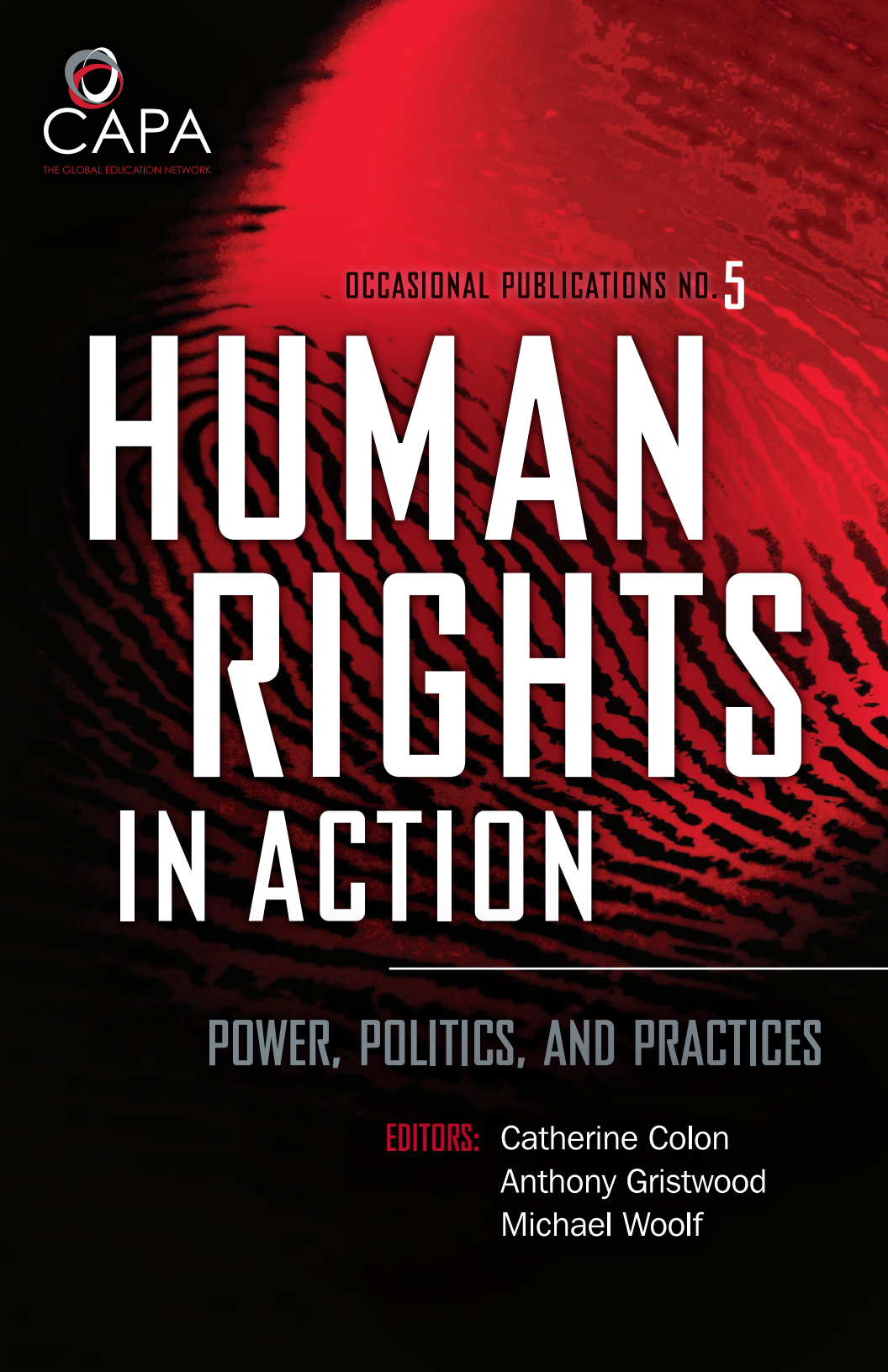
CAPA
THE GLOBAL EDUCATION NETWORK
OCCASIONAL PUBLICATIONS NO. 5
HUMAN RIGHTS IN ACTION
POWER, POLITICS, AND PRACTICES
EDITORS: Catherine Colon
Anthony Gristwood
Michael Woolf

## CAPA THE GLOBAL EDUCATION NETWORK

CAPA The Global Education Network is committed to academic excellence, integrity, and innovation in learning abroad. Our mission is to provide meaningful experiences that challenge and inspire students to analyze and explore complex political, cultural, and social landscapes within urban environments. Through our commitment to personalized learning, global connections via technology, and collaborative learning communities, we prepare students to live and work in a globally interdependent and diverse world.

May 2016

*Freedom means the supremacy of human rights everywhere*

**Franklin D. Roosevelt**

*In the Universal Declaration of Human Rights (December 1948) in most solemn form, the dignity of a person is acknowledged to all human beings*

**Pope John XXIII, *Pacem in Terris*, 1963**

*It is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal right to achieve that*

**14th Dalai Lama**

*It is the very universalistic core of democracy and human rights itself which forbids its universal propagation by fire and sword*

**Jürgen Habermas**

*The idea of cultural relativism is nothing but an excuse to violate human rights*

**Shirin Ebadi, Iranian Human Rights Activist, the first Muslim Woman to win the Nobel Peace Prize, 2003**

## CAPA OCCASIONAL PUBLICATION SERIES



**Acknowledgements:** The Editors would like to thank the members of the Editorial Advisory Board for their careful and expert review of submissions. Special thanks go to Lorena Leonard (Marketing Director), Jaclyn Cimino, and other members of the CAPA Design and Marketing team for their work on the production and design of this volume. Finally, we also wish to express our gratitude to John Christian for his continued support for this Occasional Papers series. This is an expression of CAPA's commitment to good thinking and open debate.

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# Foreword

**John J. Christian**
CAPA The Global Education Network

*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*
**Universal Declaration of Human Rights, 1948**

In response to the cataclysmic events of the first decades of the twentieth century, the United Nations issued the Declaration of Human Rights to assert that some values supersede national, cultural, religious, or political practices. In other words, there is a moral and practical core of behavior from which no deviation is acceptable. Further, these rights apply universally without qualification.

Some religious ideologies may approach the idea of universality but it is not until the mid-twentieth century that there is an attempt to create a legal and political framework that goes beyond ethical or religious recommendations. The notion of universal human rights belongs to relatively recent history. Constitutional prescriptions such as the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration on the Rights of Man and of the Citizen (1789), and the US Constitution (1789) and Bill of Rights (1791) are not in practice universal but define ethical standards for groups: "benefits of membership" from which others are, implicitly or explicitly, excluded.

Prior efforts to create some sense of universal human rights floundered for one reason or another (The League of Nations is one example, undermined by the USA's refusal to join), or succeeded in addressing the rights of particular groups (such as the abolition of slavery). The birth of the United Nations and the aftermath of World War II created an urgent ethical agenda. Nazi war criminals were convicted of "crimes against humanity": a concept that implied that certain legal standards had universal validity.

The Commission on Human Rights set up by the United Nations led to the unanimous ratification of the Universal Declaration of Human Rights (UDHR) on December 10, 1948 (with the abstention of eight countries). The key concept was that the treatment of citizens was no longer a matter of national responsibility alone but was an area of concern for all nations: "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world."

Human rights were not only the focus of the 2015 Symposium for CAPA and this Occasional Paper, but a central theme that influenced many aspects of our curriculum, program activities, and public events throughout the year. We launched this work in Boston at our Annual Reception where we were delighted to welcome two honored guests to offer their perspective on the topic of human rights. Chris Mensah, Secretary to the Governing Council and Chief of Inter-Governmental Relations for UN-Habitat, spoke about his experience fulfilling UN-Habitat's mission to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all. His perspective on the topic of international human rights comes from his work at the institutional level and focused on the right to the city and basic human rights such as access to water, food, housing, and education.

Later we heard from Justus Uwayesu. Justus gave us a firsthand account of what not having access to the basic human rights that most of us take for granted meant to him, through a very personal story. Justus is a survivor of genocide in Rwanda who, through the help of the charity *Esther's Aid*, is a *Bridge2Rwanda*[1] scholar at Harvard University and had just completed his freshman year.

In the approximate one-hundred-day period from April 7 to mid-July 1994, an estimated 500,000-1 million Rwandans were killed, constituting as much as 20% of the country's total population and 70% of the Tutsi then living in Rwanda.

[1] *Bridge2Rwanda* was formed in 2007 to help expand Rwanda's global network of friends, to encourage foreign direct investment, and to create opportunities for Rwandan students to study abroad. A few years later, President Paul Kagame asked B2R to develop a new scholars' program to "burst the bottlenecks" that were preventing Rwanda's best students from competing for international scholarships. The first class of *Bridge2Rwanda* Scholars was launched in 2011 (see http://www.bridge2rwanda.org/).

*Esther's Aid* is a non-profit organization founded in 1999 in New Rochelle, New York by Clare Effiong.[2] Its mission is to help feed, educate, and train impoverished children, youth, and women in Rwanda, protecting them from health hazards such as HIV/AIDS, drug addiction, malnutrition, sexual exploitation, child labor, and sex trafficking. *Esther's Aid* is the charity responsible for helping Justus go to school and escape the burned-out car in which he was living on a Rwandan garbage dump.

Justus's story was emotional, compelling, and *very human.* The thing that struck me about Justus when I first met him was his kindness and the thoughtfulness with which he speaks about his past and his future. He said – and I will never forget this – "I did not know I did not have human rights until I actually had them."

In December 2015, we hosted an International Student Day Conference on Human Rights in London which we linked to CAPA Global City Programs in Dublin, Florence, and Boston through our global classroom network, enabling multiple CAPA students, in several locations, to engage in a full-day discussion. The intention was to explore topical issues and current debates in the work of individuals and organizations which aim to promote and maintain human rights around the world. The conference examined the historical development, theory, and practices of human rights, their political complexity, and the current challenges faced by organizations around the world. Participants heard firsthand insights from student interns and professionals actively working in various aspects of human rights, as well as those who have been directly affected, with a particular focus on wrongful conviction.

A number of international human rights organizations described their work to students and enlisted their interest and support for their respective agencies, while also offering career information for those interested in pursuing this avenue professionally. The following organizations offered students insider perspectives on their work:

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[2] *Esther's Aid* started operation in Rwanda and set its objectives to help children become productive adults through a basic education and skills development training program. *Esther's Aid* work and workers are supported by the gifts and sacrifices of compassionate people (see http://www.esthersaid.org/ for further details).

***Stonewall*** is Britain's leading charity for lesbian, gay, bisexual, and transgender equality, working to create a world where every single person can be accepted without exception.

***Womankind Worldwide*** is an international women's rights charity working to support women and girls to improve their lives and communities in Africa, Asia, and Latin America. They partner with a variety of women's rights organizations working to tackle the issues that affect women's lives on the ground in these parts of the world.

***The Innocence Project*** is a multinational organization dedicated to exonerating wrongfully-convicted people.

***The Sunny Center*** was founded in Connemara, Ireland by Sonia "Sunny" Jacobs and Peter Pringle, who each served years on death row for murders they did not commit. Jacobs was incarcerated for seventeen years in the United States and Pringle for fifteen years in Ireland. Both were exonerated after their convictions were finally overturned. Perched on a hillside overlooking a lake, the Sunny Center welcomes other wrongfully convicted people from around the world as they try to readjust to life on the outside.

In my letter to those attending, I highlighted the Innocence Project, an organization which has had a major influence on me, and a cause that I continue actively to support. I wrote:

*I am particularly pleased that you will have the opportunity to learn more about one of the organizations working to make such a difference: The Innocence Project. The Innocence Project is an international litigation and public policy organization dedicated to exonerating wrongfully-convicted individuals and reforming the criminal justice system to prevent future injustice. I first encountered the Innocence Project at a study abroad conference a couple of years ago when CAPA highlighted their work as part of our human rights awareness agenda. This is where I met my friend, Uriah Courtney. With the help of the California Innocence Project, Uriah was exonerated in 2013 after eight years in jail for a crime he did not commit.*

*Take a moment to think about where you are right now. Consider your freedom and the excitement of your study abroad journey, and then imagine this never happened and you are instead in solitary confinement in prison with no natural light. Imagine waking up every day knowing you were there for something you did not do. Uriah was your age when he was falsely accused, convicted, and sent to prison for a crime he did not commit. Uriah's story encouraged me to learn more and to become an active supporter of the Innocence Project. I also gained a new friend and teacher. I am continually struck by his courage and spirit to survive, forgive, and live a full life on the outside. He has become one of the most important and inspirational people in my life. Uriah's story is also a reminder that human rights issues can affect us all.*

In CAPA's Human Rights Institute in Dublin, students are engaged in a full semester of courses, field study, and intensive research focused on international human rights. Completion of the semester will result in the award of a Certificate in Human Rights. This formal program is but one reflection of our commitment to a topic that, in conjunction with civil rights, profoundly impacts the reality in which we all live.

In May 2015, CAPA launched the global education network. Through the use of technology, the network allows us to connect faculty and students across CAPA's centers, thereby creating the opportunity for multi-center collaborative learning. This was an important next step in our mission to explore and analyze globalization, urban environments, social dynamics, and diversity in a more meaningful and global context. CAPA's student learning outcomes interact directly and dynamically with issues of human and civil rights.

Human rights are at the focus of many of the most pressing contemporary global challenges. The current refugee crisis, struggles over individual liberty and freedom of expression in a world of globalized security threats, prominent cases of wrongful conviction and miscarriages of justice: all indicate their continuing importance – and these only represent the tip of the iceberg.

Hosting academic and internship programs in global cities around the world offers us a unique opportunity to examine human rights from a very human perspective. Study abroad students, like most of us, are fortunate

to be distanced from the experiences described in this volume. However, diminishing that distance is one of our core aspirations. The realities of these issues are embedded in our teaching agenda and are visible in the streets upon which our students walk every day. Further, we seek to engage and involve multiple communities of CAPA students, staff, and faculty in some of our most important work to date: the study, understanding, and support of human rights work around the world.

This Occasional Paper has powerful contributions from multiple scholars, activists, and practitioners in the field of human rights issues. It illustrates diverse opinions and urgent, passionate commitments embedded in the broad agenda of human rights. I want to thank all of those who have been involved in what has been an inspiring and enlightening year of teaching and learning.

I would like to offer a special thanks to Michael Woolf, CAPA's Deputy President and creator of the CAPA Symposia and Occasional Papers, who co-edits these volumes with Anthony Gristwood, Principal Lecturer and Faculty Chair in London, and Catherine Colon, Vice President, Corporate Administration, Development and Assessment. This work has filled a gap in our profession by creating a necessary forum for the intellectual and academic exploration of issues related to intrinsic core values of our work as international educators. This current piece is at the heart of this cause.

