

Introduction

Worlds of Difference

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For most of their lives, human rights and humanitarianism have been distant cousins. They were the offspring of the Enlightenment, Christianity, and humanity, but they soon went their separate ways. Humanitarianism focused on situations in faraway places where natural or humanly made events caused large-scale loss of life that demanded urgent attention. Human rights, on the other hand, advanced the cause of individual liberty and equality at home. Because they were doing different things in different places, they rarely encountered or took the measure of the other. World Wars I and II reduced some of the distance. After World War I, humanitarianism became attentive to refugees, who were conferred rights, and human rights became more international with the invention of international minority rights. After World War II and decolonization, each went through a growth spurt that brought them into greater proximity. Although now circulating in some of the same networks, they largely kept to themselves.

Everything changed beginning in the 1990s. The end of the Cold War produced an explosion of internal conflicts and humanitarian emergencies from the former Yugoslavia to Somalia and beyond. In these so-called “new” wars, civilians were not “collateral damage” but rather the intended targets. Millions of innocents fled conflict and sought shelter and protection where they could. Sometimes they managed to cross a border and become bona fide refugees where they received aid in internationally organized camps. But in many instances the displaced were stuck in their home country, requiring aid agencies to undertake a perilous mission of bringing relief to them. For many the temporary became the long term, and agencies had to consider questions of education, livelihoods, community organization, and even rights. Because of these and other changes on the ground and the growing ascendancy of a human rights discourse, aid organizations began embracing a “rights-based” framework. Human rights ascendant included an expansion into armed conflict and the protection of the same populations that concerned humanitarians. Challenging the artificial boundary between needs and

2 *Michael N. Barnett*

rights, human rights activists insisted that victims had a right to, and not just a need for, relief, alongside other basic rights. Furthermore, relief might be adjusted to better prepare the ground for human rights.

Now that human rights and humanitarianism were occupying the same spaces and working with the same populations, they had to address their relationship. Some imagined them becoming a force multiplier, stronger together than apart, and with enhanced capacity to protect vulnerable populations. Each could learn from each other. They could develop a sequenced division-of-labor, with aid agencies saving lives and then rights activists protecting them from other harms and injecting the rule of law into states and societies. One possibly provided support for the other. The humanitarian concern for refugees and asylum seekers can open the door to human rights and justice.¹ The human rights community's concern for gender-based violence prodded more and specialized attention from the humanitarian field. Long-standing distinctions between international humanitarian law (IHL) and international human rights law (IHRL) began to erode. Traditionally IHL covered armed conflict and IHRL relations between states and their citizens, but in the 1990s, they began to converge, producing a "humanity's law."²

Others rejected the idea that all good things go together, and identified tensions and warned of conflicts between the two. For example:

On engaging perpetrators: Human rights activists tended to name and shame, make noise, and heckle rights-violating states to get them to cease their violations; humanitarian organizations prefer quiet diplomacy.

On the use of drones: Human rights organizations might fly drones to try and identify where atrocities were occurring and identify the names and faces of the perpetrators; humanitarian organizations might fly drones in the same area to identify the location of the victims, their needs, and survey logistical hurdles. Whereas human rights agencies have relatively little need for the cooperation of the perpetrators, aid agencies do, and "rights" drones might make the latter's operations much more difficult and dangerous because they must now try to negotiate with much more suspicious armed actors.³

On conditionality: Humanitarian organizations insist that there is a near "right to relief," while human rights activists judge this relief in relationship to the broader goals of human rights protection and justice.⁴

On construction of the "other": Humanitarian reason can lead from a politics of pity to the demonization of refugees, while human rights activism can foster inclusion.⁵

On the effects of the discourse of "emergency" and "crisis": Labeling something as a humanitarian emergency or crisis can displace attention from the causes, including a lack of rights.⁶

On humanitarian intervention: Human rights has tended to favor the idea of humanitarian intervention whereas humanitarian organizations have been lukewarm to cold.⁷

On international criminal justice: The International Criminal Court (ICC) requires first-hand accounts and evidence for its proceedings, and aid workers are often eyewitnesses. But if they cooperate with the ICC, or any legal process, they risk being expelled from the country, or worse. This is exactly what happened in the Sudan when the ICC indicted Sudanese president Bashir for genocide.⁸ The search for justice might cost lives.

