



---

HUMAN RIGHTS

---

AND

---

GLOBAL DIVERSITY

---

ROBERT PAUL CHURCHILL

---

BASIC ETHICS IN ACTION

# Human Rights and Global Diversity

*This page has been left blank intentionally*



# Human Rights and Global Diversity

**Robert Paul Churchill**

*George Washington University*

 **Routledge**  
Taylor & Francis Group  
LONDON AND NEW YORK

First published 2006 by Pearson Education, Inc.

Published 2016 by Routledge  
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN  
711 Third Avenue, New York, NY, 10017, USA

*Routledge is an imprint of the Taylor & Francis Group, an informa business*

Copyright © 2006 Taylor & Francis. All rights reserved.

All rights reserved. No part of this book may be reprinted or reproduced or utilised in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, or in any information storage or retrieval system, without permission in writing from the publishers.

Notice:

Product or corporate names may be trademarks or registered trademarks, and are used only for identification and explanation without intent to infringe.

Cover Design: Bruce Kenselaar

*Library of Congress Cataloging-in-Publication Data*

Churchill, Robert Paul.

Human rights and global diversity / Robert Paul Churchill.

p. cm.

Includes bibliographical references and index.

ISBN 0-13-040885-9

1. Human rights—Moral and ethical aspects. 2. Ethical relativism.  
3. Cultural relativism 4. Intercultural communication. I. Title.

JC571.C565 2005

323—dc22

2004022492

ISBN-13: 9780130408853 (pbk)

*For Eileen,  
My Guiding Light*

*This page has been left blank intentionally*



# Contents

PREFACE xi

*chapter one*

REASONING ABOUT HUMAN RIGHTS 1

1. The Concept of Rights 2
  - Social context* 3
  - Entitlements* 4
  - Correlative duties* 6
  - Objects of rights* 8
  - Individual discretion* 10
  - Universalizability* 10
  - Moral rights* 12
2. The Justification of Human Rights 13
  - Natural law and natural rights* 15
  - Difficulties with natural rights* 17
  - From natural rights to human rights* 20
  - Good reasons approach* 22
  - Problems with the good reasons approach* 25
  - Dialectical justifications* 28
3. Applications: The Anikwata Case 33
  - Do the Anikwatas Have a Right to Asylum?* 34
  - Considering justifications* 38

*chapter two*

- DEBATING THE UNIVERSALITY OF HUMAN RIGHTS 42
1. Universalism Versus Exceptionalism 43
  2. Is It Possible for Human Rights Norms to Apply Universally? 48
  3. Should Human Rights Norms Apply Universally? 66
  4. Diversity, Human Rights, and Cross-Cultural Negotiation 87

*chapter three*

- HUMAN RIGHTS AND CROSS-CULTURAL NEGOTIATIONS 89
1. A Transformational Strategy 92
  2. A Strategy of Accommodation 97
  3. Internal Validation as a Strategy 108
  4. The Strategy of Worldview Integration 118
  5. Summing Up and Looking Forward 125

*appendix a*

- THE INTERNATIONAL HUMAN RIGHTS REGIME 128
1. Conceptualization of the Program 128
    - a. Charter of the United Nations 128
    - b. Universal Declaration of Human Rights 129
  2. Definitions of Human Rights and Creation 130
    - a. International Bill of Human Rights 130
    - b. Convention of the Prevention and Punishment of the Crime of Genocide 130
    - c. International Covenant on Civil and Political Rights (ICCPR) 131
    - d. International Covenant on Economic, Social, and Cultural Rights (ICESCR) 132
    - e. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) 133
    - f. Convention on the Rights of the Child (CRC) 134
  3. Monitoring and Implementation 134
    - a. Implementation Provisions of Treaties and Covenants 135
    - b. Influences on National Law 135
    - c. Role of the UN Commission on Human Rights 136
    - d. Office of the High Commissioner for Human Rights 136
    - e. Peacekeeping and Humanitarian Intervention 137
    - f. Tribunals 137
  4. Instruments and Organizations Regional in Scope 138
  5. International Citizens' Advocacy Groups 139
- Concluding Comment 140

*appendix b*

SELECTED RESEARCH AND/OR ACTIVIST NONGOVERNMENTAL  
ORGANIZATIONS (NGOs), SELECTED INTERGOVERNMENTAL  
ORGANIZATIONS (IGOs), WITH OTHER SELECTED RESOURCES 142  
Selected NGOs and Web Sites 142  
Selected IGOs and Web Sites 144  
Other Selected Resources 144

INDEX 145

*This page has been left blank intentionally*



# Preface

As is customary, an introduction or a preface of a book should give readers a clear indication of the author's objectives. Consequently, I have divided this preface into three brief parts. First, I explain what the book attempts to accomplish. Second, I offer an overview of the importance of human rights for our future as global citizens. Third, there is much in discussions and arguments over human rights that falls outside the scope of this book; consequently, in order to avoid confusion, I comment on what this book does *not* cover.