*Throughout history, it has been the inaction of those who could have acted, the indifference of those who should have known better, the silence of the voice of justice when it mattered most that has made it possible for evil to triumph*
**Haile Selassie**

**John J. Christian**
**President**

# Introduction: Human Rights in Action: A "Human Family" or "Swords of Empire"?

**Catherine Colon, Anthony Gristwood, and Michael Woolf**
CAPA The Global Education Network

This volume, which focuses on the topic of human rights in the context of international education, forms the first part of a continuing discussion which, in the next volume, will address the question of civil rights and consider the relationship between these concepts and the degree to which these may be complementary and, at times, contradictory. Both are deeply significant in the shaping of the contemporary global landscape, and both are also highly contentious aspects of this contested terrain.

The notion of human rights implies universality, yet this is problematic. The papers in this volume illustrate divergent viewpoints on human rights as "natural," or dependent on societal or political circumstances. The concept of *universal* rights, equally attributed to all people by virtue of their shared humanity, is strongly appealing in a world characterized by inequalities, injustices, domination, and oppression. If human rights may be regarded as "universal," civil rights are constrained. They apply to citizens of a specific political construct but may, or may not, be applicable beyond national contexts, yet the boundary between these two categories of rights is, as a number of our authors argue, very far from obvious.

The topic of rights provides rich potential for student engagement and deep learning in the context of study abroad, and yet, as several of the authors in this volume argue, this opportunity is one which has been relatively neglected to date: a "niche" offering. A common focus tends to be in experiential education, through service-learning or multi-country models in the Global South, which investigate the comparative context of human rights. This volume interrogates, and makes problematic, some of the dominant assumptions within the topic of human rights in international education. It considers the ways in which the experience of more students studying abroad might be enriched and challenged by engaging with this subject in broader contexts, and in all its complexity.

The United Nations Declaration of Human Rights (reproduced in full as an appendix to this volume) makes a radical statement of profound consequence when it argues for "the inherent dignity and of the equal and inalienable rights of all members of the human family." The metaphor of the family redefines the relationship among people insofar as it explicitly prioritizes that which they have in common over that which divides them. Patriotisms, tribal loyalties, ethnic identifications, and religious beliefs are all subsumed by a discourse of greater responsibility to "common humanity." Therein lies one of the paradoxes of human rights which permeates many of the discussions here: the notion of human rights has great *moral* force while simultaneously being made *politically* ineffective through the persistence of national and sub-national loyalties among those responsible for their implementation. Furthermore, to define these rights as inalienable similarly aspires to redefine the nature of human interaction for all times and in all places without the qualifications of socio-cultural practice, national identity-formation, or any of the other myriad mechanisms by which difference is constructed.

The universalism of human rights, while appealing, is, for some critics, potentially a "double-edged sword" (Harvey, 2009: 74). Human rights issues have, on occasion, been co-opted as "swords of empire" in the interests of the powerful (Bartholomew and Breakspear, 2003: 124-45). More trenchant still is the critique offered by the sociologist Ulrich Beck, who identifies a "global priority shift" in the post-war world from the primacy of international law, as vehicle for policing human rights, to a new paradigm in which human rights *precedes* international law. For Beck, this shift gives legitimacy to "military humanism" which, he argues, has characterized recent Western "humanitarian" interventions in the Middle East and elsewhere (Beck, 2000: 83).

The 1948 Declaration also recognizes that it is located within a specific historical moment in which "disregard and contempt for human rights have resulted in barbarous acts." The events of the first decades of the twentieth century revealed a capacity for savagery and mass slaughter that threatened terminally to fracture the idea of civilization. Thus, the modern concept of *universal* human rights is a direct consequence of the traumatic destructiveness that consumed the world from 1914 to 1945. The failure of the notion that World War I was "the war to end all wars" (a phrase attributed

to Woodrow Wilson) created a sense that only a universally-applicable set of principles could resolve what appeared to be the innate destructiveness of nation-states. As early as 1940, H.G. Wells created a blueprint for a new "world collectivism" which recognized that national sovereignty had failed to bring humane order: "These sovereign governments have given us nothing but inconclusive wars on a larger and larger scale, and we have to get rid of them all" (Wells, 1940: 4).

The declaration that Wells created (and others of its kind) had many commonalities with what emerged in 1948. Above all, these rights were not conditional on citizenship, membership, or national allegiance. The strength (and weakness) of the Wells declaration was that it "must become the common fundamental law of all communities and collectivities assembled under the World Pax" (Wells, 1940: 13). The inherent tension between national sovereignty and universality that is identifiable in the Wells declaration was, almost inevitably, also implicit in the UN Declaration.

The Commission on Human Rights set up by the United Nations led to the unanimous ratification of the Universal Declaration of Human Rights on December 10, 1948 (with the abstention of eight countries). The key concept was that the treatment of citizens was no longer a matter of national responsibility alone. Thus, at the end of the Nuremberg Trials, which took place between November 20, 1945 and October 1, 1946, Nazi war criminals were convicted of "crimes against humanity": a judgment that established a core precedent for the idea of universal rights applicable beyond national standards or values. In short, it was possible to act legally within a national context and yet be found guilty of actions that conflict with standards of common humanity.

The Universal Declaration of Human Rights thus presents an explicit challenge to the idea of cultural relativism in the field of study abroad. Yet, there are continuing battles being fought over which rights matter most, which (if any) are actually "universal," and how universal principles and conceptions of rights should be constructed in practice and incorporated into law. As with all rights, some "universal" rights are also potentially in conflict with one another: Marx famously commented that "between two rights…force decides" (Marx, 1967: 225). All universal claims, when put into practice, have to account for

the paradoxes of differentiation – geographical, ethnic, societal, or political. To recognize this reality is not to advocate for an uncritical cultural relativism, but to understand that the translation of principles into action – and the way that this implementation is perceived – is frequently, of pragmatic necessity, inflected by politics and relations of power. For example, as Roland Adjovi and Chris Mensah explain, the implementation of universalist conceptions – so central to *American* ideas of rights – entails particular complexities in the postcolonial context of African societies.

It should therefore be no surprise that the papers in this volume elucidate a wide range of political, philosophical, and ethical perspectives on human rights issues which are sometimes in conflict with one another. All of these essays illustrate, to some degree or another, the moral dimension inherent in debates about human rights which inevitably generates impassioned controversy. Many of those passions are expressed in these papers. These views represent those of the individual authors, and do not necessarily reflect the views of CAPA or the editors of this volume. Publication does not imply agreement or endorsement. Dissent is central to our aims. This volume's intention is to create a forum in which diverse views can co-exist, so as to demonstrate the potential for analysis and debate within the multi- and inter-disciplinary context of human rights.

The volume's authorship is also marked by a very broad geographical range of reference including Australia, Africa, the UK, the USA, Palestine, and Ireland. This reflects the transnational significance of human rights debates and the degree to which these are of urgent, global significance. The papers themselves are organized into four sections. Part One examines the topic in the context of international education. These papers ask how best, in practical terms, its potential can be leveraged in curricular and programmatic design. Michael Woolf addresses the challenge presented by cultural relativism and suggests a new agenda for teaching the subject in a multi- and inter-disciplinary framework that unlocks its full potential as a vehicle for critical thinking. For Brian Whalen, education abroad provides a unique opportunity for students psychologically to escape the "confines of the self" and develop their capacity to engage with the human rights agenda. Rebecca Hovey critiques universalist conceptions of human rights and calls for intercultural sensitivity when asserting them. She argues that

"Human Rights" (capitalized) simultaneously embody moral rhetoric and unequal relations of power; "human rights" (in lower case) embody instead local agency and expertise in the definition and practice of rights. In order to engage effectively with human rights, students need to go through a process of defamiliarization and "unlearning" of unchallenged assumptions.

Part Two develops these insights to consider critically the implementation of human rights in practice in different geographical, societal, and political contexts. The views expressed in each of these papers reflect the contentious nature of global debates and identify contradictions between the *ethical* and *political* agendas of human rights in practice. Joni Aasi and Denise Berte discuss the complexity of human rights issues, specifically children's rights, in the context of the Palestinian-Israeli conflict. Chris Mensah and Roland Adjovi expand the range of these complexities further by considering the nature of human rights in Africa, identifying specific discourses of "African Rights," while Donna Vaughan explores the impacts of market-based mechanisms on human rights in Australia.

The papers in Part Three further address the intersection of power and politics. Amber Bathke, Gráinne O'Connell, and Mary Jane Dempsey focus on contemporary debates about immigration and migrants' rights, and consider the ways in which migrants have been characterized in political and media discourse. For Dempsey, the limited rights afforded to immigrants' children in Italy illuminate the troubled history of Italian attitudes towards multicultural immigration, while O'Connell compares media discourses about sexual rights in Ireland and the unfolding "migrant crisis" in Europe. In another context, but no less topically, Amber Bathke critically analyzes the physical and social construction of the border between the USA and Mexico. Such "hard boundaries" are, she argues, a violation of human rights and a means of perpetuating white privilege.

In Part Four, the papers by Justin Brooks and Anne Driscoll draw our attention to continuing injustices inherent in legal and judicial systems in the USA and Europe. They outline the challenges involved for those seeking to exonerate the wrongly convicted and demonstrate the powerful potential this field has to enrich student learning. Most of the essays in this volume locate human rights within the context of modern history and politics, though a number

of authors draw attention to political and philosophical antecedents. In this section, Mike Punter reminds us that the question of humane justice, and its relationship with democracy and public participation, is by no means solely a concern of the modern sensibility. Nothing, we may deduce, is entirely new in the context of human behavior.

The issues raised in these essays also demonstrate that conflicting discourses of human rights co-exist within a larger moral universe. They reflect a continuing imperative for nations and individuals to interact peacefully with compassion and justice. This complex and contested terrain might suggest that the topic is already deeply embedded in the agenda of education abroad. The reality is otherwise. The papers by Driscoll, Hovey, Whalen, and Woolf seek to demonstrate ways in which the study of human rights can enrich student learning.

While there is no single thesis expressed in this collection, an underlying assumption is that education abroad offers an ideal context for studying human rights. CAPA's integration of human and civil rights into student learning derives from the recognition that this is an imperative if we are, collectively, to establish the case for the importance and contemporary significance of our endeavors.

This volume follows thematically on from our last publication on the subject of war. The wars between 1914 and 1945 were the catalyst for the creation of a number of organizations and institutions dedicated to avoiding further global cataclysms. The emerging agenda shaped the lives of all of us and the dynamics of modern history. It is easy to be cynical about the Declaration of 1948 for its demonstrable failures. As is made clear in many of these essays, nation-states retained real power and the ideals of the Declaration have frequently been rendered impotent. While that is evidently the case, there remains a moral power in the idea of a common humanity bound by ethical principles.

This collection demonstrates the power of the topic to engage students, practitioners, and scholars. The immediate events that stimulated this volume included a symposium in Boston and a CAPA student day conference in London in 2015. Participants at both events understood that this area is

complex and challenging, intellectually and emotionally; it transcends and integrates the boundaries of the traditional disciplines; it creates no simple answers but, instead, disturbs and disrupts assumptions and raises issues that create potentially profound fields of inquiry.

The study of human rights directly impacts CAPA's approach to education abroad. It reflects our interest in areas of investigation that transcend the boundaries of nationhood. Students should, of course, learn as much as possible about the places in which they study, but we also have a responsibility to offer some insights into perspectives beyond the parochial. Study abroad offers the potential to enable students to examine the particularities of place while, simultaneously, analyzing and exploring the geopolitical dynamics that continue to shape our world. Education abroad has tended to concentrate on topics associated with perceived differences of nation and culture. This Occasional Paper, and others in this series, invites the field to go beyond myopic vision, to consider a panorama of possibilities, to see the forest rather than the veins of the leaf, to engage with the power of the storm rather than to wade through puddles of stagnant water.

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# HUMAN RIGHTS AND INTERNATIONAL EDUCATION


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# Teaching Human Rights

**Michael Woolf**
CAPA The Global Education Network

*The most important untaught subject in US education*
**Sam McFarland (2014)**

## An Ethical Landscape

The topic of human rights is ostensibly ideally suited to the several agendas of study abroad. In practice, however, this area of potential investigation receives muted attention. A preoccupation with the specifics of "cultural" and national contexts has created a limited range of vision: metaphorical myopia in which transnational, global topics are relegated to secondary relevance. As a consequence, intensive microscopic examinations of the veins on the leaf have rendered the forest obscure. The recurrent focus is on matters of "cultural" difference and national distinctions at the expense of substantial considerations of common concerns that transcend those national differences. In that process, opportunities to study global issues, the context in which nations have developed and function, are lost. The teaching of human rights would offer perspectives on global dynamics and create some insight into the nature of the interdependence of nations.

The topic of human rights also raises the critical question of the degree to which ethical assumptions are uncritically embedded in approaches to the teaching of disciplines that are based around ideals. Peace studies and civil rights might also raise similar questions: in short, are we teaching or preaching? By way of example, in the discussion of capital punishment is due respect given to the case for judicial execution? The notion of crimes against humanity in a historical context was used, after all, to justify the execution of Nazi leaders in 1946.

In the academic context, there needs to be a clear understanding of learning objectives. There is a substantial distinction between these intended outcomes: to expose students to issues related to the subject matter and, as a consequence, to inspire them to become advocates and activists; to

teach students the histories and philosophies associated with the subject and to lead them towards some familiarity with related complex political and ethical questions. The students in the latter case may or may not become advocates or activists but, in any case, conversion is not an integral learning objective. These are not, of course, mutually exclusive or absolute educational aspirations but a matter of emphasis. That said, the ethical and political foundations upon which the course is constructed should be explicitly defined so that students and colleagues can make informed judgments about the legitimacy of the approach.

We do, however, need to recognize that all education contains a set of ethical assumptions; it is not value free. It is assumed that knowledge is better than ignorance; that it is better to read books than to burn them; that learning usually confers status. Except in the most totalitarian of environments (where knowledge may be seen as a threat and ignorance a form of social control), the value of wisdom and erudition is embedded in the social construction of hierarchies: professors, teachers, sages, gurus have an elevated status based upon the fact that they know more than those they teach. Thus, implicit in the idea of education is the concept of the value of knowledge, whether that is expressed in terms of individual enrichment, social and political development, or some combination of those.