On pandemics: COVID-19 has demonstrated a series of tensions around priorities and trade-offs when balancing saving lives and protecting human rights and privacy. In order to mitigate the spread of the virus, there is considerable need for data regarding individuals' actions, whereabouts, movements, and networks. Without contact tracing and other forms of prevention and mitigation, more people are at risk and will needlessly die. Human rights and civil liberties groups are worried that these new surveillance technologies will be appropriated by states and others to violate human rights and represent a threat. Although human rights actors want to save lives, and humanitarian actors are worried about the growing use of biometric data and threats to privacy, they often prioritize lives and rights differently and are prepared to make the trade-offs between the two in different places.⁹

On protection: The concept of protection has expanded considerably since its earliest days in the beginning of the 1990s. Much of the initial attention emerged from within the humanitarian system and the need to highlight the physical threats to civilians. But over time it expanded to include human rights.¹⁰ From one angle, the expansion from protection to prevention is a natural development. From another, a broader version of protection and the centrality of human rights law, as Taithe illustrates in this volume, potentially undermines humanitarian's notion of protection.¹¹

On gender-based violence: Relief and rights organizations can adopt different approaches to violence against women in conflict in part because, as Swaine observes in this volume, they have different objectives: the former treats physical harms and psychosocial trauma, while the latter interviews victims to collect stories, information, and first-hand experiences in order to prosecute perpetrators and seek justice. But interviewing victims of sexual violence can retraumatize the victims.¹²

Each community has registered wariness of the other, but my reading is that the field of humanitarianism has been more worried than the field of human rights (though in Chapter 1 Moyn makes the opposite case). Why? Humanitarianism stayed closer to home as it remained largely focused on situations of armed conflict and natural disasters, and exhibited little interest in the wider world of human rights. Human rights, on the other hand, was expanding into the known and unknown worlds, penetrating deep into humanitarian territory, and possibly altering humanitarian practices in the process.¹³ For instance, humanitarian agencies have increasingly defined protection to include advocacy, almost to the point that advocacy displaces real protection; when women in refugees camps in Darfur were being raped as they searched for firewood outside the

camps, aid agencies, according to one critic, spent more time calling attention to their situation than offering the remedy of bring firewood into the camps.¹⁴ One International Committee of the Red Cross (ICRC) official fatalistically observed that the war between the two bodies of law was over, and IHL needed to consider the terms of its surrender.¹⁵ This was not a merger but a hostile takeover. The ICRC's Hugo Slim, who once wrote sympathetically about the need for humanitarianism to embrace a rights-based framework, called on humanitarianism to maintain its identity in the face of the human rights revolution.¹⁶

A similar story of independence followed by debates about boundaries also occurred in the scholarly fields of human rights and humanitarianism. Human rights scholarship grew considerably beginning in the 1980s, appearing in flagship journals and creating a growing number of specialized outlets. Scholars of international law were examining the mutual influence and growing overlap between international human rights and humanitarian law.¹⁷ Political scientists were exploring the remarkable spread of contemporary human rights, how transnational activists influenced states, and why states felt compelled to comply with the growing web of nonbinding international human rights law.¹⁸ Historians were debating the origins and evolution of human rights, and when human rights globalized and became *international* human rights.¹⁹ Anthropologists were exploring variations in the meanings of human rights, including how human rights was understood, redefined, vernacularized, and practiced across different societies.²⁰ Sociologists were examining the social movements and combination of structure, agency, and contingency that propelled human rights from infancy to maturity.²¹ Some writings turned human rights on its head, seeing them not as pathways to emancipation but rather as stealth weapons of domination and reinforcing a highly unequal global order.²² The totality of these writings and scholarly activity, both euphoric and critical, was creating a bona fide human rights field. There were more courses on human rights. Universities began establishing stand-alone human rights centers, offering minors and masters programs.

