

Cambridge University Press

978-0-521-70755-8 - Universal Human Rights in a World of Difference

Brooke A. Ackerly

Excerpt

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1 *Universal human rights in a world of difference: challenging our thinking*

Feminist activists have done the apparently impossible: they've shown us how to think about human rights as local, universal, *and* contested. They have shown us that contestation over human rights is not evidence that rights do not exist. Rather, contestation provides a basis for understanding their universal meaning. Or so I argue here.

Before we get to that argument, let us consider why we need a political theorist to argue that there are human rights and human rights violations. Do we need a theorist to tell us that our moral intuitions are universal? That sounds like the basis for imperialism.¹ Can a political theorist offer any argument that would persuade a torturer that torture is wrong? That seems like a waste of time, light, and ink. When even the well-intended can go wrong and the ill-intended cannot be convinced, why do scholars, why do feminist activists, keep at it? What can we learn from them about human rights? And what would it mean for these activists to be accountable in *practice* to their own *theory* of human rights?

As the research leave during which most of this book was drafted came to an end, Marie sent me her latest plan. Marie is trying to get her children out of Rwanda. She had two with Jean-Paul, her husband, three more, orphaned in Burundi, whom Jean-Paul and she adopted in 1992, and a sixth child whose parents were recently killed. Her country did not demilitarize after the Rwandan Liberation Front and

¹ Jon Sobrino SJ notes the ironic juxtaposition of the theoretical advance and formal spread of universal human rights against "considering life for the vast majorities, the actional condition of this life does not improve in line with theoretical advances" (2001: 135). Sobrino cites Father Ignacio Ellacuría, who was one of eight defenders of human rights who were executed in El Salvador, November 16, 1989: "The problem of human rights is not only complex but also ambiguous, because within it not only does the universal dimension of man meet with the actual situation in which men's lives are lived, but it tends to be used ideologically in the service not of man and his rights, but rather in the interests of one group or another" (Ellacuría 1990: 590).

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paramilitaries ended the 1994 genocide.² When her family returned from a refugee camp in Uganda, though he had not participated in the genocide, her husband was killed by paramilitaries in post-genocide violence. Over the next ten years she worked in a pharmacy, aspiring to start her own, but eventually started a photocopy shop which required less start-up funds. Her efforts to rebuild her life were stymied by her own ill-health, recurring mental illness, and bleeding ulcers. In renewed violence in 2004, her children were explicitly threatened. A relative and the parents of the baby she now cares for were killed. Government efforts to deal with this growing violence were not obvious. Living in fear, they left the house at night to sleep. Now, she has hidden her children in a neighboring country and is trying to figure out how to keep them safe. She has even considered putting her children up for international adoption. While she is hiding her children, she has no economic means to support them. Under this kind of stress, she has difficulty thinking clearly, assessing proposals that others make to her, or designing a plan of her own.

Is Marie's situation unique? In what sense? Of course, the life she had with Jean-Paul was their own: their hard work in the early years of their marriage when they were both thin from physical work, the later success at their farm by getting cows to produce more milk through improving diet, their sharing that success through a non-government organization (NGO), their adoption of the children from Burundi. Certainly, they had a unique marriage and life together. However, the 1994 genocide, retributive violence, health problems, and limited economic opportunity are not unique to Marie and Jean-Paul. Sadly, in Rwanda they are not unique to their family, to a particular ethnic group, or to people from certain regions.

Further, the complicated context of post-conflict insecurity – conflict, inadequate civilian rule of law, difficult health conditions, and economic uncertainty – is not unique to Rwanda. In 2005, Amnesty International reports from Afghanistan, Colombia, Democratic Republic of the Congo, Côte D'Ivoire, Haiti, Iraq, Israel and the Occupied Territories, Sierra Leone, and Sudan describe these conditions.³ Even when the

² On one reading, demilitarization in Rwanda was a difficult project because militants and population could not be distinguished. Moreover, disarmament had a different meaning in Rwanda because the primary weapon of the genocide was an agricultural tool (Waters 1997).

³ Amnesty International 2005: 36, 80, 86, 134, 139, 221, 235.

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violence is not imminent, fear creates an environment where basic health, education, and opportunity for livelihood are conditional. For example, in Israeli Occupied Territories, Palestinians' mobility is constrained with checkpoints and barriers such that getting adequate health care, seeing and supporting their family members, going to school, and getting to work are severely curtailed.

Images from Hebron before the 2006 violence between Israel and Hezbollah reveal the constrained conditions of daily life. A man walks down a street; wire mesh prevents trash from Israeli settlements from falling on the Palestinians in the old city. A woman takes her daughters to school, her younger son in tow.⁴



⁴ Tone Andersen, photographer.