## THE ARGUMENT OF THE BOOK

This book is intended as an unabashed argument for the *universality* of human rights. As such, the book is guided by three main theses. First, all human beings everywhere have the same human rights. To speak of rights as "human rights" means that, simply in virtue of a person's status as a human agent, every human being has moral entitlements that outweigh contrary considerations except in rare and unusual circumstances. An

argument for human rights as a special category of rights and for their reality as prescriptive and preemptory moral entitlements is made in Chapter One, Reasoning about Human Rights.

It follows from the logic of Chapter One that human rights are necessarily universal. Thus, all human beings everywhere can make the same legitimate claims to the enjoyment and protection of basic goods and liberties, and are therefore universally the same in the possession of human dignity as agents. The absence of protection of a human right or of people's enjoyment of it within a particular state or society is *not* evidence of its nonexistence in that place or time. And persons not able to enjoy the goods or objects of their human rights are victims of serious moral wrongs.

The argument of Chapter One thus entails that all versions of *exceptionalism*, or *particularism*, are false. Contrary to particularism, and despite cultural and social diversity—much of which is to be valued and preserved—human rights are *not* created by, or exist as a consequence of, or are otherwise dependent on, relative and particular cultural or social arrangements. Neither are human rights (in contrast to legal rights) created by states or societies (they are not enacted or legislated), nor can they be modified in essential respects by conditions arising within a particular society, nor overridden except in extreme emergencies. Indeed, in the rare instances when a human right must be derogated—for example, a suspected terrorist is deprived of freedom to protect the right to life of others—we recognize that the circumstances would justify the derogation universally. That is, derogation of the suspected terrorist's right to liberty would be justified in the same relevant circumstances in any social group or country experiencing the same threat.

Chapter Two, Debating the Universality of Human Rights, is an extension of the argument for the universality of human rights. Because, as previously noted, the argument of Chapter One already implies logically that human rights are universal (a claim that I characterize as *universalism*), Chapter Two is presented as a rebuttal of arguments advanced by those who are not yet persuaded. The chapter is intended to show that no plausible particularist, or exceptionalist, argument can succeed, including the following contenders: the view that universalism is false because ethical relativism is true; the view that human rights cannot be universal because they have their origins in particular (North Atlantic) cultures; the view that human rights are incommensurable with key values in some societies and therefore cannot be "translated" into meaningful norms for those societies; the view that human rights are a (sometimes disguised) form of cultural imperialism; the view that human rights are destructive of values that are native, or indigenous, to local social groups; and the view that human rights, or some of them, may be set aside or "traded off" to attain other social values deemed important by opponents of the universality thesis.

The argument from ethical relativism receives the greatest amount of attention for two reasons; first, historically the argument has had greatest currency (at least within intellectual circles in the North Atlantic) and has misled more people than the others. Of more importance, however, is the logical status of this objection to universalism. It serves as grounding for particularist arguments in the sense that, were it to be true, not only would universalism be false, but also the particularist arguments would obtain philosophical justification. It is critical, therefore, to appreciate why ethical relativism is false, and indeed, as I show, is even self-refuting.<sup>1</sup>

This book is in the *Ethics in Action Series*, which is edited by Michael Boylan, and for this reason, Chapter Three, Human Rights and Cross-Cultural Negotiations, is very much about applied ethics. This chapter considers the impact of the universalist human rights position in cultures and geopolitical regions of the globe in which there is still strong resistance to the growing international consensus on human rights. In some cases rejection centers on women's rights, as in some Muslim societies; in other cases, as in China, it involves serious infringement of civil and political liberties; or in still other cases, as in the United States, unacceptable infringements of welfare, or subsistence, rights prevail, as in inadequate provision of food, housing, and health care.

My approach in Chapter Three is to emphasize ways of finding consensual and cooperative approaches to the debate. Given that particularist arguments fail (Chapter Two), the objective is to show that there is no inherent contradiction between human rights norms (defensible interpretations of what respect for human rights requires) and social and cultural values, practices, and forms of life *worthy* of preservation. My hope is to show that human rights can be incorporated into every social or cultural order without threat to fundamental and morally defensible values and practices defended by members of the social order, and often in a way that strengthens plurality (for example, by protecting minorities and expression of diversity) or that protects traditional values (for example, the authority of tribal order against the destructive effects of modernization).