The human rights field was becoming established when the humanitarian field got its start beginning in the 1990s. Prior to then there was scattered work on the ICRC, international humanitarian law, sacrificing saviors, and the occasional history of an aid agency. Changes in the world and academics led to growing interest in the topic. As scholars picked up the pace, they shifted from angelology toward ponerology, adopting a much more critical perspective. Historians began digging through archives, finding a more complicated and profane history rooted in national, transnational, and international forces.²³ Political scientists challenged the “purity” of humanitarianism, observing how state power and

financing shaped the humanitarian sector and caused aid organizations to compete in ways that shifted their energies from the survival of victims to organizational survival.²⁴ Anthropologists began exploring how humanitarianism's ethics of care masked the presence of power disparities between the givers and receivers.²⁵ Foucault and Agamben were important inspirations, as the former offered an alternative way to think about governance outside the state and the latter states of exception.²⁶ Under their influence, refugee camps became institutions of internment and imprisonment and aid workers prison guards. Cultural theorists began excavating the sometimes profane origins and practices of compassion.²⁷ Scholars began creating genealogies of IHL that excavated gendered, racial, and civilizational discourses.²⁸ Humanitarianism became Dr. Jekyll and Mr. Hyde.

Like the debates among practitioners in the human rights and humanitarian communities regarding the relationship between them, scholars began to probe the historical and conceptual boundaries between these two fields of study.²⁹ And similar to my observation that practitioners of humanitarianism were more sensitive to intrusions from human rights than the reverse, scholars of humanitarianism seemed much more concerned about protecting their turf from human rights than the reverse.³⁰ I participated in this search for boundaries, arguing that whereas humanitarianism was constituted by needs, sad stories, and charity, human rights emphasized rights, law, and justice.³¹ In this volume Samuel Moyn criticizes my claim, rightly so, and for reasons that I knew at the time I offered them, but nevertheless wanted to help make humanitarianism an autonomous object of study. My critical error was to depart from my social constructionist position in a direction that inched toward essentialism. Specifically, although I could be interpreted as suggesting that these social constructs possess some nearly essential or enduring characteristics, my epistemological commitments and narrative of humanitarianism depended on the very opposite.

This volume explores the fluctuating relationship between human rights and humanitarianism. There are decades when they exhibited parallel play, with each doing its own thing and without much awareness of the other. There are instances when they appeared to join forces, not only collaborating but also developing something of a “we-feeling.” There are contrasting illustrations, though, when their proximity generated anxiety, leading to defensive action. Over the decades, human rights and humanitarianism have resembled an air show, with moments in which they fly parallel to each other followed quickly by separation, low-flying dips, high-flying loops, and even the occasional game of chicken.

The reason for these twists and turns is because human rights and humanitarianism have no fixed meaning, are social constructions, are

historically situated, and have been distant and intimate from each other over the decades. If this was ever in question, it can no longer be, as scholars continually plumb the histories of each to discover unknown and poorly understood events, trends, and configurations. New findings became conventional wisdoms only to be debunked by theoretical interventions and revisionist historical understandings. But this pliability does not imply that meaningful and enduring differences and distinctions cannot be located, a view shared by all the contributors, except for Hopgood who argues that, at best, there are fleeting differences without a distinction.

The chapters address the question of the differences and the relationship between human rights and humanitarianism from various perspectives. There are philosophical inquiries that attempt to understand whether and how differences are constructed at the level of ethics, obligations, and duties. There are historical inquiries that attempt to locate core differences within and between historical periods and witness their histories converging and diverging. There are settled and unsettled periods; the former is associated with identifiable patterns and the latter with turbulence, and the last three decades have been quite unsettled. And a major part of the reason for this period's volatility is because each is working out its identity in relationship to the other. There are practice-oriented perspectives that suggest how differences are created and recreated in response to concrete problems and through different kinds of organized activities with different goals and meanings. Many of the chapters locate differences in emotions; different kinds of suffering can trigger a range of socially organized emotional responses. The chapters wrestle with whether the differences between the two are major or minor, trivial or substantial. In many respects, the significance of these differences is in the eye of the beholder. Is there a difference or a distinction between a language and a dialectic?³² Is there a difference or distinction between human rights and humanitarianism? It depends – on granularity, composition, and perspective. Regardless of whether one discerns differences or distinctions, the search for similarities and contrasts forces students of human rights and humanitarianism to clarify what they believe is particular and core to each, to articulate the characteristics that often form the ideal types that, in turn, become the basis for comparison, and to consider whether and how each is sacred in a world of the profane.

What Is at Stake?