There are circumstances in which the moral value of what is taught performs an explicit ideological function, most obviously when the subject matter relates to religious or political ideologies. The function of education in those circumstances may be to ensure a level of compliance with prevailing orthodoxies. However, even within the liberal educational tradition in which the ostensible function of education is, at some level, to question orthodoxies, there are (contested) values embedded in the educational curriculum. In some contexts, that is entirely explicit: an obvious example would be the Marxist historian. In contrast, pure mathematics may be an example of a discipline in which ethical values are implicit and located within the more general value given to education as a whole.

## Education Abroad and the Ethical Agenda

In the context of education abroad, there are ethical assumptions that may be unspoken and unrecognized. These include the notion that diverse social and political environments enrich learning through engagement with some kind of difference, and that the domestic environment does not represent a monopoly on truth or wisdom: a view of the world that is essentially inclusive and liberal. A parochial view might, in contrast, perceive the world elsewhere as under-developed, of less value or interest, in need of improvement; this is the classic assumption behind political colonialism and a missionary agenda. In contrast, education abroad recognizes the potential for diverse environments to demonstrate that what we believe and know is neither necessarily superior, nor inclusive of that which is true or of significance.

These distinctions may be demonstrated by constructing an entirely theoretical spectrum along which it is possible to place student intentions in studying abroad. The following are extremities of variables rather than descriptions of what may drive specific student participation. At one extreme end of a theoretical spectrum is what we might designate metaphorically as the missionary tendency: the notion that the student has qualities, abilities, or insights of profound value that create a moral imperative to export these to the foreign environment. The student may believe that they have an obligation to enrich (even transform) the lives of poor, deprived natives (this parodies a perverse form of service-learning).

At the other end of this motivational spectrum is the idea that "abroad," wherever it is, is a richer, more sophisticated environment than that of home: it invents "abroad" as a single undiscriminated entity, something like Prospero's island, infused with quasi-mystical powers to bring enlightenment into arcane mysteries.[3] Both of these extreme forms of imagined engagement have roots in American political and intellectual history, particularly that of the nineteenth century. They also persist, in some form or another, as formative assumptions in the construction of the idea of "abroad."

[3] An unintended consequence is that, in prioritizing the transformative powers of "abroad," there is an implication that the domestic environment is, in comparison, relatively less potent. At some level, that is disrespectful of artistic, social, and political diversity within the USA. It also makes the doubtful assumption that environments alone can be a catalyst for transformation. It is possible, we might assume, to achieve Nirvana in Des Moines as well as Paris.

Manifest Destiny encapsulated a notion of American exceptionalism that had a long tradition within the development of the national myth. The term Manifest Destiny was coined in 1845 by John L. O'Sullivan, essayist and journalist, who envisaged a "destiny of growth" (cited in Brinkley, 1995: 352). At the root of this version of American identity is a unique combination of intimacy with divinity, and ideals that align with myths of origin. As early as 1630, on the ship *Arbella,* en route to the New World, John Winthrop, a Puritan lawyer, delivered a sermon to his fellow colonists, "A Modell of Christian Charity." He envisioned a role for the nascent country that combined continuity with biblical sources (with a clear reference to Jesus's Sermon on the Mount)[4] and recognition of unique responsibilities: "We shall be as a city upon a hill, the eyes of all people are upon us" (Winthrop, 1864-67: 19). Winthrop was to become the first governor of the Massachusetts Bay Colony and was a key figure in the development of New England. The notion of a God-given obligation became a recurrent element in national rhetoric.

In January 1961, for example, President-elect John F. Kennedy cited Winthrop's vision:

> Today the eyes of all people are truly upon us – and our governments, in every branch, at every level, national, State, and local, must be as a city upon a hill – constructed and inhabited by men aware of their grave trust and their great responsibilities (Kennedy, 1961: A169)

President Barack Obama also echoed the idea of America's unique responsibility in his second inaugural address: "What makes us exceptional – what makes us American – is our allegiance to an idea articulated in a declaration made more than two centuries ago" (Obama, 2013). In this persistent version of the national myth, Americans have a special responsibility to bring enlightenment and enrichment to the world.

In paradoxical contrast, there is a recurrent notion that Europe, in particular, is a richer, socially more complex environment: a dreamed landscape with profound potential to transmit wisdom, social grace, and a form of

[4] The Sermon on the Mount, *Matthew* 5: 14, *King James Version* (KJV):
Ye are the light of the world. A city that is set on a hill cannot be hid.

cosmopolitan sophistication. In this context, the American does not bring exceptional abilities, but is a youthful innocent anxious to learn of the arcane mysteries of the Old World. Rather like the notion of "abroad," this "Europe" is a collective concept rather than a set of distinctive nations. This Europe is recurrent in American literary history, exemplified by Washington Irving, Henry James, Mark Twain, Ernest Hemingway, F. Scott Fitzgerald, Henry Miller, and a host of other American writers. Washington Irving defines the European world as a space in which social and historical depth contrasts with the relative superficiality and naivety of home. This represents the "Holy Grail" sought by some students in studying abroad. It is a kind of secular pilgrimage:

> …Europe held forth the charm of storied and poetical association. There were to be seen the masterpieces of art, the refinements of highly-cultivated society, the quaint peculiarities of ancient and local custom. My native country was full of youthful promise: Europe was rich in the accumulated treasures of age. Her very ruins told the history of times gone by, and every mouldering stone was a chronicle (Irving, 1849: 10)

The motivations of American students in studying abroad are most unlikely to be shaped explicitly by these theoretical and historical models, but they offer a set of conflicting narratives that, in one way or another, connect with the ways in which the agenda of study abroad has evolved: as an opportunity to contribute to the international environment as an idealistic participant and, conversely, as a way in which to become enriched by the sophisticated mysteries to be found in the worlds beyond domestic borders.

The values inherent in any educational enterprise, at home or abroad, may be unspoken and a matter of embedded assumption. However, making those unspoken values an implicit part of the educational enterprise would serve to enrich student learning. In studying abroad, students are part of a tradition of engagement: a context that has shaped their own experiences. We do not spring uniquely formed into the world, but carry with us the baggage of our histories.

**The Example of Peace Studies**

In short, teaching and learning agendas would be richer, broader, and more inclusive if students and their teachers integrated the materials they teach with an awareness of the values embedded therein. An enhanced level of such

consciousness would give students abroad an opportunity to understand the contexts in which they study. Those contexts are not neutral.

There are then, areas of academic knowledge that would benefit from some kind of analytical review, not necessarily so as to devalue the enterprise, but rather to reveal assumptions. A brief consideration of peace studies highlights issues that are equally relevant to the teaching of human rights. The extracts cited below are adapted from a variety of current syllabi and are indicative of potentially problematic learning objectives:

> …how nonviolent conflict can be used to right social wrongs…how their chosen vocation or discipline contributes to building sustainable peace. Examine their own role and responsibility in contributing to a more peaceful and just community, nation, and world. Only when each person and each sector contributes appropriately to this effort can a more genuinely peaceful society result

In practice, of course, the teaching of these courses may be exemplary and students may be invited to examine the underlying assumptions in a critical manner. The rhetoric of peace studies, nevertheless, embeds a core question: is the underlying intention to encourage activism or is it to raise key questions about the nature of peace? Precisely the same question needs to be raised in relation to teaching human rights.

The rhetoric suggests that peace is an ultimate aspiration which might preclude the consideration that there is such a thing as a just war. The common collocation of "peace and justice" may also not necessarily stand up to the scrutiny of history. The simple example of Apartheid demonstrates a potential flaw. Nelson Mandela (frequently and strangely given an iconic status in the peace agenda) and his comrades in the ANC understood that the choices facing the anti-Apartheid activist were peace *or* justice. In his statement at the Rivonia Trial on April 20, 1964, he argued that justice could, in the circumstances prevailing, only be achieved through violent resistance:

> Firstly, we believed that as a result of Government policy, violence by the African people had become inevitable… Secondly, we felt that without violence there would be no way open to the African people to succeed in their struggle against the principle of white supremacy (Mandela, 1964)

Mandela's speech raises key questions about the nature of peace. The assumption that it equates with justice is not inevitable. Students should be taught to examine other challenges to that assumption including the American War of Independence, the Russian Revolution, or the Hungarian Uprising, as selective examples.

**The Example of Human Rights**

The challenge of teaching subject areas with explicit ethical content is to retain the integrity of learning objectives. It may be that the intention of a course is to create activists committed to becoming disciples in the given cause. Unless we define the purpose of education as the inculcation of an ideological agenda, that proposition sits uneasily and uncomfortably in the context of liberal education. An alternative rationale might be to demonstrate a potential career path to aspiring activists but, in that case, the activity would be defined more narrowly in predominantly utilitarian contexts.

As an area of investigation, the topic of human rights is multi-disciplinary and inter-disciplinary to the point where it challenges the traditional parameters through which we define knowledge. Boundaries between disciplines are fragile, temporary, and artificial. The growth of multi-disciplinary approaches in study abroad reflects the convergence of a number of dynamics: in the broadest context, radical alterations to conditions of our environments, and the pace of that change, make new modes of analysis almost inevitable; a growing awareness of the force of globalization (in all its paradoxical shapes) undermines the credibility of traditional perspectives; study abroad adds another dimension of disturbance to those complexities: geographical dislocation and disruption combines with the challenge of new concepts to enforce radical disconnection with traditional modes of understanding the world.

Creative education abroad integrates subject study with situational and experiential learning and, thus, expands learning environments in an intentional, strategic manner. Challenging assumptions behind teaching and learning is part of an intellectual obligation intensified by the conjunction of new ideas in new environments. The teaching of human rights aligns with those innovative dynamics.

## The Colonial Critique

An awareness of deeply contested and paradoxical contexts is an essential aspect of the teaching of human rights. It impacts upon the ways in which we consider history and in the manner in which we perceive our reality. It is also a matter of matter of historical and contemporary controversy.

By way of example, a recurrent and standard critique of the 1948 Declaration of Human Rights is that it is a product of Western values: a form of moral imperialism. That narrative derives from a postcolonial assumption that predominantly Western European and Christian ethical assumptions are embedded within the text. Thus, according to this narrative, the Declaration was an attempt to impose a set of alien values upon emergent nations. In 1948, it is a matter of fact that African countries had no part in the construction of the Declaration. Paradoxically and simultaneously, however, it was a source of inspiration in the anti-colonial struggles in the second half of the twentieth century, not least for Julius Nyerere, the first President of Tanzania. In 1961, in his first address to the United Nations, Nyerere affirmed the Declaration as a benchmark for the newly emergent African nations:

> The underlying theme of the Universal Declaration, that of human brotherhood, regardless of race, colour or creed, is the basic principle of which we ourselves … and we believe other peoples in Africa and other parts of the world, have been struggling to implement (Nyerere, 1961: 1039)

The critique of the Declaration of Human Rights as a form of colonial intrusion coexists with the fact that it was an inspiration in the anti-colonial struggle. The ideals embedded in the Declaration were critical to the politics of liberation.

Furthermore, simple statistics suggest that the view of the Declaration as an extension of Western, Christian colonialism is, at least, worthy of challenge. Of the forty-eight signatories, thirty-two were not European countries. Eleven European countries signed the Declaration, less than 25% of the total. Twelve signatories were not formally Christian countries. Seventeen of the signatories represented Latin America. While African nations were not part of the UN process, the ethics embedded in the Declaration were inspirational in the anti-colonial struggle.[5]

[5] Full details can be found at the UN Office of the High Commissioner, Human Rights library and archive section online, available at http://unbisnet.un.org:8080/ipac20/ipac.jsp?&-profile=voting&uri=full=3100023~!909326~!0&ri=1&aspect=power&menu=search&source=~!horizon, accessed March 29, 2016.

Thus, postcolonial denigration of the human rights agenda is historically contentious. Similarly suspect is the assumption that postcolonialism is invariably a synonym for progress. There are certainly contexts in which liberation from colonial rule brought profoundly beneficial alterations, not least in pride in national identity. This is exemplified in Thomas Osbourne Davis's Irish nationalist song (written in the 1840s) which foresaw the restoration of Irish independence:

> When boyhood's fire was in my blood
> I read of ancient freemen,
> For Greece and Rome who bravely stood,
> Three hundred men and three men;
> And then I prayed I yet might see
> Our fetters rent in twain,
> And Ireland, long a province, be
> A Nation once again!

However, an African context may offer an alternative narrative. The leadership of the liberated confederation of Rhodesia and Nyasaland illustrates an uncomfortable truth: Robert Mugabe emerged as the leader of what had been called Southern Rhodesia and became Zimbabwe; Hastings Banda led Malawi (formerly Nyasaland); and Kenneth Kaunda, Zambia (Northern Rhodesia). In view of the ultimately corrupt and authoritarian nature of those administrations, it would take some significant act of selective imagination to see these administrations as unequivocally better custodians of human rights than those that preceded them.

Governments emerged that were sometimes corrupt, incompetent, and brutally cruel with little evidence of regard for the welfare of the people. There are contexts in which postcolonialism made life worse, rather than better, for those parts of the population that were not part of the mostly unelected elite.

The example of Rwanda offers an extreme version of the kind of tribal violence that also erupted in some postcolonial contexts. Certainly, a primary cause of these terrible fragmentations is, precisely, a consequence of the creation of artificial nations by colonial authorities. Nevertheless, despite the burden of that colonial history, the transition from colonialism to postcolonialism in Africa has not been untroubled, nor is it inevitably characterized by an increase in prosperity, security, democratic potency, or the maintenance of human rights.

It may be that human rights have been made ambiguous and complex by history but they nevertheless offer a necessary set of benchmarks against which we can recognize and condemn barbarism, inhumanity, and cruelty. Postcolonial narratives, combined with cultural and ethical relativism, have created an environment in which it becomes permissible to make those benchmarks conditional and problematic. However, if we dismiss or denigrate the principles of human rights, what values may offer credible moral alternatives? If notions of civilization are hopelessly compromised, what is left? Where are the limits of tolerance? Cultural relativism, embedded in study abroad, contradicts moral imperatives implicit in the idea of human rights that are, theoretically, universal, absolute, and applicable across all political, national, and social structures.

**Human Rights and National Sovereignty**

A core question embedded in the notion of human rights is, then, the concept of universality. In practice, the word "universal" is a tautology; in so far as these rights apply to humans, they are applicable to all. Concepts of European human rights or African human rights may have political utility but they are redundant because universality overrides regional fragmentation.

A source of political controversy derives from universality. The sovereign powers of nations are compromised by the theoretical obligation to align with principles defined by others that may contradict national will, customs, or ideologies. That reflects the fact that the Declaration of Human Rights emerged precisely out of the failure of nation-states to maintain basic humane principles in the first half of the twentieth century.