The four methods discussed in Chapter Three successively reflect efforts to bring to bear resources of communicative theory; efforts to employ cultural, spiritual, and ethical resources already embedded within a particular

---

<sup>1</sup>Some readers might be tempted to view the logical structure of Chapter Two as what logicians call an *argumentum ad ignorantiam*, or "negative proof." In other words, they might aver that it does not follow from my showing that the particularist arguments presented fail, that every possible particularist argument will fail. I believe that such objectors misplace the burden of proof, however. I regard the argument of Chapter 1 as *sufficient* to establish the universality of human rights. Thus, I do not attempt to prove this thesis by refuting contenders in Chapter Two. My objective, instead, is to overcome bias against the argument of Chapter One by demonstrating the untenability of particularist positions.

society or culture to embrace human rights or to embrace them more completely; efforts of accommodation that recognize permissible differences in cultural or social “interpretations” or “forms” of human rights; and, in addition, efforts to bring the benefits of worldview perspective to bear on the debate.

## WHY EMPHASIZE THE UNIVERSALITY OF HUMAN RIGHTS?

The argument of Chapter Three is underscored by the conviction that we should respect human rights because we accept and admire one another’s basic humanity. But for political, social, and other practical reasons, human rights norms will be of critical importance for the twenty-first century. This last claim has both an empirical and a normative dimension. On the empirical, or factual, plane, human rights are emerging as the most dominant ordering principles in international affairs and global society. Among the causes of the increasing prominence of human rights is each of the following:

1. The vast expansion of international activity in protecting refugees and providing humanitarian assistance in countries devastated by ethnic conflict and civil war;
2. The expansion of United Nations peacekeeping efforts to protect civilian populations, to secure the distribution of relief supplies, and to supervise elections, among other things;
3. The extensive “internationalization” of human rights in certain regions, especially the European Union where the European Court of Human Rights hears cases on appeal and makes decisions binding on participating member states;
4. The evolution of the international human rights “regime” as a formidable body consisting of conventions, or treaties, customary law, and techniques for implementation and compliance;<sup>2</sup>
5. The requirement that newly independent states seeking membership in the United Nations accept the aspirations of the Universal Declaration of Human Rights, and more significantly, the incorporation of provisions of human rights covenants into the constitutions of many new states, as well as the expression of the aspirations of the peoples of many “third world states” in terms of human rights, such as in the Declaration of the Right to Self-Determination and the Declaration of the Right to Development;
6. The increasing recognition among states leaders and peoples generally that sovereignty cannot be unlimited, in fact, that the sovereignty of a state or the authority of a social group (for example, a tribal council) is limited by the rights of citizens, members, or any persons under its power.

<sup>2</sup>Gene M. Lyons and James Mayall, eds., *International Human Rights in the 21st Century* (Lanham, MD: Rowman & Littlefield, 2003), pp. 10–2.

In saying that human rights have a normative dimension, I mean, in addition, that it is *good* that state relations and that our lives as global citizens are ordered by these principles rather than others less conducive to the development of our full potential as agents. But I also assert that there are additional reasons why we should want to organize our interactions on the basis of human rights. These reasons refer to a future characterized by increasingly scarce resources needed to sustain life and increasingly severe competition for these resources; environmental degradation that, unless addressed, will threaten the opportunities of increasing millions to live lives of dignity; and globalization that drives states to adopt open markets and to remove restrictions on the free movement of capital. This new international economic orthodoxy makes it increasingly difficult for states to redistribute income or to implement welfare policies. Additionally, globalization leads to the increased privatization of the necessities of life, such as potable water.

As anthropologist Barbara Rose Johnston notes, "The past few generations have seen a rapid expansion of technology and industries, intensified use of environmental resources, exponential population growth, and unprecedented destruction of our global habitat. Accompanying these changes in human action are changes in the culture and structure of power: fewer and fewer people control more and more of the world's resources, and most people are far removed from the consequences of their actions."<sup>3</sup> Because the severest problems of the twenty-first century are intrastate and transnational—often truly global in reach—as are economic globalization, information technology, infectious disease, terrorism, and despoliation of the environment—the traditional, nation-state international system is incompetent to deal with them.

Yet, insofar as there are human causes (or human links in the causal chain) of our problems, they all involve *power*. We all know that those who suffer the most from economic globalization or environmental despoliation are typically those with the least power in society, either the power to insulate themselves from threats or the power to rebuild their lives after catastrophe. And it is precisely because human rights developed their prominence as the way persons assert their moral entitlements to limit forms of power exercised against them (first in relation to states, now increasingly in relation to nonstate "actors" such as industrial conglomerates), that human rights will be of increasing importance in the years to come. The focus of human rights is always on the protection of humanity, as meaningfully embodied and individuated in persons, against whatever forces might seek to stifle or crush human beings. Thus, because human rights are more directly related to and more easily fashioned to deal with power relations as they affect persons, it *ought* to be the normative system, selected first among

<sup>3</sup>Barbara Rose Johnston, ed., *Life and Death Matters: Human Rights and the Environment at the End of the Millennium*, "Introduction" (Walnut Creek, CA: AtaMira Press, 1997), p. 15.

others, to be developed further and expanded to meet the challenges of the future.