This collection probes the possible boundaries and the variety of relationships that exist between human rights and humanitarianism. Because this

exercise can have a clinical feel, it is paramount to recognize that humanitarianism and human rights are ethical projects that can have life and death consequences for vulnerable and marginalized populations. What are people talking about when they are talking about human rights and humanitarianism? Lives, yes. But also a spirit of humanity. Everyday practices of humanity are tied to the transcendent, and the transcendent shapes practices of humanity. These practices have worldly and heavenly aspirations. Human rights and humanitarianism represent a resistance to a world that can treat others like human waste. They follow Michel Foucault's admonition that "the misfortunes of men must never be the silent leftover of politics."³³ They are advancing not only the material needs of others, but also their own spiritual needs. Helping others but also helping themselves – it is through acts of compassion that individuals enact their humanity. To help others is to be humane, and to be indifferent inhumane.

Human rights and humanitarianism are expressions of the world that exists, the world we hope to exist, and our pragmatic calculations about how to narrow the difference between the world that is and that world that can be. These themes of global ethics are the background and foreground of human rights and humanitarianism, but each occupies a different standpoint. A major branch of global ethics regards what we owe strangers and the ethical significance of boundaries.³⁴ Can we, and on what basis, treat outsiders different from our compatriots and fellow citizens? What is the nature of our obligations and duties to others beyond our borders, and based on what principles? Are our obligations fulfilled by charity, or do they demand more extensive and long-lasting commitments? Do our duties focus on protection or extend toward empowerment? How do these ethics apply in specific circumstances and do they allow for recognition of difference? What is the balance between the universal and the particular? How do these philosophical judgements translate into practice in a world of sovereign states? Do our ethics become practical and bow to the world that is, or do they aspire to create a bridge to a better world?

The exchanges during the workshops for this volume occasionally became quite spirited because of the associated ethical commitments and ambitions of human rights and humanitarianism. To give a flavor of that conversation and the connections to global ethics, this section briefly reviews two foundational questions. Why act to relieve the unnecessary suffering of distant strangers? The second question moves from motives to effects as it questions whether these well-meaning interventions are reforming or reproducing an unjust global order. Human rights and humanitarianism do not have single answers to these questions, and

often there is considerable overlap between them. But for argument's sake and in the spirit of ideal types, the ethics of humanitarianism and human rights cluster around different responses – with the former organized around the world as it is and the latter around a vision of the world that should be. The wager is that what is lost by simplifying and stereotyping is gained by illuminating some potentially critical points of comparison.

Why Act? Reason, Sentiment, and Humanity

The sources of altruism, compassion, and beneficence have drawn considerable scholarly attention in recent years, traversing disciplines as diverse as cultural studies, gender studies, neuroscience, sociobiology, evolutionary theory, religious studies, law, philosophy, psychology, media and communication studies, political science, geography, history, political theory, and sociology. The chapters in this volume address two critical questions. The first is whether individuals are motivated to act because of reason and rationality or because of sad stories and sentimentality, an issue considered at length in Part I. The reason and rationality approach emphasizes the rational exchange of views and the search for a better argument, learning, and interest-based motives, including forms of diffuse reciprocity and principled claims that become generalized to all members of the community.³⁵ It stands to reason that we have mutual obligations to each other, or it makes sense for the preservation of the species and the individual to care about neighbors and suffering strangers. Some of these appeals to reason, moreover, are intertwined with utilitarian and consequentialist ethics. Peter Singer's highly influential arguments grounds the decision to give on whether our actions will make a difference in the lives of others and enhance the world's welfare without doing appreciable harm to our own lives.³⁶

But the desire and decision to act, at least according to the chapters and other research, is driven as much by emotion as by reason.³⁷ Compassion is often the first feeling mentioned when considering the imperative to respond to human rights violations and humanitarian emergencies. When confronted by knowledge or images of unnecessary suffering, we do not stop to ask: whether the person in need will help me if I am in a similar situation in the future, perform a utilitarian calculation in relationship to general welfare or invoke an enlightened rationality. Instead, feelings, not rationality,; dominate, and not just any feelings but feelings of compassion, which represent the “better angels of our nature.” But is it the distress and despair provoked by images of distant suffering that move us to reach for our wallets? If so, is this compassion, or

something else? Human rights violations often trigger outrage and anger.³⁸ The demand to end impunity arguably is based less on its deterrence value than on the grotesque possibility that the bastards might get away with their crimes. Humanitarianism is about feelings, but not only compassion. It can also be about pity.³⁹ And pity is often connected to feelings of guilt. How much of humanitarianism is tied to feelings of white, liberal, guilt? And which emotions are more likely to provide a sustained connection to others and commitment to humanity? Fury or pity?