As H.G. Wells indicated: "These sovereign governments have given us nothing but inconclusive wars on a larger and larger scale, and we have to get rid of them all" (Wells, [1940] 2015: 104). There is a real sense in which the principles of universal rights emerged from the hideous ashes of the Nazi Holocaust and from the systematic bombing of civilian populations during World War II. These, and many similar outrages, destroyed the notion of a rational world. The nation could no longer be trusted with the fate of humanity.

The persistent power of nations to violate human rights, and the relatively ineffectual mechanisms to punish those violations, has undermined the credibility of the idea of universality. Consequently, civil rights are perceived as far more significant because they are defined and guaranteed by national law. Without denying that political reality, there is an obvious transaction between the principles of universal human rights and the legal implementation of civil rights within the nation-state. Furthermore, the fact that ideals are not necessarily universally applied does not, surely, make them devoid of ethical power. (The meek did not, after all, inherit much of the Earth but that does not render worthless Jesus's Sermon on the Mount.) In terms of education abroad, it also implies that what unites us is equally significant as the forces that divide us: a principle that subverts priorities given to "cultural" and national characteristics. The teaching of human rights suggests an expanded agenda for our research, teaching, and learning.

**Ideologies in Conflict**

Discussions of human rights resonate with history and contemporary reality in many complex ways, manifestly in helping students understand the great ideological divides that have shaped our experience. An emphasis on political rights relates to the ideas of liberal democracy: priority is given to, for example, the right to vote, to worship, not to be arbitrarily detained. In defining human rights in economic terms, the emphasis shifts to issues such as the right to work, to education, to healthcare: rights that ally more clearly with state intervention and control.

This is another dimension of the diverse ways in which freedom may be constructed. Freedom "to" and freedom "from" imply different models of state engagement. Freedom "to" may be defined variously as: to vote, travel, worship, and so on – an enabling philosophy which limits the role of government. Freedom "from," in contrast, may be defined in terms of freedom from hunger, homelessness, discrimination, poverty: a condition that implies more extensive State control. In embryonic terms, those distinctions embody the divergent principles behind liberal democracy and state socialism.

Arguably, the great ideological division in our times has been between the values of individualism and collectivism: the arena of human rights belongs most clearly to ideas of collectivism. The obligations we have to each other

are, by implication, more significant than individual desires. At the geopolitical level, human rights (the collectivist ethic) supersede the individual priorities of the nation. Teaching human rights, in short, places students at the center of those ideological divisions that have fundamentally created the conditions in which they live.

**What Students Learn**

In studying human rights, students have the opportunity to understand that all learning contains ethical assumptions and that, consequently, an understanding of those assumptions enriches teaching and learning. This will also challenge students to examine their own ethical values and assumptions. Are they, for example, grounded in the context of domestic moralities or inspired by global principles, or shaped by a pragmatic synthesis of both?

The study of human rights also opens a door to understanding the dynamics of global history and politics. Transnational institutions emerged because of the failure of nations. Simultaneously, the ideological and political schisms that fragmented the twentieth century resonate with the ethical complexities, paradoxes, and tensions accumulated around this topic.

In short, this discussion demonstrates the rich potential of human rights in the field of international education. Study abroad is ideally suited to achieve two paradoxical objectives: to demonstrate the importance of national realities and to demonstrate the importance of values that transcend national difference. However, the crucial distinction remains: are we teaching, or preaching? If we are preaching rights, we ought to be in the pulpit. If we are teaching rights, we are creating consciousness of paradoxes and challenges that disturb and disrupt assumptions. That is the purpose of education.

# A Self-Evolving Circle: The Psychological Dimension of Education Abroad and Human Rights

**Brian J. Whalen**
The Forum on Education Abroad

## Education Abroad Begins by Enacting a Basic Human Right

The ideal of human rights transcends the boundaries of self and place, and this core aspect of human rights is also the essence of education abroad. Education abroad has over the past fifteen to twenty years become what the college experience itself once was: a distinctive educational opportunity during which a student has the opportunity to move well beyond the ways in which they have been defined by their inherited cultural, religious, political, and social contexts.

At its center, education abroad offers the chance for students to flee from what Emerson called the "confines of the self" and enter that "self-evolving circle, which, from a ring imperceptibly small, rushes on all sides outwards to new and larger circles, and that without end" (1883, 283-84). It is this psychological opening that makes possible an education about human rights not only through intellectual development but also through a transformation of the self.

The education abroad narrative begins with the assertion of the right to be mobile, which makes education abroad possible. We take for granted the basic fact upon which education abroad is based: the freedom to travel from one place to another. The education abroad field tends to view this as a mere logistical operation that is one of the unglamorous aspects of our work. We arrange travel for so many students that while focusing on passports, visas, airport transfers, and suchlike, we may very well overlook the significance of the act of departing itself.

If we view departure in the context of human rights, we can recognize its deeper meaning within a student's educational experience. In exercising the right to travel, a student asserts personal freedom to break from the confines

of a particular place and of a self that is defined by that place. The beginning of the education abroad journey, therefore, embodies a basic and profound human right: the freedom to be mobile – which is articulated throughout key human rights documents authored by the United Nations:

1. The Universal Declaration of Human Rights: "Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country." (United Nations General Assembly, 1948)
2. The International Covenant on Civil and Political Rights: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own.... No one shall be arbitrarily deprived of the right to enter his own country." (United Nations General Assembly, 1966)
3. General Comment No. 27: "Liberty of movement is an indispensable condition for the free development of a person." (United Nations Human Rights Committee, 1999)

How might this principle be utilized within an education abroad context to shape a student's education? Research by Pillemer and colleagues (1988) on the memories of educational experiences suggests an answer. They found that many years after they graduate, alumni recollect in much greater detail and with much greater frequency those educational experiences that occur at *transitional* moments. These memories that occur at such moments are recalled more readily and frequently; they have a greater degree of emotion attached to them and have greater meaning and influence in the lives of alumni over the course of time.

Experience with students in the education abroad context seems to lend support to this research on memory and education. Research that asked alumni to recollect their education abroad experiences has revealed that alumni memories cluster around transitional moments, especially departure and arrival on-site. Moreover, moments of departure and arrival are often remembered and discussed by returning students. These memories have

a range of emotions attached to them: anxiety, excitement, curiosity, fear, and homesickness. These are significant moments that students will recall throughout their lives and which will continue to teach valuable lessons over an entire lifetime.

Education abroad programming can help to shape these experiences, and how they are remembered, by orienting students to their departure and on-site arrival as an expression of a basic human right. This would alert students to their intimate connection to the topic of human rights and also begin to raise awareness of other humans who are not free to move, those for whom movement is involuntary, and people who experience a condition of exile and dispossession. For example, as part of pre-departure orientation, we might ask students to reflect on the meaning of their departure as an expression of their human rights, something upon which students rarely, if ever, reflect. If they are prompted to do so, their act of departure might be raised to an entirely different level of meaning. An additional tactic would be to require that students read an article on the topic of freedom to travel as a human right, and ask them to compare their own experience to those of others who face restrictions on this basic right. Embedding the student experience of departure into this context is likely to make it more meaningful, not only at the moment, but also years later when it is recollected time and time again.

**The Psychological Capacity to Respect Human Rights**

In his work, "The Psychological Foundations of Human Rights," Kar argues that "humans have an innate psychological capacity to identify and respond to rights" similar to our innate ability for language (Kar, 2013). Thus, all humans also have the *potential to develop* an ability to know and respond to rights. Kar explains:

> To say that these capacities are innate is to say two things. First, ordinary humans have a special psychological capacity to identify and respond to rights, which develops in certain regular and predictable ways in response to species-typical social interactions that arise in almost all human communities. Second, this capacity can be described at a certain level of abstraction as being universal (in the sense of being deeply species-typical) and by reference to universal principles that govern its ordinary development and operation. To

> qualify as universal, the principles should govern in all (or nearly all) forms that the capacity takes, even if the capacity develops in slightly different ways in different social circumstances, and even if it attaches people with different cultural or life histories to different senses of moral, legal and/or other obligation (2013: 25)

While humans share this capacity to know and to respond to rights, Kar explains that "the more specific phenomenon of respect for *human* rights is at least in part a culturally emergent phenomenon" and this capacity "needs support to produce stable perceptions of rights beyond one's in-group." He adds that "distinctive factors engage this capacity and can help orient it to support a more stable and universally shared form of respect for human rights in the modern world" (2013: 2).

What are these distinctive factors that shape the capacity to respect human rights? They appear to be what Kar calls a special complex of psychological attitudes that includes "perceptions of obligation, motivation within a community to conform to these obligations, shared expectations of conformity in the community at large, and shared dispositions to react to deviations in certain regular and predictable ways." This collection of attitudes constitutes "the psychological capacities that need to be engaged to support a more stable and universally shared form of respect for human rights in the modern world." Kar further explains:

> These capacities are, however, clearly distinct from a broad range of other psychological phenomena, including the capacity for compassion, the capacity to attribute mental states to others, the capacity to engage in instrumental (or purely goal-oriented) practical reasoning, and a range of other character traits that one might think necessary for virtue. Even if all of these psychological phenomena interact in complex ways, a better understanding of the distinctive ways in which the psychological capacity to identify and respond to rights functions is therefore needed for the advancement of human rights (24)

There appears to be within each of us this specific, distinct capacity to know, react to, and respect human rights. At the same time, it is humbling and disappointing to think that we as humans do not do more to foster the development of this capacity as much as we do other innate capacities.

In the education abroad context, what might be the supporting structures and distinctive factors that can enhance this capacity to respect human rights? To answer this, we need to think about the context of human rights within our students' psychological "in-group." Following Kar, only when students are able to move beyond their cultural framework are they able to understand the transcendent, universal framework for human rights.

**Engaging Students with the Topic of Human Rights: Changing Attitudes**

Previously we made the connection between the departure for education abroad and the assertion of the human right to move freely. Another psychological opening towards human rights occurs when students' education abroad programming begins on-site. Education abroad offers an ideal opportunity for the development of the psychological capacity to advance an appreciation for, understanding of, and a commitment to, human rights. However, students need to move beyond culturally conditioned views of the world and the attitudes that prevent them from identifying and respecting human rights. There are distinctive challenges for US students who undertake this challenge.

McFarland and Matthews (2005) have discussed how Americans think about human rights. They noted that in surveys, Americans tend to voice strong support for human rights in the abstract (free speech, peaceful demonstration, free press, etc.) and favor the promotion of human rights as a goal of US foreign policy. However, this support quickly weakens when people are asked to prioritize human rights among other foreign policy goals, such as energy, trade, and national security. Commitment to human rights is further demonstrated to be superficial when people are asked to choose between policy priorities (like preventing mass killings *versus* ensuring a strong immigration policy, or maintaining a strong military *versus* ending child prostitution), or when they are given hypothetical scenarios and asked how to act (McFarland and Matthews, 2005: 3).

By analyzing surveys of this type, McFarland and Matthews were able to draw conclusions about what they call the *personality traits* that are associated with a strong commitment to human rights. They found that negative predictors (which make a person less likely to support human rights)

include ethnocentrism, an authoritarian personality, blind patriotism, and a fatalistic attitude. Positive predictors include a feeling of identification with all humanity, a sense of global citizenship, and dispositional empathy, or the tendency for people to imagine and experience the feelings and experiences of others (2005: 7).

We no doubt recognize McFarland's personality traits as being part of our shared vision and goals for education abroad. The negative predictors that work against openness to human rights seem to parallel the first stage of Milton Bennett's intercultural sensitivity model, for example, where there is a "denial of difference" that impedes recognition of cultural diversity in various contexts (2011). Therefore, we might speculate that as students develop intercultural sensitivity and awareness, they may become more capable of understanding and respecting human rights.

The positive predictors – identifying with all of humanity, a sense of global citizenship, and dispositional empathy – are what we hope our students will achieve. In fact, many of the assessment measures that are being used by institutions and organizations to assess education abroad outcomes focus on these and related traits, examples of which appear in The Forum on Education Abroad's *Outcomes Assessment Toolbox* (2015).

Many, and perhaps most, of our students are psychologically ready during their education abroad experience to be oriented toward a commitment to human rights. This may indeed be one of their few life experiences which provides an immediate environment in which to develop understanding and respect for human rights. However, unless the topic is introduced and probed during education abroad, the potential for enhanced learning may be lost.

McFarland (2014) has called human rights the "most important untaught subject in US education." His statement is a challenge for the education abroad field. Given the psychological opening that education abroad offers, it is one of the best educational moments during which students can learn about and commit to human rights. We therefore should consider the ways in which our education abroad programming can be developed to take full advantage of this opportunity.

## Conclusion

Education abroad can be a journey into students' understanding of their own human rights, as well as human rights in general. It is a journey that is, potentially, a mode of being in the world, one that begins with the exercise of the right to free movement. This can be a defining moment in students' lives, during which they can exercise their human rights through experience of places and selves different from the ones left behind. I have often reflected on what seems to be true for many of our education abroad students: they consider education abroad to be one of the happiest times of their lives. Students report on surveys about their overall college experience that education abroad is a "high impact" experience (Kuh, 2008), and they are often nostalgic for it (Whalen, 2009). I wonder if a reason for their happiness is that they have enacted their basic human right to move freely and have also moved closer to appreciating and understanding the rights of others.

Navi Pillay, United Nations High Commissioner for Human Rights, has stated that the "protection of human rights may enhance psychological wellbeing" (Pillay, 2012). The preservation of an individual's and a community's human rights are important to psychological health. Education abroad can foster this well-being in part because it provides the environment for a student to come to understand, respect, and commit to human rights. The promise of education abroad is a promise of self-transformation, and human rights ought to be a key aspect of that transformation.

# *Know Your Rights!... Whose Rights?... What Right Do You Have?* Knowledge, Human Rights, and a Critical Pedagogy for International Education

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The urgency of human rights conditions in the world challenges international educators' well-intentioned pursuit of mutual understanding through cross-cultural exchange. Can mutual understanding itself advance global human rights? How can our understanding of rights lead to a deeper engagement and solidarity of action needed to respond to human rights violations? The capacity to understand the meaning and context of human rights is an epistemological question significant for international education pedagogy and global human rights. This paper explores some of these challenges through a critical assessment of global human rights institutions and the notion of universal norms. Santos's *Epistemologies of the South* (2014) offers an alternative philosophy of knowledge based on ecologies of learning and intercultural translation that can advance a critical pedagogy for international education based on global justice and human rights.