## SUBJECTS OUTSIDE THE SCOPE OF THIS BOOK

This book represents an exercise in applied philosophy and applied ethics, most particularly. Consequently, no attempt has been made to cover subjects thoroughly discussed elsewhere. In particular, there is no effort here to present the historical development of the Universal Declaration of Human Rights or of the subsequent “International Bill of Rights.”<sup>4</sup> In addition, I have not attempted to replicate or to advance the work on human rights of empirical political sciences or of other social and behavioral scientists.

Margaret Keck and Kathryn Sikkink examine a type of pressure group that had largely been ignored by political analysts: networks of activists that coalesce and operate across national boundaries. Keck and Sikkink argue that, in the last two decades, transnational activism has had a significantly positive impact on human rights.<sup>5</sup> Likewise, Sikkink and others have examined the impact of human rights norms on the behavior of national governments in many regions of the world, demonstrating how and why human rights norms influence the actions of states and are internalized in domestic policies.<sup>6</sup> Equally outside the scope of the book, but also important for the promotion and implementation of human rights, are the numerous intergovernmental organizations (IGOs), such as the United Nations Commission on Human Rights, and numerous nongovernmental organizations (NGOs), such as Amnesty International, Human Rights Watch, and the World Labor Organization.

The central focus in this book is on the universality of moral principles, or norms, in what is known as the International Bill of Rights (IBR). The IBR comprises the Universal Declaration of Human Rights and the two subsequent conventions of 1966, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The IBR is, however, only one part of what might be called the “international human rights regime” that includes additional important covenants, monitoring instruments, regional human

<sup>4</sup>An excellent account of the former is Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001). A collection of materials relevant to the development of the International Bill of Rights is to be found in Henry J. Steiner and Philip Alston, eds., *International Human Rights in Context*, 2nd ed. (Boulder, CO: Westview Press, 1988). See also their extensive bibliography.

<sup>5</sup>Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca and London: Cornell University Press, 1998).

<sup>6</sup>Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 2001).

rights organizations, and enforcement mechanisms such as the European Court of Human Rights. Although mention is made of the international human rights regime in certain places in the main text and the international human rights regime is briefly described in Appendix A, readers will need to go to other sources for a fuller account of its various parts and operation.<sup>7</sup>

In recent years, considerable attention has been given to group rights, or collective minority rights. Their prominence in discourse arises when rights of individuals cannot be achieved or protected except by members of groups acting in concert or by granting to all members of a group what, in Chapter One, I characterize as the “object” of the right. Some authors believe that protection of group rights is a necessary part of any attempt to democratize a deeply divided society, especially where constitutional guarantees and the rule of law may not be sufficient to overcome ethnic or racial animosity and rivalry.<sup>8</sup> Group, or collective, rights thus make sense in the context of institutional arrangements to protect a minority against an oppressive majority, such as the apportioning of seats in a national assembly, or to protect the customary practices of indigenous persons against the inroads of a majority culture, by allowing an indigenous group to follow tribal practices by making special provisions or exemptions. Thus, although I cannot make the argument here, I regard group rights as derivative and not primary. As group rights exist to facilitate the realization of the individual rights of persons, they are legal or social rights, but not human rights.

Finally, there are abundant philosophical issues that are not considered in this introductory work. Some, such as the long-standing controversy over the relative priority of “negative” (liberty) rights versus “positive” (social and economic) rights, I pass over because I am persuaded that this division is artificial and unhelpful, at least for my purposes here.<sup>9</sup> There are other philosophical justifications of human rights worthy of consideration, but I must leave the discovery and savoring of these to interested and industrious readers.

## ACKNOWLEDGMENTS

Many hands, minds, and hearts are involved in the making of a book. In this case, I would especially like to acknowledge the continual loving support of my wife Eileen; my students in my graduate course “Normative Issues in

<sup>7</sup>For a general overview see Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca and London: Cornell University Press, 1989), pp. 205–27. Donnelly distinguishes between global and regional human rights regimes and analyzes regimes in terms of three variables: promotion, implementation, and enforcement.

<sup>8</sup>*International Human Rights in the 21st Century*, p. 4.

<sup>9</sup>The classical argument against the distinction is Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton: Princeton University Press, 1980).