The other big debate regards the historical development of humanitarianism and human rights. The rationality and sentimentality theses lean toward different reasons why humans do and should care about distant others, but agree that societies have varied in terms of their propensity to respond to unnecessary suffering of strangers. Compassion has always existed in human history, but has been scattershot and is often the domain of religion and religious institutions. The current wisdom is that something extraordinary began to evolve in the mid-eighteenth century as cold, calculating individuals that were historically indifferent to the suffering of others became “men of feelings” that helped to build states, societies, and institutions that were organized around the relief of unnecessary suffering and the betterment of society.⁴⁰ This was the origin of humanitarian governance: “the administration of human collectivities in the name of a higher moral principle of that sees the preservation of life and the alleviation of suffering as the highest values of action.”⁴¹ How and why these feelings of compassion and care emerged and became institutionalized is a matter of controversy; the safe answer is that there were a conjunction of religious, economic, political, sociological, and cultural causes that combined structure, agency, and contingency. For many scholars, the rise of British abolitionism is Exhibit A in this historical development because a British society became mobilized to alleviate the suffering of a dark-skinned people from a different continent that most had never seen in person. In any event, as Hannah Arendt famously observed, but with some concern, there was now a “passion for compassion.”⁴²

The emergence of human rights and humanitarianism is bound up with the construction of “humanity.” Humanity is a tricky concept. Humanity is not a fact of nature but rather has a history, and a rather recent one. It became part of the vocabulary in the 1700s because of Christianity and the Enlightenment, but its invention did not come with a set meaning. Instead, humanity has been a work in progress.⁴³ Central to the debate about and expansion of humanity is: Who is the human? The evolving concept of humanity was intertwined with debates about what physical

10 *Michael N. Barnett*

and cognitive qualities an individual must possess to be counted as a human and whether all humans are truly equal. As Flynn and others in this volume underscore, distinctions have been made according to race, culture, religion, gender, and other categories of discrimination, and it is only recently in human history that those who argue in favor of forms of discrimination – and that some are more human than others – are on the defensive. Today, humanity means a belief that: all individuals are humans are equal, obligated to respect each other's dignity, and must “treat fellow humans as family.”⁴⁴ But who knows what will be tomorrow. Will humanity extend to animals? Will robots be conferred human-like qualities and qualify for membership in humanity? Will they have rights and be deserving of charity?

The world is filled with suffering, but not all suffering matters, or equally, or becomes a matter of social concern.⁴⁵ Humanitarianism and human rights, in this way, operate according to a form of social triage – distributing attention and resources according to different kinds of suffering. Humanitarianism operates on the principle of need and with a bare-bones notion of humanity that is often described as “bare life.” It concentrates on giving people what they need to survive, and anything above and beyond these basic needs migrates into wants. Humanitarianism does not deny that there is something beyond bare existence, but it resists going beyond the minimum. Human rights, on the other hand, includes those things that individuals require to flourish. People deserve not just food in their bellies but the dignity that comes from being treated humanely and with respect, praying (or not) as they like, speaking their minds, and living a full and fulfilling life as they define it. Because human rights imagines an extensive list of rights, there are debates regarding which of these rights are foundational and universal. But there is no doubt that it scans for a wider array of suffering than does humanitarianism.

Humanitarianism and human rights also occupy different positions regarding whether individuals are allowed to choose to act in response to suffering, a topic explored in the chapter by Beitz. Human rights tends to adopt the forceful language of obligations and operate with the claim that many rights are nonderogable. States cannot choose, for instance, whether to recognize the right of religious liberty or freedom of conscience. The language of perfect duties observes that states do not have the right to decide whether to torture or not – they cannot. They must follow this perfect duty, and if they do not then they are violating the basic human rights of others. And if rights are being violated, then we, as part of humanity, have an obligation to help stop it. Humanitarianism, on the other hand, typically accepts that individuals have discretion over whether and how to perform their (imperfect) duties. We can choose to