's sentiments. Thus, as Peter Dougherty argues in his accessibly insightful *Who's Afraid of Adam Smith*, Smith would *not* endorse the prevailing attitude of economists today who 'have a hard time accepting the idea that the social capital has anything meaningful to do with the thrust of economic activity'.<sup>20</sup> When observing such propositions being put to economists, Dougherty comments that

[t]he image that invariably comes to my mind in these exchanges is that of the movie archaeologist Indiana Jones (in this case, the economist) confronting the sabre-wielding swordsman (the social philosopher). Jones is momentarily dazzled by the swordsman's display of saberly showmanship, and then remembers that he has a revolver, casually draws it, and blows the shrouded avenger away with cool efficiency.<sup>21</sup>

For Dougherty, this reflects an unfounded overreaction on the part of economists. The overlooked social dimension of the market, as Adam Smith saw it, is of crucial importance to this book's concern with the intersection of the global economy and human rights, if – as I argue – human rights must embrace the power of the global economy, while insisting that its power is harnessed so as to promote the overarching goals of human rights.

### *Modern development of human rights*

In establishing what is meant by human rights in terms of this book I focus on the modern era of human rights development which dates from 1945. In so doing I do not of course deny the importance of the antecedent ancient (especially Greek, Roman and theocratic), Renaissance

19 Adam Smith, *The Theory of Moral Sentiments* (1759), Part III, chapter III. Written nearly twenty years before *The Wealth of Nations* (1776), the former essentially established the moral philosophical base for the building of his theory of political economy in the latter. As Peter Dougherty so neatly puts it: Smith 'puzzled out a progressive concept of society and retrofitted it with the incentive structures necessary to achieve a broadly humane vision', *Who's Afraid of Adam Smith?* (New York: J. Wiley, 2002), p. xiii.

20 *Ibid.* p. 44.      21 *Ibid.*

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and Enlightenment eras, for it is their various legacies of citizenship, visionary enterprise, individualism and rationality that underpin the capacity and claims of human rights today.<sup>22</sup> It is upon these bases that I do indeed draw at times throughout the book. But it is the twin proclamations of the modern development of human rights – that they are universally applicable, and that they are expressed in law as such – that really makes their intersection with the global economy so pertinent. It has been in the period since the Second World War that the promotion of the idea and practice of human rights has become inextricably associated with international laws and institutions, even more than with domestic regimes, especially as the latter are very often themselves direct responses to international obligations and pressures. Indeed, as Steiner, Alston and Goodman unequivocally put it, the human rights movement's 'aspirations to universal validity' have now come to be seen as necessarily rooted in international law.<sup>23</sup>

This combination of human rights globalisation by way of international legal instruments has had the effect not only of consolidating, but also of expanding, the scope, objects and format of human rights. Iconic legal representations of human rights had of course already been formulated – the French *Déclaration des droits de l'homme et du citoyen* in 1789, the US Constitutional Bill of Rights in 1791 and even the English Bill of Rights in 1689 before them. But all of these were jurisdictionally restricted, domestic statutes, rather than international treaties with avowedly global scope. Claims as to the universality of human rights had also been long established. Natural law theorists of various hues, from John Locke through Immanuel Kant to Tom Paine and John Stuart Mill, variously considered them to be inalienable, transcendental and inherent in all human beings. However, to the extent that these Enlightenment philosophers intended the 'rights of man' to apply to *all* mankind (and there is a strong case to be made that their thinking was that groups such as slaves, criminals, non-citizens, women, children and the disabled were not to be covered), their arguments emanated from a peculiarly European cultural context at a singular moment in European domestic and colonial history. Such rights were not, as a matter of practice, applied at the time outside certain European nations and the United States.

22 See Micheline Ishay, *The History of Human Rights from Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2004), chapters 1 and 2.

23 Henry Steiner, Philip Alston and Ryan Goodman (eds.), *International Human Rights in Context: Law, Politics, Morals* (Oxford and New York: Oxford University Press, 3rd edn 2008), p. 59.