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The complexity of insecurity – political, social, and economic – is not unique to post-conflict contexts. For example, in Bangladesh violent crimes against women – rape, dowry death, domestic violence, acid burning, and suicide – go under-reported; when reported, women are discouraged from filing their cases; when filed, cases are pursued slowly. Although these crimes are illegal, the police’s willingness and ability to enforce these laws, and the judiciary’s uneven record at carrying out the law, mean that women live in a context of insecurity.⁵ Of course the police failure to ensure women’s safety is an important element of the human rights context for women in Bangladesh; however, the human rights violating social practices are inextricably linked to these legal failures. The practices of dowry, of integrating a new bride into the domestic hierarchy of her husband’s family, of domestic violence in order to gain a first wife’s assent to a second wife, of forced marriage, of local religious and community leaders issuing *fatwas* or community-authorized punishments all contribute to the context of

⁵ Women aged thirteen to eighteen are most often victims of rape and acid burning; women over nineteen are most often victims of domestic violence and dowry death (Ain o Salish Kendra 1999; 2000).

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human rights violations.⁶ Further, the economic context of poverty and increasing local class inequality influence the evolution of these practices such that dowry amounts have risen; the period over which they are paid now extends after the marriage, often years after the marriage; and new dowry demands made after marriage are increasingly common.

The complexity of insecurity – political, social, and economic – is not confined to so-called developing countries. In parts of the United States, lack of economic development creates a different but equally distressing context. Often concerns about these forms of insecurity are brought to our attention through statistics. According to 2001 statistics, in the US 18.2% of children under six live in poverty and 48.9% of children living in female-headed households live below the poverty level.⁷ Nearly half of all US children aged one to four live so close to poverty that their families need federal assistance in order to afford adequate nutrition.⁸ Of the 11.1% of the US population who experience food insecurity, 3.5% were not caught in either government or private safety nets and experienced hunger during the year.⁹ In the United States, the infant mortality rate is about 7 per 1,000, and almost 15 per 1,000 among children born to African American mothers.¹⁰ In the United States 20.7% of the population lacks functional literacy.¹¹

Because of familiar media images in the United States, these statistics evoke images of poor urban minority children.¹² However, these statistics are as bad or worse among certain regional and ethnic subsets of

⁶ Government of Bangladesh 2001. ⁷ Proctor and Dalaker 2001: 4.

⁸ The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) was started in 1972 and catered to an average of 88,000 participants per month. That number has now risen to an average of 7.2 million in 2000. Almost half of all infants and all children of one to four years of age participate in the program. WIC accounts for almost 12% of total federal expenditure for food and nutrition assistance (Oliveira 2002).

⁹ On any given day in 2003 that number was between 490,000 and 698,000 (Nord 2004).

¹⁰ MacDorman 1999.

¹¹ The National Adult Literacy Survey (reported in 1993) found a total of 21–23% (40–44 million) of American adults (defined as age 16 or older) functioned at the lowest literacy level, i.e. they had difficulty using certain reading, writing, and computational skills considered necessary for functioning in everyday life (South Carolina Department of Education 1998).

¹² For a critique of the politics of poverty see Kimberle Crenshaw on the Monyihan Report (1965) (Crenshaw 1989).

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the population who live in some persistently poor and economically depressed rural areas, such as in the Mississippi Delta, Appalachia, and the lower Rio Grande Valley.¹³ In the US, 20% (55.4 million people) of the population is rural¹⁴ and the rural poverty rate has always been higher than the urban rate (2.1% higher in 2003) though the gap has been closing due to increases in urban poverty. In 2003, 7.5 million people, or 14.2% of the population who lived in non-metropolitan areas, were poor.¹⁵

These statistics, while shocking, and while they may stir us to action, are measures of symptoms: symptoms of political, social, and economic institutions and practices that perpetuate these conditions. These social, political, and economic conditions limit the opportunities for composing a life. Consider the child born into each of these contexts. From birth she experiences constrained health and education. Her opportunities for developing herself and her economic prospects are constrained. In each context for developing a life – in Rwanda, in Israel and the Occupied Territories, in Bangladesh, in the United States – we should ask if human rights are being violated.

In the case of Marie, the answer must be “yes.” The lives of her children have been explicitly threatened; the police are not a reliable resource and to her knowledge have perpetrated or condoned some of the acts of violence she has witnessed. Due to this fear she is prevented from living in her home, her health is unstable, and she cannot support her family despite her ability and willingness to work. Even though she cannot name the government officials who are failing to secure her children, even before her own children were explicitly threatened, the environment of fear perpetuated by the sight of murdered neighbors in the street itself constitutes a human rights violation. The destructive impact on economic and social systems of an “environment of fear” makes the human rights impact more complicated to understand and address.¹⁶ More generally, consider the life chances of a child born and raised in this context. Can we think of the *lack* of opportunities – that

¹³ Lichter and Leif 2002. ¹⁴ Hobbs and Stoops 2002.

