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978-1-107-01463-3 - The Contentious History of the International Bill of Human Rights

Christopher N. J. Roberts

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THE CONTENTIOUS HISTORY OF THE INTERNATIONAL BILL OF HUMAN RIGHTS

Today, the idea of human rights enjoys near-universal support; yet, there is deep disagreement about what human rights actually are, their true source of origin, how to study them, and how best to address their deficits. In this sweeping historical exploration, Christopher N. J. Roberts traces these contemporary conflicts back to their moments of inception and shows how more than a half century ago, a series of contradictions worked their way into the International Bill of Human Rights, the foundation of the modern system of human rights. By viewing human rights as representations of human relations that emerge from struggle, this book charts a new path into the subject of human rights and offers a novel approach for addressing some of the most challenging contemporary problems.

Christopher N. J. Roberts is an associate professor at the University of Minnesota Law School and an affiliated faculty member of the Department of Sociology. His research spans the areas of human rights, citizenship, social theory, concept formation, and jurisprudence.

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PREFACE

THE INTERNATIONAL BILL OF HUMAN RIGHTS comprises three principal human rights texts: the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social, and Cultural Rights. Together, these three documents are the foundation of the modern system of international human rights. Although historians have written volumes on the development of the Universal Declaration of Human Rights, much less is known about the creation of the other two-thirds of this human rights triumvirate. Entire swaths of this history have been lost from memory, crucial pieces of the human rights concept have been elided from our minds, and rights-bearers often remain rightless. This book attempts to reconnect them.

THE PALACE THAT STANDS TODAY emerged on the eve of a second Great War. Its two column-laced white wings bolt skyward from the semicircular foundation it inherited from the past. A broad, open-air concourse splits the edifice into two halves, with its vast theater ensconced below. It was within this space – the Great Hall of the Palais de Chaillot – that in 1948 the Universal Declaration of Human Rights came into being.

The monumental Palais now shares its history with the foundational text of the modern international system of human rights. The plaza that divides the Palais' twin wings, which is now known as "the esplanade of the rights of man," memorializes the historic achievements of those who breathed life into a concept that is now an organizing principle of the modern world. To celebrate the adoption of the Universal Declaration, the UN established the tenth of December as *Human Rights Day* – a testament to the triumph of a concept that enjoys unparalleled normative strength today, a day to honor those who in the Great Hall of the Palais de Chaillot helped make it so.

Yet there is another side to the venerable ideas, monuments, and history we commemorate – an altogether distinct, unremembered

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founding story characterized not by celebration and triumph but rather by controversy. Contrary to the tenor of the well-known story of success and consensus that surrounds the Universal Declaration's adoption, there was in fact incredible opposition against the idea of human rights. After World War II, individuals, mainstream groups, nations, conservative leaders, and progressive scholars objected to the emerging idea of human rights for numerous reasons. The hesitations, doubts, and objections that filled the Palais so many years ago, as well as their lasting effects, have gone unobserved and the lessons they offer unheeded by human rights scholars and historians.

Paralleling the historical controversies are the countless contemporary scholarly disagreements about the nature and origins of human rights, how to study them, and how to mend their deficits. Although human rights are held to be a universal good, there has never been anything close to universal agreement about the nature of the concept. And perhaps most seriously, despite the apparent triumph of human rights in the modern world, violations often go unanswered, leaving people separated from their noble words and lofty principles.

THIS BOOK CHARTS A NEW PATH into the subject of human rights – one that offers a new theory of human rights and a new methodology for rigorous empirical study. Human rights are defined not as moral, legal, or political entities but rather as representations of human relations that emerge from struggle. Human rights struggles become the entry point within this exploration. This new path into the subject permits a reengagement with the historical record, which brings to light a previously buried history and shows how the bitter opposition against human rights integrated itself into the human rights concept during its moments of inception. The struggles of an era that has long since passed remain embedded within the concept that the modern world now takes for granted, while the opposition over a half-century later continues to work from within.

This exploration is driven by two basic questions: What are human rights and where do they come from? Without answers to these questions, it is impossible to fully understand the modern world or navigate its ever-shifting frontiers. These questions hold the keys to addressing contemporary violations, locating an appropriate point of departure for their study, and working through the innumerable pressing and unanswered human rights issues of the day.

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Whether the human rights story of origins is viewed as one of consensus and triumph or conflict and controversy depends in large part on the answers to these questions. How we define and locate human rights determines which parts of the past and present are seen, and which parts remain shielded from view. As if to offer these thoughts credence, the Palais de Chaillot bears on its outer wall, high above the esplanade, a Delphic inscription that receives all who have entered:

*It depends on he who enters
Whether I am tomb or treasure-house
Whether I speak or am silent
The choice is yours alone.
Friend, do not enter without desire.¹*

¹ Paul Valéry (translated from the French).

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