The title of this paper is intentionally cast as a dialogue, suggesting that the concept of human rights in intercultural exchange is subject to interpretation, deliberation, and conflicting views on the basis of human inequities. *"Know your rights!"* is the call of an advocate, seeking to motivate action based on knowledge of legal or civil rights. This declarative statement represents the stance of much of the work associated with Human Rights Education, a professional field developed to advance the promotion and implementation of the United Nations "Universal Declaration of Human Rights" (United Nations, 1948) and subsequent conventions on human rights. *"Whose rights?"* responds to this declaration from a local or community level: in the context of marginalized or disenfranchised communities, the abstract notion of rights may apply to some members of a community and not others. Questioning the entitlement to rights also highlights how different members of a community (or "actors" in the social science literature on rights) have different rights in relation to specific areas of the law. In relation to housing, for example, the rights of landlords will differ from those of tenants; citizens will have different

legal or civil rights than do resident aliens or undocumented migrants. Finally, *"What right do you have?"* is the challenge of the activist or beleaguered beneficiary of aid: what presumptions underlie the well-intentioned efforts of promoting abstract notions of human rights? As educators, this is perhaps our greatest challenge. How do we prepare ourselves and our students to first learn from communities about their own struggles and priorities? How do we ensure that we respect the process of knowledge construction with global communities as we seek to learn from them and about the world?

**Human Rights and the United Nations**

The vast literature on human rights, encompassing fields of anthropology, philosophy, political science, law, and sociology, among others, is more than can be elaborated here. Briefly, within western historical traditions of thought, conceptual frameworks of rights derive from ancient beliefs of cosmopolitanism and citizenship to Enlightenment beliefs in natural rights and the protection of law; in contemporary debates, these frameworks hinge on universal norms, such as those formulated in the 1948 Universal Declaration of Human Rights and their application in the culturally diverse, interconnected global politics of the twenty-first century (Follesdal and Maliks, 2014; Donnelly, 2013; Clapham, 2007).

The Universal Declaration is generally considered the key reference point for human rights activism and advocacy. Profoundly aspirational, the opening claim of the Preamble, *"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,"* establishes a basis for global civil society and humanitarian ethics with which few nations would disagree. The thirty articles, from Article 1, that all humans are born free and equal; Article 8 that all are recognized as persons before the law; Article 13 of the right to freedom of movement; and even Article 27 of the rights to enjoy the arts and scientific achievements, present a vision of an ideal society in which human life may flourish in peaceful coexistence. Beyond the use of the Universal Declaration in seeking legal redress or protection against blatant human rights violations, Article 25, stating the rights to shelter, food, health, well-being, and livelihood, is cited repeatedly as the standard for poverty reduction development programs in promoting the basic human rights of peoples and communities around the world. While these Articles set a measure by which nation-state members of the UN

promote and deliver basic human rights, activists, scholars, and policymakers recognize the inequities and wide gaps that loom in the actual achievement of these goals. Lack of clarity in what specific conditions are required in order to claim these rights has led to subsequent covenants and agreements within the UN, specifically the 1966 International Covenant on Economic, Social and Cultural Rights, the 1989 Convention on the Rights of the Child (Gerber, 2013), and numerous specific treaties dealing with rights of women, people with disabilities, migrants, use of torture, and related issues of civil and political rights.[6] Within the UN protocol, committees tasked with the implementation and monitoring of these rights may issue comments to clarify adequate access to the standards which often lead to broader General Assembly resolutions (Tibbitts, 2015), such as the 2010 Resolution 64/292 which recognized the right to water and sanitation as key to the realization of the basic rights.[7]

Efforts to advance the promotion and implementation of the Universal Declaration have led to the formation of formal education initiatives under the umbrella of Human Rights Education (HRE). Beginning with the 1995 launch of the UN Decade of Human Rights Education, followed by the 2005 formation of the World Programme for Human Rights Education, national and international human rights organizations have received funding and support to provide basic curricular development on basic rights in primary and secondary schools as well as training of educators, law enforcement personnel, and military, especially those located in cooperating countries in the Global South.[8]

Over the past twenty years, the HRE field has grown exponentially, with numerous international NGOs affiliated with the UN or multilateral agencies contributing to global efforts of promoting basic human rights. Handbooks, videos, curricular development and training guides, along with evaluation materials have proliferated as means of providing common resources to

[6] See "The Core International Human Rights Instruments and their monitoring bodies" on the website of the United Nations Human Rights Office of the High Commissioner, at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

[7] See the "The human right to water and sanitation" on the website of the UN Department of Economic and Social Affairs (UNDESA), at http://www.un.org/waterforlifedecade/human_right_to_water.shtml

[8] See "World Programme for Human Rights Education (2005-ongoing)" on the website of the United Nations Human Rights Office of the High Commissioner, at http://www.ohchr.org/EN/Issues/Education/Training/Pages/Programme.aspx

educators and advocates across diverse cultural and national settings (Adami, 2014; Struthers, 2015).[9]

The HRE field itself is built on an assumption that the rights affirmed in the Universal Declaration are universal norms and standards agreed to by UN nation members and global advocacy organizations. However, the notion of universal norms is a topic of vigorous debate. Within political philosophy and social sciences, especially development anthropology, the debate between universal norms and cultural relativism has evolved in ways that continue to question how different cultural communities interpret and construct notions of human rights. Among the various theoretical efforts within the western tradition to bridge this impasse, Donnelly (2013) has proposed the concept of "relative universality" in which rights are universal as concepts and relative in their particularity.

Beyond this theoretical debate regarding the universality of norms and rights is a broader global political economy critique of development funding and rhetoric, frequently under the auspices of UN initiatives. Under the protective guide of well-meaning programs, such critiques question whose interests are being served in the implementation of initiatives designed to promote housing, food security, health, or other basic rights (Risse, 2012; Moyo, 2010). To what extent are local communities and individuals engaged as knowing subjects in determining their own basic standards of living and the ways in which they will be accessed?

**Hopgood's Endtimes of Human Rights**

Hopgood's blistering critique of the human rights agenda associated with the UN, *The End Times of Human Rights?* (2013), moves the debate around universal norms into the political arena. His analysis removes the veil of sanctity from the UN and examines the institution in its role as a dominant global power. Distinguishing between "Human Rights," in upper case, as a

[9] Phillips and Gready (2013) note that the call for HRE education referenced its promotion through "the curriculum of all learning institutions." Although its implementation has been primarily in training of government officials and development agencies involved in human rights work, the teaching of human rights within university curricula would fall within the domain of HRE.

global institution with its own power agenda, from "human rights" in lower case, as grassroots and transnational community activism, Hopgood draws a parallel between the Human Rights industry and global hegemony:

> Human Rights, capitalized,… is a global structure of laws, courts, norms, and organizations that raise money, write reports, run international campaigns, open local offices, lobby governments, and claim to speak with singular authority in the name of humanity as a whole (2013: ix)
>
> …the global inevitably structures, disciplines, channels, institutionalizes, and eventually colonizes the local reproducing hierarchies of power and influence familiar from the worlds of domestic politics and of interstate relations (x)

Key to Hopgood's analysis is that the very nation-state members of the UN tasked with promoting and implementing Human Rights initiatives are frequently the same governments and forces responsible for the suppression of rights, often through brutal abuse including torture and indiscriminate warfare against those under their power. He relates an account of Mary Robinson's visit to East Timor in her role as the UN High Commissioner for Human Rights. The former President of Ireland arrived in East Timor shortly after the end of the Indonesian occupation of the country and spoke at the opening of a workshop on International Human Rights. Hopgood describes the response of the East Timorese when presented with conference kits with Human Rights information including badges with the phrase "Human rights: know them, live them, defend them." After a twenty-five-year battle against occupation in which thousands of East Timorese died defending their rights, many attending were offended at the suggestion that they needed to be educated about human rights. Hopgood contrasts the UN High Commission tagline with the East Timorese's own title to the Truth and Reconciliation Commission report, "No more, stop, enough!" (Hopgood, 2013: viii).

It is this emphasis on the local, lived reality of communities who struggle to maintain their livelihoods and existence, in contrast to the rhetoric of international promises of Human Rights, which lies behind Hopgood's skepticism of universal norms as presented in the Universal Declaration. He claims "This is the humanist utopia: to speak in the name of Human Rights is

to put the neutral, objective, and universal ahead of the partial and subjective. It is to become The Authority." (6). When these humanist norms are assumed as a given, a pre-determined set of standards delivered to marginalized and suffering communities, he argues that this presentation is part "… of a grand narrative that gives an ideological alibi to a global system whose governance structures sustain persistent unfairness and blatant injustice" (2).

The authoritative grand narrative depicted by Hopgood is one in which the "Why?" questions about human conditions are set aside to instead focus only on instrumental "How?" questions in the delivery of pre-determined rights through educational, legal, and military means. Rather than deflating hopes in a commitment to human rights, Hopgood's critique is a necessary correction to the blind faith in well-intentioned principles of global institutions. Hopgood ends his work imploring his readers to begin asking "Why?" – leaving us with the hope that a moral grounding can be found in a grassroots movement of transnational communities.

Within the human rights field, one source of scholarship documenting this divergence from the mainstream HRE approach is the *Journal of Human Rights Practices*. Scholars and practitioners in this forum have focused primarily on the actual, empirical work of advocating for and supporting human rights work from a grassroots perspective. In the introduction to a special issue on *Dilemmas of Human Rights Practices,* Dudai (2014) describes the multiple ways in which the everyday work involved in human rights advocacy involves compromises, uncertainties, multiple interpretations, and practical constraints, among myriad other sets of context-specific challenges to human rights implementation.

As an example of this approach, Sarelin (2014), borrowing from Ife (2010) and Dembour (2010), presents an actor-oriented discursive approach within the constructivist tradition in political science to demonstrate how the process of rights advocacy in Malawi depended first on a process of meaning-creation among local community members:

> Actors did not primarily rely on fixed definitions of the human rights concepts in general, instead the meanings of 'human rights' were shaped in the process of demanding services… that is, making claims (Sarelin, 2014: 259)

## Epistemicide and Cognitive Justice

Boaventura de Sousa Santos, one of the leading intellectuals associated with the Global South and World Social Forum, contributes a philosophical grounding to this work and the prospect of global human rights. In his *Epistemologies of the South: Justice against Epistemicide* (2014), Santos claims "there is no global social justice without global cognitive justice" (viii). This inclusion of cognitive social justice addresses the intentions of human rights practitioners working from a constructivist approach to human rights work: how to navigate between universal proclamations of rights and the ways in which marginalized groups need to undergo their own process of identifying their struggle with context-specific claims. Without this process of cognitive justice, of being entitled to ask "Why?" as proposed by Hopgood, and to interpret, decode, and think outside the institutional frameworks established by local authorities, marginalized communities suffer a form of cultural annihilation that Santos refers to as "epistemicide":

> What are the possibilities for a cross-cultural dialogue when one … (has) been molded by massive and long-lasting violations of human rights perpetrated in the name of the other…?
>
> …I designate epistemicide, the murder of knowledge. Unequal exchanges among cultures have always implied the death of knowledge of the subordinated culture (2014: 93)

Within mainstream HRE, even when the Universal Declaration is presented via community dialogues and discussion, and alternative perspectives are sought or developed, these alternative perspectives do not change the status of the document as an *a priori* statement of values. Santos would argue that merely having different perspectives on *a priori* universal norms places the knowing subject as passive in relation to these norms, outside the realm of knowledge construction. A radically different experience of "knowing one's rights" is one in which locally determined notions of rights are shaped through dialogue and resistance with diverse communities.

This work addresses the epistemological question of how we come to know and construct claims we have of life, and how these claims may be translated into

rights and norms as articulated by legal, state, and social welfare institutions. Whereas Hopgood professes his hope that an amorphous transnational social movement will arrive at new articulations of norms, how this will happen is unclear. What are the underlying theoretical frameworks and approaches that will support new norms and procedures within institutions such as international law, civil rights, and multinational agreements? These need to be based on more than "partial and subjective" interpretations.

Santos's proposal to bridge the impasse between universal norms and a multiplicity of context-specific knowledges is a process of "intercultural translation." Building on Gramsci's notion of "*con passionalità,*" an "active and conscious sharing," Santos describes this process as "…an alternative to…abstract universalism grounding Western-centric general theories and to the idea of incommensurability between cultures." (2014: x). He writes of translation as a transcultural contact zone,

> in which rival normative ideas, knowledges, power forms, symbolic universes, and agencies meet in usually unequal conditions and resist, reject, assimilate, imitate, translate, and subvert each other, thus giving rise to hybrid cultural constellations (218)

The process of intercultural translation is one that begins with "defamiliarization" of oppressive régimes; following the traditions of Frantz Fanon, Albert Memmi, and later work by liberation theologists, feminist theory and postcolonial historians, this is a complex process that recognizes forms of continuity in relations of oppression while constructing new identities and social relations through dialogical practices (222-227).

**Human Rights and a Critical Pedagogy for International Education**

As with the mainstream political philosophy on human rights, engaging with the intellectual debates of the postcolonial, "Global South" views on justice and rights is beyond the scope of this paper. However, central to the critical pedagogy I am proposing is the notion that respect for the dignity and full personhood of knowing subjects and marginalized communities involves a willingness to engage in the intersubjective and dialogical process of constructing knowledge together.

Within international education – through our models of study abroad, our global institutional partnerships, mobility exchanges, and curricular design – the lesson is: be conscious of existing structures which reproduce models of either knowledge appropriation or imposition. For Santos, and others, the epistemological ground for this critical pedagogy constitutes an "ecology of learning" (Hovey and Weinberg, 2009). A global ecology of learning acknowledges the process of knowledge construction in the lived-world experience of human life as *a priori* to formal academic knowledge or institutional frameworks such as HRE. At a minimum, awareness of the global ecology prompts us to be aware of power relations implicit in the structures and institutions that support international travel and study.

The connection of human rights to international education is at the heart of critical pedagogy. A critical pedagogy for international education is based on this belief, that knowledge emerges through efforts to communicate across difference and to seek respect and understanding of unique perspectives of individuals as subjects. This respect for others, and for their own process of knowing and claiming the world through communication, is the starting point for the respect of human rights. Rights are not just pre-determined basic rights to survival at a minimal level of existence, but rights to self-determination, to know the world on its own terms, and to be treated as full human beings, not curious objects of poverty, need, or "study."