¹⁵ Economic Research Service 2004.

¹⁶ Some scholars have been developing different methods for identifying and studying insecurity that do a better job than the study of war alone at making visible the insecurity of marginalized populations (Ackerly, Stern, and True 2006; Derriennic 1972; Galtung 1969; Krause and Williams 1996).

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is, her *lack* of possibility to develop as she might choose to if the possibility existed – as a human rights violation?¹⁷

Familiar accounts of human rights treat rights as “entitlements” with corresponding “duty-bearers.”¹⁸ Is there no rights violation if there is no identifiable collective or individual duty-bearer? Does society bear responsibility for the contexts it creates? Do individuals bear responsibility for the contexts their society creates? What are the boundaries of the society that bears that responsibility? Are they local or global boundaries? Geopolitical or geographic boundaries? Are they economic or moral boundaries? These questions are hard to answer and raise doubts about the usefulness of the thinking about human rights as entitlements with duty-bearers in the familiar senses.

In the examples I have been offering, there are sometimes identifiable actors, but their actions would not be characterized as human rights violations but for the collective failure of social, political, and economic institutions and the habits and practices that sustain them. While it is important for a theory of human rights to enable us to be critical of

¹⁷ While some proponents of the capability ethic hesitate to equate human rights with human capabilities, the view of human rights presented here treats these as very similar. Institutions and practices that create and foster conditions in which human rights are violated are the same that make human capabilities unrealizable. Sen (1999a) argues we would do well to think of human rights violations as unfreedoms. Sen (2004) and Nussbaum (1997) tentatively suggest that human rights concerns are a subset of human capabilities concerns. But Sen’s 1999 argument does not require this interpretation. Even his later argument does not argue that rights are not capabilities (2004).

¹⁸ “A claim about rights generally involves a fourfold assertion about the *subject* of entitlement, the *substance* of entitlement, the *basis* for entitlement, and the *purpose* of entitlement” (Shapiro 1986: 14). “A right in this sense can be thought of as consisting of five main elements: a right-holder (the subject of a right) has a claim to some substance (the object of a right), which he or she might assert, or demand, or enjoy, or enforce (exercising a right) against some individual or group (the bearer of the correlative duty), citing in support of his or her claim some particular ground (the justification of a right)” (Vincent 1986: 8). “Historically, the idea of rights has embodied two foundational claims. First, that there is an identifiable subject who has entitlements; and secondly, that to possess a right presupposes the existence of a duty-bearer against whom the right is claimed” (Dunne and Wheeler 1999: 3–4). Though freedom is important to Benhabib’s account of rights, she uses the language of entitlement (2004b: 140). I think the constraint of this metaphor on the theoretical imaginary is in part to blame for the difficulty she takes in explaining why membership is a right. As we will see, in an immanent theory of human rights what Benhabib conceives of as “membership rights” can be easily understood in their social, political, economic, and civil indivisibility.

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human rights violations by a single actor, a theory of human rights cannot be limited in application to such examples. A theory of human rights can also be a critical tool of macro political forces, such as state and global politics, that create exploitable hierarchies. Further, it can be a critical tool of micro political forces, such as the patterns created by language, ethical decisions, habits of consumption and expenditure, and aspirations that create exploitable hierarchies.¹⁹ Importantly, activists and the oppressed use human rights to make their own claims. In the process, while struggling against their oppression – or rather the sources of oppression that their analysis has indicated are those against which they might be most effective – they are not reifying either the source of their domination *or* themselves as victims. Rather, they are realizing an identity as a political actor and, to the extent that their struggle is against some subset of their sources of oppression, as a strategically minded political actor at that. Though one identity or another may be strategically useful (mother, citizen, survivor . . .), the malleable identity forged through human rights activism is that of strategic political actor with all of the ambiguity that such an identity entails in any place and time and across space and time.

The remoteness of the impact of our habits of daily life, institutions, practices, and global interactions conceal their rights-violating implications. We need tools for revealing these, not definitions of “rights” and “duty-bearer” that obscure them. Further, the meanings of “society” and the boundaries of “obligation” they suggest need to be examined if they are to be resources in our reflections on human rights violations.²⁰ We cannot assume that boundaries are geopolitical or that obligations are bounded. These need to be a part of a theory of human rights.

