Encyclopedia of Law & Society: American and Global Perspectives

Human Rights, International

Human rights are rights that belong to every human being, irrespective of any other qualification or condition such as gender, race, or nationality. Therefore, human rights theories and practices are inherently universalistic and egalitarian. Human rights transcend the boundaries of state legal systems; they are equal for all human beings.

Origin

Theoretical conceptions of human rights have been present in many historical and geographical contexts. Modern theories of human rights, however, stem from natural rights theories elaborated in the seventeenth century. Human rights were originally protected at the national level as fundamental rights or civil liberties. In the twentieth century, human rights have become central to the practice of law at the international level. Their relevance in the contemporary world is increasing. Many economic, social, political, and cultural issues make reference to their diffusion, elaboration, and implementation. In this sense, they have become a paradigm of legal discourse, providing a framework for discussion about conflicting views. They are also one of the main forces behind global legal evolution. Many different actors are participating in human rights development, including states, international organizations, nonstate entities such as nongovernmental organizations, and, more broadly, so-called civil society. Notwithstanding the philosophical and practical conflicts related to their diffusion and enforcement, they are at the center of a dynamic process that is truly international, even if it is not homogeneous.

The debate about human rights encompasses, on one hand, the philosophical ideas on which they were founded and, on the other hand, the evolution of instruments for ensuring their legal protection.

The radical claim that some rights must be granted to individuals as human beings has been developed in modern times from philosophies of natural rights, that is, rights that exist independent of the will of a sovereign and, therefore, can limit political power. The most prominent thinkers within this tradition were Hugo Grotius (1583–1645), John Locke (1632–1704), and Samuel von Pufendorf (1632–1694). The cultural elaboration of fundamental rights was manifested as a concrete political and institutional matter in

the American Revolution (1776), the French Revolution (1789), and the Bill of Rights to the U.S. Constitution (1791). The idea that all human beings are equal in dignity and have some inalienable rights is inherently universalistic, but was at first elaborated within the practice of law at national levels. Nevertheless, the underlying intuition of the unity of humankind increasingly led to the internationalization of human rights movements. The question of the universality of human rights, that is, whether the same rights inherently belong to all people, **[p. 721 ↓]** is challenged by cultural relativism. Relativists and essentialists argue in depth in modern times using strategies ranging from contemporary natural law philosophies to postmodern theories.

Legal Protection of Human Rights

Human rights are entitlements that should be protected. Therefore, the cultural elaboration of ethical standards, which are the basis of human rights, must be institutionalized in legal practice. The history of the concrete protection of human rights relates to political and legal developments that either facilitated their implementation or, on the contrary, resulted in their irrelevance in practice, even when formally declared as matters of principle.

A landmark document in the institutionalization and internationalization of the protection of human rights, originally codified and later gradually enforced as fundamental rights at the national level, is the Universal Declaration of Human Rights, adopted by the United Nations in 1948, following World War II.

Different "generations" of rights have emerged in the course of time. The first generation includes "negative" rights, which protect the individual from the power of the state. They include political and civil rights and liberties, such as freedom of speech. The second generation includes "positive" rights, claims requiring action by the state to ensure social justice. To this class belong economic and social rights. Scholars and jurists now suggest a third generation, including rights to peace, economic development, and a clean environment. Although first-generation rights are closely connected to the first phase of liberalism, second-generation rights may be seen as offspring of the twentieth century welfare state and third-generation rights as an outcome of attempts to provide legal protection for social needs emerging from major global issues.

The first two generations of rights are protected by several international instruments, beginning with the United Nations international covenants on Civil and Political Rights (1966) and on Economic, Social, and Cultural Rights (1966). The extent of the protection varies greatly in practice. Furthermore, second-generation rights by their very nature establish standards whose realization is progressive. Third-generation rights are so new that their international institutionalization is still in the process of becoming legally binding.

Concerning the extent of human rights, some feel that identifying core human rights could improve enforcement and protection. On the other hand, others support the actual tendency, which is to justify every fundamental right as a human right, with the aim of providing international protection to even new and sometimes questioned rights.

National, Regional, and International Protection

Human rights have become a crucial part of the agenda of international relations. Full acceptance among the community of nations requires that states comply with certain legal standards, which may be enforced by legal sanctions or instruments of political pressure.

Many scholars consider the international human rights process a global effort to promote and implement rights through the actions of several types of actors and several legal and nonlegal instruments. Protection is carried out in several contexts, at the national, regional, and international levels. At the national level, rights are protected by constitutional norms or state enforcement of international norms. Unfortunately, national governments perpetrate many human rights violations, and, therefore, the international community has elaborated supranational institutional frameworks to monitor states' compliance with international obligations and to sanction violations.

Along with the universal system of the United Nations, there are regional systems for protection, such as the European Convention on Human Rights (1950) and inter-American and inter-African systems, which have different grades of institutionalization

and effectiveness. Mechanisms for protection include the jurisdiction of permanent international courts or ad hoc international tribunals. Actors not associated with nation-states play an important role also, through advocacy, monitoring, and pursuing specific projects aimed at improving the conditions of life of disadvantaged people.

[p. 722 ↓]

Scholars have debated the strengthening of international instruments of protection from a variety of perspectives. Some have argued that local and national systems are in a better position to ensure the protection of human rights or the prerogatives of sovereign states. Many criticize the idea that individual nations' experiences could be the model for the development of global law and democracy. This idea, which is influential in human rights movements, is conducive to an increasing role of international organizations and to the implementation of rights at the international level through coercive measures.

Democracy

The discourse on human rights has become closely connected to the development and diffusion of democracy, although the two matters are not necessarily bound together. In support of their connection, some argue that the political rights formulated in democratic theory are in themselves human rights and that democracies tend to protect human rights better than other political systems.

Human rights protection may be affected by tensions in democratic societies as well as in other political systems, especially in connection with economic development or national security issues. In principle, states should not violate human rights under any circumstances. In fact, human rights define the limits of government action toward human beings on the ground of inherent dignity. Historical situations, however, have challenged the ethical standards embodied in human rights. As societies evolve, the attempt to assure better conditions of life for everyone has to deal with the intricacies, conflicts, and contradictions inherent in the process of defining and protecting rights. The legal process is dynamic; different and conflicting conceptions of law and political organization and different actors may influence legal evolution at both the national and

international levels. The future of human rights is open. Clearly, however, human rights have assumed a pivotal role in the theory and practice of law.

DomenicoFrancavilla

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See also

- Civil Liberties
- Courts, Supranational
- Culture, Global Legal
- Essentialism
- Evolution, Social and Legal
- Globalization, Processes of Legislative
- Grotius, Hugo
- Human Rights, Asian Perspectives on
- International Courts
- International Criminal Tribunals
- Locke, John
- Positive Law
- Relativism, Cultural
- Relativism, Philosophical

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