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# GLOBAL PERSPECTIVES


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# Human Rights in Africa and Challenges in Perception: An Agenda for International Educators

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***N.B.*** *The views expressed here are only those of the authors and not related to the United Nations in any way.*

## Introduction

The current international human rights framework was designed in 1945 by way of the San Francisco Charter which led to the foundation of the United Nations[10] and, in 1948, to the Universal Declaration of Human Rights (UDHR).[11] In those days, the large majority of African peoples, whether in Africa or elsewhere, were still under domination and were not even fully recognized as human beings.[12] Yet, paradoxically that framework has led to the various regional instruments within the African continent.[13] When one discusses human rights issues in Africa, it is therefore important to question the extent to which the universal framework relates to the African philosophy of human society.

For that reason, our aim is to present an African perspective on human rights in Africa, showing how it differs from the perception in other parts of the world, especially the discourse in American media outlets and public

[10] The treaty which created the United Nations was signed on June 26, 1945 and came into force on October 24, 1945. Today, 193 States are parties to it, while only 51 States were original signatories. See, for further details, United Nations Charter, available at http://www.un.org/en/charter-united-nations/index.html.

[11] A/RES/217 (III) International Bill of Human Rights, Section A on the Universal Declaration of Human Rights. See Appendix for the full text of the Declaration.

[12] In 1945, only four African countries were independent and joined the United Nations: Egypt, Ethiopia, Liberia, and Union of South Africa.

[13] See, among others: OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1969), African Charter on Human and Peoples' Rights (1981), African Charter on the Rights and Welfare of the Child (1991), and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003). All those instruments and others are available online at http://au.int/en/treaties.

opinion. We also consider the interest of international educators and seek to demonstrate the learning opportunities embedded in comparative studies of human rights for students in higher education institutions in both the USA and within a broader international context.

## Defining (Human) Rights

Human rights can be generally defined as those inherent to all human beings. However, historically and regionally the concept has been constructed in different forms. We illustrate this by focusing on historical perspectives in the USA in contrast with the regional approach found within the African context.

### *Human Rights in the United States of America*

The USA inherited part of its legal system from other regions of the world, especially from Europe; as a result, an investigation of human rights in the USA has to start elsewhere. The earliest evidence of society's acknowledgement of human rights dates back to 539 BCE when the first King of Persia, Cyrus the Great, after conquering Babylon, freed the slaves and decreed that people had a right to their own religion and to racial equality. This decree is recorded on a baked-clay cylinder, known as the Cyrus Cylinder, in the Akkadian language with cuneiform script.[14] The idea of human rights spread to some parts of the world including the Roman Empire which constructed its laws on rational ideas based upon the fact that people tended to follow certain unwritten laws in the course of life.

Fifteen-hundred years later, the Magna Carta (1215), which King John of England was forced to sign, enumerates, among other things, a version of what we know today as human rights.[15] It includes a right to own property and the right of widows who own property to choose not to remarry. The first glimpse of a legal due process principle is discernible. The Magna Carta demonstrates that certain freedoms are considered to be human rights.

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[14] Simonin (2012) outlines a brief history of the Cyrus Cylinder. See also the translation of the Cyrus Cylinder on the website of the British Museum, available at http://www.britishmuseum.org/research/collection_online/collection_object_details.aspx?objectId=327188&partId=1.

[15] See the translation by Nicholas Vincent available in the US National Archives and Records Administration, available at https://www.archives.gov/press/press-kits/magna-carta/magna-carta-translation.pdf.

In the Petition of Right sent to Charles I in 1628, the English Parliament made a statement of civil liberties re-emphasizing the right of *habeas corpus* and a requirement that imprisonment should have just cause.[16] Interestingly, by the 1760s, this Petition was used by the American colonists to petition King George to uphold their rights (Wood, 1992).

These rights were more sharply defined by the time the States, within what would become the USA, declared their independence. The Declaration of Independence in 1776 enshrined two themes: individual rights and the right to revolution. These are, for Americans, rights that their newly established State needed to safeguard, rights by which they would conduct their daily lives. These were eventually reflected in the Bill of Rights to the American Constitution.[17] These should be distinguished historically from a contemporary consensus on rights that defines relationships between the individual and society which, according to Louis Henkin,[18] derive from the Universal Declaration of Human Rights of 1948.

It is instructive to explore the roots of these rights in an American perspective and trace the path through the Declaration to the Bill of Rights and the Constitution. It is clear that the roots of some of these rights can be found in British rights, referred to above, and in colonial constitutions that existed before the Bill of Rights.

The Massachusetts Body of Liberties in 1641 restrains the power of the elected representatives by means of a document which includes a list of the rights and duties of the people.[19] The Body of Liberties also cites equal treatment of all persons under laws passed by the Massachusetts legislature, just compensation for property taken for public use, and the right to jury trial, among others.

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[16] See text available on the website of the British Parliament, available at http://www.legislation.gov.uk/aep/Cha1/3/1.
[17] See, for the full text, the website of the US National Archives, available at http://www.archives.gov/historical-docs/document.html?doc=4&title.raw=Bill%20of%20Rights.
[18] Henkin is widely considered to be one of the most influential contemporary scholars of international law and the foreign policy of the United States.
[19] See the text online, at http://csac.history.wisc.edu/6_Massachusetts_Body_of_Liberties.pdf.

In 1677, the Fundamental Laws of West New Jersey provided for freedom of religion, due process of law, trial by jury, and freedom from oppression and slavery.[20] However, the Pennsylvania Frame of Government of 1681 is by far the most influential in granting individual rights.[21] This document is rather peculiar because the grant comes not from the English Monarch or from the people, but from Quaker William Penn, who was granted ownership of the Province of Pennsylvania.

Eight years later, in the English Bill of Rights, Parliament issued a declaration on the rights and liberties of the subject with regard to religion, laws, and other freedoms.[22] These included reasonable bail, freedom of speech, and protection from cruel and unusual punishment. In 1700, the Pennsylvania Frame of Government was replaced by the Pennsylvania Charter of Privileges, a document that lasted for one hundred and seventy-five years and was regarded as the fundamental law of the colony.[23] It included the right of criminals to have the same privileges of witness and counsel as their prosecutors.

It is evident from this genealogy of rights that European societies and their American colonies had been conscious of individual rights for some time. Furthermore, it is interesting to note that although some of these rights are presumed to be inalienable, it sometimes took a revolt to assert them, as in the case of the Magna Carta and the Petition of Right.

The American idea of rights was also influenced by European philosophers. Unlike in most modern societies, American rights are not explicitly found in the Constitution, instead they are embedded in the preamble to the Declaration of Independence and in the Ninth and Tenth Amendments, namely the clauses treating enumeration and the delegation of powers. The reason for this is the fact that those drafting the Declaration did not set out to produce a constitution but rather articles of confederation from which the Articles of the Constitution eventually evolved. At the Constitutional Convention, the emphasis was on relations within the Union, and not on the relationship of

[20] See the text online, at http://avalon.law.yale.edu/17th_century/nj05.asp.
[21] See the text online, at http://avalon.law.yale.edu/17th_century/pa04.asp.
[22] See, for the full text, the website of the British Parliament, at http://www.legislation.gov.uk/aep/WillandMarSess2/1/2.
[23] See the full text online at http://avalon.law.yale.edu/18th_century/pa07.asp.

the individual to government or society. That was subsequently addressed in the Declaration of Independence.

Different perspectives from those above are apparent if one considers State constitutions that existed at the time of independence. American constitutional rights, as we know them today, were a result of many events including court judgments, civil conflict, and nationalizing influences. The idea of American constitutional rights became more prevalent in the eighteenth century as a consequence of the importation of European ideas and antecedents. However, for the most part, American constitutional rights evolved within the USA itself.

International human rights, on the other hand, emerged after World War II, influenced largely by a synthesis of ideas embodied in the American Constitution, European ideas, Socialism, and commitments to liberal ideologies. The notion of international human rights was, therefore, negotiated by representatives of different nations. In contrast, Americans see their individual rights as *natural:* they are inherent in the person from a state of nature and are not bestowed by political authority. These rights precede the Constitution and exist beyond, and outside, its authority.[24] These are rights that the individual possesses in a natural state but cedes in order to facilitate effective governance. However, in this view, individuals retain substantial autonomy and freedom for themselves and their descendants. These rights may not be clearly enumerated.

It is noteworthy that international law does not relate directly to the individual in society. The UN Charter, however, declares fundamental human rights. The UDHR is an instrument that appealed to diverse political systems and peoples. Nevertheless, in international human rights we make assumptions for which there is no derivable ideological or philosophical explanation. It is not clear, for example, if rights are autonomous or supersede government authority. International human rights require governments to engage in socio-economic planning activities in order to satisfy the social and economic rights

[24] For example, Congress is requested not to make laws abridging certain rights; nor is it given the power to promote or protect those rights. It can do so only within the context of regulating commerce. The very idea of legislation to protect civil rights was foreign to America. In the USA, there is a constitutional right to judicial remedy in case of alleged violation. However, US law is not clear on the remedy for *past* violations of rights. For example, judicial review exists only to protect future rights rather than to address past violations.

of the individual. While international human rights depend on the continued willingness of governments to honor them, some rights can be abolished. (Oraa, 1992: 285; Hafner-Burton et. al., 2011). The context in which human rights function is, therefore, ambiguous.

In a number of circumstances, American law effectively contradicts international human rights which obligate governments to implement laws such as the International Covenant on Civil and Political Rights. There are, then, sometimes conflicts of values between American rights and international human rights. For example, the International Covenant on Civil and Political Rights prohibits the advocacy of war and racial or religious hatreds, but such a law, in the context of the USA, would, in some cases, violate the freedom of speech and that of the press. The issue of owning property is another area in which American rights and international human rights conflict. Property ownership is protected in the Bill of Rights but not in the International Covenant as a result of disagreements between developed and developing countries.

*Human Rights in Precolonial African Societies*

In the African context, there is a fundamental distinction which is based upon a conceptual framework of society outside of which the individual cannot exist. However, various historical instruments have recognized individual rights in some exceptional circumstances while focusing on rights within an African philosophy asserting the primacy of society. One of those instruments is the Kurukan Fuga Charter (c. 1225) of West Africa, which the Emperor, Sunjata Keita, issued to protect civilian populations from unnecessary harm by military men.[25]

African tradition is essentially oral and, therefore, there is little record of legal knowledge prior to colonization. One has to turn to other sources to identify an understanding of (human) rights; folktales play a unique role in such an investigation. They intend to impart moral lessons. One such famous African folktale is about an orphan girl and her stepmother who abuses her but not her own child. An old fairy lady in the bush finally bestows a fortune on the orphan. That folktale communicates key moral values such as equality,

[25] The full text of the Charter is reproduced by Mangoné Niang (2006).

compassion but also punishment for wickedness. Most of the time, in our view, the values taught through such folktales reinforce the importance of the community or group, without negating the individual.

On the philosophy of society within Africa, the actors of any society are gods, the dead and living people, and there is a focus on maintaining cohesion among them through a shared set of rules.[26] In those rules, the need for cohesion leads to prominence given to the group even though individuals are not ignored. Rights can thus be defined through a recognition of both the group and the individual, with the aim of ensuring the continuous cohesion of all individuals within a group.

One illustration would be the practice of marriage: it is firstly an individual decision but it leads to the union of *two groups*, and that dimension makes the relationship more sustainable. For example, Toyin Falola and Daniel Jean-Jacques argue that

> Beyond perpetuating society, Ugandan marriages unite families, lineages, and clans, and these groups therefore try to ensure the survival of their kin's marriages. Marriage is also an important rite of passage that confers high social status on the couple both individually and collectively. Marriage is virtually universal in Uganda. Consequently, unmarried people are generally accorded low social status in most Ugandan communities (2015: 1260)

An abused wife in some societies may seek protection and get a divorce that includes integration as a separate and new individual within the husband's group. A similar principle is also recognized in the law of land: property rights belong in principle to the group, but individuals also have rights derived from their membership of the group.[27] In terms of litigation, it is also commonly stated that the African system leads to conciliation and compromise so that, in principle, none of the parties lose face in the process. This conceptualization is not fully recognized in the African Charter which promotes the international framework in contradiction to this African perspective; *practice* predominantly follows *international* principles.

[26] For further detail, see the works of Michel Alliot on legal anthropology in Africa.
[27] For example, the practice exists in Ouidah, in the south of the Republic of Benin.

## Perceptions of the International Legal Framework for Human Rights from Africa

Against that backdrop of a variety of concepts, the international human rights framework is the result of negotiation between States. This negotiation was expressed through two key instruments mentioned earlier, namely the United Nations Charter and the Universal Declaration of Human Rights. In order to identify the extent to which this negotiated system took into account the African perspective, one needs to consider the situation of African States at the time of the formation of the system. The answer is clear. In 1945-8, only four African States existed: namely South Africa (dominated by a white minority), Liberia, Ethiopia, and Egypt. This is a very limited number considering that the United Nations Charter was signed by fifty-one States. All other African societies were still under some form of external control or domination. In addition, the independent African States had very limited authority in the international community.

In practice, when the two International Covenants were adopted in 1966, the condition of these countries had not changed. Indeed, many African societies had already gained independence but were struggling to establish a stable political environment and safeguard their newly-acquired rights as nation-states. Therefore, they were unable to play any major role in international negotiations in subsequent iterations of human rights principles. African voices were not heard.

In the late 1970s, when discussions about an African framework got underway, these were constrained by the need to maintain consistency with the international framework which was already in place and was binding for some of the African States. Thus, their margin of discretion was seriously reduced. As a result, the developed African Charter has very limited differences from the existing international framework. For example, the growing body of jurisprudence on protection of the environment for the benefits of humankind is based both on specific African instruments and on universal instruments. An argument can therefore be made that the specificities of the African approach to rights have not been fully taken into account in the design of the human rights framework on the continent. This situation persists.

**Conclusion: What Roadmap for International Education?**

International education offers American students an attractive learning opportunity to broaden their minds and understand not only themselves, but also the wider world. African precolonial philosophy remains to be discovered; the merged values embedded within African societies challenge young minds to interact with exceptional and distinctive learning environments. Studying social justice around the world is nowadays critical for that audience, heightened by the exceptional histories and values that are features of society in the USA. The contrasting challenges of social justice in Africa are unique. The potential learning experience is profoundly intense and deeply fruitful. The African context offers challenges that create unique opportunities in study abroad.

Program design should be driven by the need to enable students to understand those differences. There is, for example, rich learning potential through observation in rural settings, participation with local organizations for collaborative initiatives, and so on. Africa is a context in which students can enhance their understanding of what human rights really mean within a global context.