In this book, I mean to confront well-reasoned theories of human rights with the reality of human experience, some of which might be invisible to the human rights theorist. The epistemological challenge for human rights theorists has always been not to bias our understanding of human rights as a theoretical inquiry by our comfortable but limited exposure to the experiences of human rights violation most often referenced by global politicians. Because a room, a pencil, paper,

¹⁹ As Wendy Brown puts it in summarizing what we learn from Nietzsche and Foucault about “the atomic powers of history”: power is constructed and manifest “in the very making of bodily subjects and socio-political desire” (1995: xii).

²⁰ See Galtung 1969; 1985; 1990. See also Brown 1995: 113.

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and a cup of tea afford the luxury of reflection, the academic needs methodological tools for revealing the invisible to herself, to her theory, to her interlocutors, and to “us.”

In this book I use many “we”s. Sometimes, I mean the reader and I on a journey together, having covered one argument and moving on to the next. Sometimes, I mean my informants and I, or those who participated in the online groups and meetings that are part of the context of this study. Sometimes, I mean my research partners and I. Sometimes I mean human rights scholars more generally. I have tried to be careful. History (including the history of feminist thinking) includes lots of examples of political thought that over-determines (that is, assumes that the knowledge from one perspective applies to all, such that the differences of some are invisible) or under-determines (that is, assumes that the knowledge from one perspective doesn’t apply to all, such that some people are left out). Before we are done, I will have a lot more to say about invisibility and exclusion *and* I will likely have said things that cause both. The occasionally ambiguous use of “we” in this text is meant to provoke, not just the question, “Just who does she think ‘we’ is?” but also, “Who do *I* think ‘we’ is?” We cannot know who “we” are if we confine our self-understanding to engagement with the visible.²¹ Some of “us” are invisible and some of who “we” are we can come to know only by reflecting on the invisibility within “us.”

Invisibility

Now let’s take the inquiry one level further. What if we couldn’t see Marie and her children? What if the conditions of their lives were unknown to us. Would these conditions still constitute rights violations? Certainly, if they do when we know about them, they do even if we do not know about them. Thus, to be fully attentive to human rights, we need to be attentive to human rights violations beyond our sights.

There are many ways in which human rights violations may be invisible. Women’s human rights activism and scholarship have tried

²¹ A common concern about who “we” are is at once a concern about when and why we group ourselves as “moral beings, citizens, and members of an ethical community” (Benhabib 2002: 147). In addition, my concern about the use of the first person plural is as an exercise of power.

to expose many of these: trafficking for sex work,²² slavery as domestic servants,²³ bonded sweatshop work,²⁴ death due to botched illegal abortion,²⁵ and domestic violence,²⁶ to name a few.²⁷ Health, labor, homeless, and indigenous activists similarly attempt to make the invisible visible. In each of these cases there are particular individuals who have violated particular individuals' human rights.²⁸ However, social, political, and economic conditions in particular contexts and *relative* conditions between contexts are particularly conducive to these violations. Global social, political, and economic factors – not fate or karma which influence the accident of birth – determine which children are most likely to grow up to be able to take advantage of social, political, and economic conditions and which will grow up with their opportunities constrained by those same conditions.

Consider women trafficked from Nigeria to Italy for prostitution. Illegal but well-established paths, particularly from the Ebo state and Benin City, create conditions of vulnerability, in which women choose to engage because of the economic landscape in Nigeria and in which they are kept to work in a form of bondage due to the immigration laws of Italy.²⁹ The relative economic prospects in Italy and Nigeria combine with the familial and legal context of Nigeria to generate an economic opportunity for these mostly young women, but that opportunity is constrained by exploitable hierarchies.³⁰ Like Marie, trafficked

²² Orhant 2001. ²³ Chin 1998; Human Rights Watch 2002.

²⁴ Bender and Greenwald 2003; Brooks 2003; Elson and Pearson 1997.

²⁵ Jen Ross 2005.

²⁶ Agnew 1998; Coomaraswamy 2002; Milwertz 2003; Pence and Shepard 1988; Schechter 1998; Vickers 2002.

²⁷ Bunch 1990; 1995; Mayer 1995a; [1991]1999.

²⁸ The Committee Against Slavery and Trafficking (CAST) cases and Tahari Justice Center are two among many organizations worldwide whose work documents cases of individuals violating the human rights of other individuals in a context of domestic servitude or marital violence that is not publicly visible.

²⁹ A new European agreement regarding trafficking could potentially mitigate some aspects of vulnerability (Council of Europe Convention on Action against Trafficking in Human Beings 2005).

³⁰ Is every instance of exploitable hierarchy (MacKinnon 1993), domination (Pettit 1997), or capability failure a human rights violation? Some people want to save "rights" for some subset of these conditions. I argue with women's human rights activists that without attention to the broader context, no subset is secure. And so at a minimum every instance of exploitable hierarchy, domination, or capability failure is cause for skeptical scrutiny of the prospect that human rights have been or may be violated.