# The United Nations Convention on the Rights of the Child: Problems of Application in the Palestinian Context

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In 2014, the cooking show host Anthony Bourdain received an award from the Muslim Public Affairs Council after producing an episode of his travel cuisine show in Palestine. In his video acceptance speech, he made the following comments:

> It is a measure of how twisted and shallow our depiction of the Palestinian people is that these images showing regular people doing everyday things, cooking and enjoying meals, playing with their children, talking about their lives, hopes and dreams – come as a shock to so many. The world has visited many terrible things on the Palestinian people, none more shameful than robbing them of their humanity. People are more than statistics (Muslim Public Affairs Committee, 2014)

Nevertheless, in the case of Palestinian children, statistics reveal the obstacles they face with regards to access to basic human rights.[28] Children held in Israeli detention are most frequently housed with adult criminal offenders, unable to access any appropriate educational services, and are not offered legal representation unless their families can pay. Since the uprising of October 2015 (dubbed "the uprising of knives"), young Palestinians have been the object of new Israeli legislation proposing to deny child "allowances" for throwing stones at cars and buses. Currently half of the cases submitted to court in Jerusalem for stone-throwing concern teenagers (Paz, 2015). It was

[28] According to B'Tselem (an Israeli-based human rights group), over 2,065 Palestinian children have been killed by Israeli soldiers since 2000 (over 527 in the 2014 bombings in Gaza). As of early 2016, there are over 5,000 Palestinian prisoners jailed by Israeli forces, including 307 minors. For these, and other related statistics, please see B'Tselem, at http://www.btselem.org/.

not until 2009 that Israeli Military Order 1644 established a separate court procedure for minors charged under Israeli law.

In September 1990, the United Nations introduced The Convention on the Rights of the Child, a treaty now accepted by over 192 nation-states. The document outlines civil, political, economic, and social standards aimed at preserving the rights of children including the ability to attend school, live in safety, receive adequate medical care, have access to family members, and have an opinion, as well as addressing the prevention of child abuse and child labor. Two optional treaties make declarations regarding child prostitution and sex trafficking.

The Convention on the Rights of the Child was the first international agreement that recognized children as independent and free citizens who have the right and expectation that their governments will protect them and act in their best interests. The rights of minors are separated from that of their family (indicating that they are not the "property" of their family units but individuals with inalienable rights). The Convention includes the right to identity, the right to individual thought, protection from capital punishment as well as the basic resources and freedoms needed to support appropriate growth and development.

The Convention on the Rights of the Child was ratified by Israel in 1991. However, in 2010, UNICEF criticized the Israeli government for having no strategic plan or programming to fulfill its obligation as a signatory to the treaty. Furthermore, UNICEF openly stated that Israel was in violation of the convention related to the treatment of Palestinian children, notably the criminalization of minors under the age of eighteen.

In 2012, the Committee on the Rights of the Child stated that Israel was in a state of gross violation of the treaty due to the bombing of Gaza which resulted in child victims, the destruction of homes affecting children, and continued interrogation and detention of children. The commission cited the interrogation of Palestinian minors (without supportive adults present, in Hebrew, and the forced signing of confessions in Hebrew, which the children do not speak), recruitment of children as informants (while they are being interrogated and detained), and using Palestinian children as human shields as clear evidence

of gross violations. Despite the strong language of the commission, no action has been taken against Israel for these blatant violations.

In 2014, shortly after being recognized as a State,[29] the Palestinian National Authority (PNA) adopted the UN Convention on the Rights of the Child as part of their national agenda. However, it is unclear if the Palestinian State can protect its children and whether it has the capacity to assure its obligations under this treaty. To examine these questions, we must first define the limitations of the Palestinian State's capacity to defend and protect its children while under occupation.

"Extraterritorial jurisdiction" describes the military and economic control of a territory, such as that exercised by Israel over Palestine. In the West Bank, Israel argues that a hybrid conflict exists in which a state of war and a situation of peace co-exists. In East Jerusalem and the Gaza Strip, the question of control is even more complex. Nevertheless, Israel proposes that the Palestinian Authority is bound to follow the dictates of human rights while Israel is bound by humanitarian law. The question is whether the Palestinian State is responsible for ensuring that Israeli occupying forces respect human rights or whether it extends its own legislative sovereignty (including an adherence to human rights) to any territory indicated by the terms "Palestinian State."

Even within the Palestinian community there is some hesitancy about placing the protection of Palestinian children within an international arena, instead of guaranteeing children's rights through national law. The position is best expressed by the Moroccan judge Mohammed Bennouna, who strongly criticized the process surrounding the creation of The Convention on the Rights of the Child: during the preliminary work of drafting the Convention in 1989, negotiators ignored the events of the first Intifada which had a dramatic impact upon the condition of Palestinian children (Bennouna, 1989).

[29]*Editors' Note:* In 2012, the United Nations approved the *de facto* recognition of a Palestinian State. There were 138 votes in favor, nine against and forty-one abstentions. Recognition, which is still contested, has been a long-standing ambition of the Palestine Liberation Organization (PLO) since Yasser Arafat declared independence in 1988. As of September 2015, 136 (70.5%) of the 193 member States of the United Nations and two non-member States have recognized the State of Palestine (Charbonneau, 2012).

This lack of response from the international community during the drafting of a "universal" declaration of the human rights of children is surprising, especially as the United Nations Declaration on the Protection of Women and Children in a State of Emergency and Armed Conflict (1974) was already in place. This declaration emphasized the inherent rights of women and children as a "civilian population" in emergency circumstances and armed conflict. The apparent lack of concern with the obvious suffering of Palestinian women and children at that critical time significantly reduces the confidence of the Palestinian population with regards to placing the rights of children in the hands of the international community.

In addition, for experts like Oona Hathaway, Professor of International Law at Yale University, any given State's adoption of a human rights convention does not necessarily reflect its respect for human rights in practice (Hathaway, 2007). In Palestine, the situation has less to do with political will and more to do with the limitations of governance under military occupation. Palestinian authorities under occupation have little power to affect the critical aspects of the lives of their children.

**Effective Control: Extraterritorial Jurisdiction and Legislative Sovereignty**

The Palestinian State's adoption of the United Nation's Convention on the Rights of the Child expresses a desire to transcend Israeli control. However, this step does not exempt the occupying force from its international obligations towards Palestinian children. These are outlined below.

*Extraterritorial jurisdiction*

In its response to Palestine's acceptance of the Convention, the Committee on the Rights of the Child required Israel to apply extraterritorially the articles of the Convention and specifically demanded that it honor the articles related to the protection of children in armed conflict. The goal of international law in this case is to search for a balance between the reality of the rules of the occupying force and the ethical obligation to the conditions of life of the local population. Since 1970, after three years of occupation, the issue of human rights became a central theme in the agenda of the United Nations organizations. Human Rights Committee (XXIV) 6 demanded that Israel respect the well-being and

security of the civilian population and facilitate the return of displaced persons to their homes. In 1969, the General Assembly condemned Israel's violations of the Convention, such as collective punishment and destruction of property, and demanded the immediate cessation of practices and policies of repression. The Committee on the Rights of the Child attempts to interpret the Convention not only as part of human rights treaties but also with reference to humanitarian law. In its 2004 report, the Committee demanded that Israel abide by the principles of humanitarian law including the principle of distinction (restricting acts of community punishment) and the principle of proportionality (punishment proportional to the crime) and refrain from destruction of civilian infrastructure.

The refusal of Israel to apply the UN Convention on the Rights of the Child in the Palestinian territories implies that these are not part of its sovereign territory. This, in turn, implies *de facto* recognition of the legal competence of the Palestinian National Authority in the field of justice and human rights in the occupied territory.

In these circumstances, the Palestinian State is obligated to apply human rights conventions in any territory indicated by their borders, which includes the West Bank, Gaza Strip, and East Jerusalem. This also implies the Palestinian State's international legal sovereignty (as recognized by 138 UN member States). The position of the Israeli Supreme Court not to exercise leadership in the area of human rights in the Palestinian occupied territory further indicates the *de facto* sovereignty of the Palestinian State to establish rule of law within its territory.

In regards to the Gaza Strip, Israel contends that after the withdrawal of its forces from the territory in 2005, it has no more effective control, signifying the end of occupation. The interpretation of "effective control" cannot ignore the presence of Israeli military personnel,[30] indicating a requirement for the Palestinian State to extend its legislative sovereignty over a unified Palestine, despite animosity between political factions such as Fatah and Hamas. This is analogous to the case of Lebanon, where fifteen years of civil war (1975-1990) did not abolish the sovereignty of the Lebanese State.

[30] See, for further details, the report of the independent commission of inquiry established pursuant to Human Rights Council Resolution S-21/1 (A/HRC/29/52) of June 22, 2015.

In East Jerusalem, annexed to Israel in 1980, the Israeli Government committed to respecting Palestinian economic and cultural life (as outlined in a letter from Shimon Peres, Minister of Foreign Affairs, in 1993). Currently, all UN Resolutions consider East Jerusalem to be occupied territory due to Israel's disregard of its obligations under international law and continuing acts of structural violence, including Israeli Supreme Court decisions and its interpretation of the Convention on the Rights of the Child. The Convention requires that that the needs of children are taken seriously and that they prevail in the event of conflicts of interest with State, society, or family. In its report to the Committee on the Rights of the Child in 2002, Israel defended its actions by emphasizing that the Convention does not have the status of law, but, rather, is the basis for a legal interpretation by the Israeli courts.

*Norms within the nature of the legal and political system*

The Convention on the Rights of the Child has been ratified by all UN member countries, except the United States and Somalia, although a large number of States (sixty-six countries) ratified it with reservations. These reservations concern currently accepted legal or internal moral systems inherent to these countries (Lücker-Babel, 1997). The Palestinian State did not articulate any reservations and has committed to accept all forty articles, without exception.

The Palestinian position is based upon domestic legislation aimed at integrating the standards of the Convention on the Rights of the Child into internal Palestinian law. This law adopts the international definition of a child and grants political and social rights to all children. How well a country adheres to international norms may reflect the nature of governance and political will of its leaders.

The UN Convention on the Rights of the Child defines a child as "any person between zero and eighteen years old" (Article 6). In 2010, the Committee on the Rights of the Child demanded that Israel cancel the practice of defining Palestinian children as adults at sixteen and the creation of two intermediate categories which allow the criminalization of children as young as the age of twelve. The Committee expressed its fear that Israeli policies adopted under what it calls the "fight against terrorism" are in fact creating a method to override the Convention on the Rights of the Child. Between 2005 and 2009, under this umbrella, over 2,000 Palestinian children were charged with being a risk to the

security of the State resulting in interrogation, surveillance, and detention of minors. The Committee demanded that Israel provide information on violations concerning the interrogation and detention of children, recommended the abolition of administrative detention of children, and also demanded that Israel abide by international standards of justice.[31]

**Political and Civil Rights versus Economic and Social Rights**

Basic human rights such as the freedom of thought, belief, expression, assembly, and peaceful demonstration are included in the Convention. Children are citizens with all incumbent rights. The unique case of children, however, must take into consideration the emotional and intellectual development of the child in decision-making regarding freedom and political participation. There were great reservations concerning the issue of freedom of religion for children because they are by definition under the responsibility and influence of adults at most times.

A child's right of access to information is seen as the first condition for the exercise of political and civil rights. The Convention's articulation of economic and social rights (Article 24 to Article 31) addresses access to health, social insurance, education, a certain standard of living, and the ability to play and engage in entertaining activities. According to Article 24, the right of the child to enjoy healthcare is applied in the broad sense including physical, mental, and social well-being, not just the absence of disease. In addition, this article is an extension of Article 6 on the child's right to life and development. Child development requires, from birth, safety from fear and violence, a warm atmosphere within the family, a healthy environment, proper nutrition, safe drinking water, and intellectually stimulating activities. The Convention also grants children a level of social welfare necessary for the optimal development of their physical, mental, spiritual, and moral development as social beings, taking into consideration the capabilities of the parents and, if needed, assistance by the State. The right to primary education (Article 28) applies to everyone without any discrimination. According to Article 31, children have the right to have fun and play, allowing them to relax, mentally and physically, and to choose preferred activities without undue interference by adults.

[31] See for details, the minutes of the Committee on the Rights of the Child, 53rd session, January 11-29, 2010 (Final Observations: Israel CRC / C / OPAC / ISR / CO / 1).

Some experts propose a classification of rights including negative rights (indicated by reduced state interference) and positive rights (identified by increased state participation). The question of children's capabilities or cognition gives rise to a debate about the classification of rights of the child: freedom *versus* the need for protection and the role of the State to grant freedom regardless of age while simultaneously protecting a vulnerable population.

Michael Wald and Colin Trevarthen insist that children have the capacity and right to participate in decisions relating to their own education and self-determination (Wald, 1979: 256). Colin Trevarthen, a specialist in child psychology, believes that "children's rights" are possessed by virtue of their birth. Children from approximately one year possess the ability to communicate and gain cultural knowledge, and between the age of two and five years, the ability to imagine and to be moral. Thus, children's rights merely recognize those rights that have already been bestowed (Trevarthen, 1992: 31).

The second position defines the concept of children's rights as a threat to the institution of family as expressed by Tamar Ezer. For him, the child is a person who does not have the qualifications to make a decision for his or her interests and future. The child requires care and protection. Here, Ezer supports the theory of liberal thinkers such as John Locke and John Stuart Mill: children are, in this view, unable to exercise negative rights while they have positive rights requiring state interference in order to protect them (Ezer, 2004). The debate in fact can be distilled into two ideas of freedom: freedom from…and freedom for something.[32]

**Protection, Prevention, and Participation**

The concept of children's rights goes back to the post-World War I period. However, the Convention on the Rights of the Child is more associated with the Universal Declaration of Human Rights in 1948 and the Declaration of the Rights of the Child in 1959. It represents "an intellectual shift" toward emphasizing the status of an individual child as a citizen enjoying freedom of

[32] Arguably, the United States, which is not currently a signatory of the Convention on the Rights of the Child, has not adopted it in part because its Constitution is based upon the principle of limitations to State interference in the space reserved for the individual. For further details, see, for example, Amnesty International, at http://www.amnestyusa.org/our-work/issues/children-s-rights/convention-on-the-rights-of-the-child-0.

thought and choice. It is a shift from "the protection of a child in a difficult situation" to "the rights of the child," where the child is accepted as an independent human being.

The Palestinian position on the Rights of the Child affirms the right of all children to be active participants in society. Children are no longer thought to be under their parents' ownership, nor are they objects, instead children are considered to be complete and independent citizens and will be active participants in discussing the conditions that must be taken into account to work and strengthen personal growth for all citizens, regardless of age.

The question of the relationship between the nature of socio-political organization and the development of the child must be addressed. Education, despite being an inherent right, is also an *influence* exercised by the adult community on the young. If managed appropriately, there should not be a significant gap between the *individual* and *societal*, as children are in fact taught *within* the culture and society in which they are being raised. There is no "natural person" who belongs to *all* or *no* culture. The child is a cultural product of a specific society, but at the same time, the child is also a natural person (belonging to all of humanity), which means that each has a moral right that *precedes* any political and social obligation (Kolakowski, 1990: 54).

The Palestinian adoption of the Convention emphasizes collective rights such as cultural and national identity. Palestinian Child Law No. 7 of 2004 links rights to obligations: "preparing the child for a life of freedom and responsibility in a civil society based on the balance between awareness of rights and duties and the commitment to justice, equality, tolerance and democratic values." This is representative of the unique situation of Palestine: the independence of the individual child is inextricably connected to the independence of Palestinian society as a whole (individuals can be free only in a free society). Prioritizing *collective* identity is also reflected in the emphasis on economic and social rights rather than political and civil rights.

**Conclusion**

The acceptance of the United Nations Convention on the Rights of the Child by the Palestinian State inevitably raises questions about appropriateness within

the cultural and historical experience of Palestine on the one hand, and actual legislative sovereignty over the territory on the other hand. The Palestinian State is not a State like any other State: it is not universally recognized and has been unable to exercise legal sovereignty over its own land since 1967.

What is clear is that despite its seemingly powerless position, the Palestinian State has a commitment to human rights and a dedication to creating a new reality for the children of Palestine. The adoption of the Convention was not merely a gesture of good intention. In 2004, the Palestinian State created legislation intended to implement the Convention. The emphasis on the concept of protection rather than on the concept of rights and participation is not surprising in light of the occupation. For the Palestinian child, the Convention on the Rights of the Child needs to be a vehicle to create actual protection including provisions for an environment that can sustain the basic safeties needed for appropriate development, a lofty goal not easily achieved under the current conditions. The affirmation of the UN Convention on the Rights of the Child is the light of hope at the end of a tunnel that is more than deserved by the children of Palestine.

# Human Rights and the Market Economy: Who is Responsible?

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## Introduction

Human rights frameworks and institutions rely on the State to take responsibility for its own actions and those of its citizens within their own borders and beyond. It is the State which signs declarations, gives effect to these commitments in legislation, and which is held to account by international bodies such as the United Nations. Since the 1980s and the advent of the neoliberal era, the privatization and outsourcing of government activity has allowed a certain ambiguity to emerge in terms of who is responsible and accountable, and to whom.

The recent activist campaign in Australia against Transfield Services – renamed Broadspectrum in late 2015 – a publicly listed company which operates offshore asylum seeker detention centers under contract from the Australian Government, has brought this ambiguity into sharp focus. The campaign, "No Business in Abuse" (NBIA), relies on several human rights instruments for its arguments. In particular, it focuses on the commercial risk attached to contracts which arises from breaches of Article 9 of the International Covenant on Civil and Political Rights (ICCPR) which bans arbitrary detention (Office of the High Commissioner for Human Rights, 1976). The campaign strategy aims to persuade investors in Broadspectrum to divest themselves of their shareholding. This advocacy on behalf of asylum-seeker detainees has had some success with investors to the extent of forcing the company itself to go on the offensive (Wiggins and Hewitt, 2015) and defend itself, not to the government or the asylum seekers and refugees in the detention centers, or even to the Australian people, but rather to the markets and investors.

This case study goes beyond the mantra of "corporate social responsibility" (CSR) or even ethical investment and raises an important question: is the market a legitimate or appropriate venue for seeking government policy change in circumstances where the State has outsourced its responsibility

to the private sector? This paper attempts to unravel the tentacles of this question using the NBIA campaign as a case study. I argue, as does NBIA (2015), that the citizen/consumer/shareholder, sitting at the nexus of the State and the commercial enterprise in this outsourcing scenario, is entitled to exercise value preferences in both domains using whatever mechanisms are available – democratic processes or market mechanisms. Further, the market has demonstrated an ability to deal with such issues in the past. This particular case suggests a need for market intervention due to failure of the State – just as the State intervenes in the case of market failure.

Advocacy is a struggle between ideas and values. It involves a process of negotiation on how to advance these values and ideas, and a process by which we facilitate their realization through policy change. Human rights provide the values framework to which all the protagonists and stakeholders in the NBIA – Transfield – Australian Government case study appear to subscribe by virtue of their own statements. What is at issue is the actions of the government and Transfield which suggest a watering down or compromise of the general principles and values of human rights as encapsulated in international instruments. The contest or struggle is indeed one of ideas and values – the idea of the market as an institutional partner with the State in upholding the values, in this case human rights, held by society at large.

**Context**

The background to this case arguably shows an intention by government to distance itself from the rights of asylum-seeker detainees. In 1992, the Australian Government introduced mandatory detention for non-citizens arriving in Australia without a visa. In 1997, the management of detention centers was outsourced to private corporations. Then, in 2001, the "Pacific Solution" was introduced, which determined that asylum seekers arriving without authorization would immediately be removed to, and held in, government-funded offshore detention centers on Pacific Islands (currently Nauru and Manus Island in Papua New Guinea - PNG). Then, in 2006, this policy was taken a step further: asylum seekers arriving in Australia without authorization would not have their claims processed in Australia. The Pacific Solution was abandoned with the change of government in 2007 but revived, including offshore processing, in 2012. In 2013, it was stipulated that asylum

seekers, in the event that their claim to refugee status was upheld by the United Nations High Commission for Refugees (UNHCR), would still not be accepted for resettlement in Australia.[33] Arrangements were made with the Pacific Island of Nauru and the Government of Papua New Guinea (PNG) to send all such arrivals directly to one of the two locations – in the case of PNG, Manus Island – where they would be processed by UNHCR and either resettled in these countries or in a third country. Delays in processing asylum applications and further delays in finding a country to accept the refugees for resettlement have resulted in asylum seekers (adults and children) being held in mandatory detention, not just for months but for years. Current law sets no time limit on detention, regardless of processing outcomes.

The NBIA campaign relies on four human rights principles and related instruments (NBIA, 2015). The first is the UN Convention on the Rights of the Child (Office of the High Commissioner for Human Rights – OHCHR, 1990) which is breached by the mandatory detention of children for prolonged periods which results in mental and physical harm, compounding the trauma they have already suffered as refugees.[34] The second is Article 9 of the International Covenant on Civil and Political Rights (ICCPR) which bans arbitrary detention – specifically mandatory, indefinite detention – without a transparent process of assessment of claims and denial of the right to challenge the detention in a court of law. These attributes are all features of the Australian immigration detention scheme. The third human rights premise for the campaign relates to cruel, inhumane, and degrading treatment evident in the ongoing violence and abuse within the offshore detention centers (Department of Immigration and Border Security, 2015) and failure of Broadspectrum and the government to prevent and address these conditions. NBIA argues that this places both parties in breach of Article 10 of the International Covenant on Civil and Political Rights, Article 7 of the International Covenant on Civil and Political Rights, and Articles 1 and 16 of the UN Convention against Torture. The latter instrument was also found to have been breached in the UN Special Rapporteur on Torture 2015 report on the Australian system (Mendez, 2015). Finally, NBIA argues that

[33] For a complete and detailed chronology of events see the Refugee Council of Australia, at https://www.refugeecouncil.org.au/fact-sheets/australias-refugee-and-humanitarian-program/timeline/.

[34] It should be noted that in the past few years the Australian Government has made significant progress in removing children from detention, although some still remain.

the lack of transparency or freedom of detention center staff and detainees to speak openly consequently compromises independent monitoring, implying that the relevant human rights principles and instruments cannot be effectively upheld and enforced.

While NBIA is initially targeting Broadspectrum, their strategy is to lobby other organizations and individuals who have a relationship with Broadspectrum to terminate these relationships. These include arts organizations which benefit from Broadspectrum's philanthropic activities.[35] While the government argues that this is a pointless exercise, as other companies are ready to step in should Broadspectrum withdraw from operating the detention centers, the ultimate goal of the campaign is an end to mandatory detention – onshore and offshore.

> The NBIA pledge outlines a values basis for all people and institutions in our community. It ensures that we, as a society, hold to the fundamental values of humanity, that will ensure our current detention centres cannot reincarnate, under different names, in different places or with different companies (NBIA, 2015)

NBIA's appeal to investors is not only based on moral grounds, but also on the basis of potential for commercial risks arising from the failure of the company to address human rights abuses. These abuses arise from the fact of mandatory detention, as well as alleged individual employees' actions within the centers (Moss, 2015).

**Advocacy, Policy and the Market**

The model of society based on the categorization of actors into one of four domains or spheres provides a useful framework and theoretical basis for analyzing this case study. It also helps us to answer the question posed at the start: is the market a legitimate or appropriate venue for seeking government policy change in circumstances where the State has outsourced its responsibility to the private sector? The State is comprised of the institutions of the State

[35] In 2014, artists participating in the Biennale of Sydney, a major arts festival, threatened to withdraw because Transfield was a major sponsor and held a festival Board position. Transfield was forced to withdraw its sponsorship and remove its representative from the Board.

(parliament and the executive, judiciary, and bureaucracy); civil society is comprised of individuals and non-State (typically non-profit) organizations representing different interests; the private sphere is comprised of private commercial organizations and related institutions through which market transactions take place; and the public sphere resides between the State and civil society as the domain of critical discussion and debate on matters of general interest and concern. The functioning of the public sphere is critical to the ways in which citizens become informed (e.g. through the media) and the ways in which public opinion itself is formed (Habermas, 1962 [1991]).

By examining the position of the actors in each domain in relation to the case study in question, it is possible to identify contradictions that challenge the boundaries between the domains. To begin with the State, the Australian Government refers to the campaign as *political activism*, which it argues is not appropriate in the marketplace because it opens up a Pandora's box of potential challenges to otherwise lawful activity on a whole range of issues (Wiggins and Hewitt, 2015). This position is hard to maintain when the market already acknowledges the principle and practice of ethical, social, and governance (ESG) investment. If market actors then engage in activity which by a set of values and social norms – national and international – is considered unethical by virtue of its breaches of human rights, then it is a legitimate target of activism by virtue of its own self-proclaimed standards.

This brings into the frame the position of the private sector on this issue. Broadspectrum has published a Human Rights Statement (Transfield Services, 2015) as an adjunct to its Code of Business Conduct. The section on "Commitment to Respect Human Rights" states:

> While sovereign states have the primary duty to protect and uphold human rights, Transfield Services recognises that where possible and within their sphere of influence, companies should strive to respect human rights by seeking to avoid infringements arising from the conduct of business activities (2)

The section goes on to point out that human rights standards are neither "binding" or "enforceable" against it and that it is "the responsibility of government to ensure protection of human rights." Finally, in conclusion:

> Transfield Services recognises its own limitations and ability to influence change when it comes to government policy and other matters outside its control. Transfield Services focuses its efforts on those areas which are within its own direct influence (2)

One could argue that accepting a government contract which breaches human rights is within a market actor's sphere of influence. The fact that the company is enforcing a government policy of mandatory detention arguably in breach of human rights and under conditions also determined by government is a commercial choice, with all the attendant business risk, voluntarily undertaken by the company on behalf of its shareholders. Thus, NBIA argues precisely this in asking investors to divest their holdings in Broadspectrum because it is involved in a commercial relationship with a system that is in breach of human rights, and as such can be "contributing to those abuses and complicit in those abuses" (Shen Narayanasamy, NBIA Executive Director, as quoted by Wiggins and Hewitt, 2015). The company in response has publicly reiterated the argument made by the Government:

> We do not influence government policy in this area, so we think the activists' attention to us is misplaced. If they want to change government policy, they should engage directly with the government (Chair, Transfield Board of Directors as quoted in Wiggins and Hewitt, 2015)

It is clear that private sector actors can influence government policy but choose not to do so. Nevertheless, some consumers and investors are exercising their choice according to their values by demanding that Broadspectrum at least not be *complicit* in human rights abuses.

Where there has been a failure of the State to meet its obligations and where the private sector is in a position by virtue of a commercial arrangement with government to step in and bridge the gap in responsibility, and where failure to do so can create a business risk, then these consumers and investors are insisting on corporate intervention.

So far we can see the blurring of boundaries between the State and the private sector in giving effect to public policy and the complications that arise in deciding who is responsible for the consequences. The boundaries

are also blurred between the private sector and civil society. In taking on a level of commercial risk, the company is obligated by the market to act with due diligence and regard to the interests of its shareholders. In this case, some investors have clearly taken the view that these interests are not entirely separable from societal values, norms, and expectations and that a challenge to the latter is an investment risk to the former because of the power of the end-consumer. Individual members of civil society are also investors and will exercise their choices in line with their personal values (or not) regardless of how the government, companies, or the media label them or what they tell them they can or cannot do.

This debate goes beyond the broad principle of corporate social responsibility which implies a voluntary code of conduct on behalf of the private sector. However, even this code has been interpreted quite precisely by the UN Human Rights Office of the High Commissioner which identifies examples of enterprises that contribute to adverse human rights impacts including "performing construction and maintenance on a detention camp where inmates were allegedly subject to inhumane treatment" (UNOHCR, 2012: 17). In such situations, companies are expected to "cease or change the activity that is responsible, in order to prevent or mitigate the chance of the impact occurring or recurring" (2012: 18). Notwithstanding this very clear guideline, Australian Super, the largest industry super fund[36] in Australia, has taken the view that Transfield is doing all it can and should do in respect of human rights (Heather Ridout, Chairperson of Australian Super as cited in Wiggins and Hewitt, 2015).

While NBIA has had success in 2015 in persuading several superannuation funds to divest their shares in Broadspectrum,[37] another fund, in response to the even earlier 2014 Sydney Biennale public debate over Transfield and its involvement in detention centers, went on record publicly stating unequivocally that it would not invest in companies associated with mandatory detention centers:

[36] A "super fund" or superannuation fund is a retirement fund with compulsory contributions which is supported by the Australian Government.
[37] See, for example, HESTA http://www.smh.com.au/business/banking-and-finance/hesta-dumps-transfield-citing-detention-centre-abuses-20150818-gj218u.html; and Non-government Schools (NGS) http://www.afr.com/news/ngs-super-dumps-transfield-services-on-moral-grounds-20150825-gj72tm

> All our investments are screened in alignment with the Australian Ethical Charter, which governs both the positive investments we seek out and the ones we avoid.
>
> In relation to human rights, the Australian Ethical Charter states that we shall avoid any investment which is considered to unnecessarily:
>
> - extract, create, produce, manufacture, or market materials, products, goods or services which have a harmful effect on humans, non-human animals or the environment
>
> - contribute to the inhibition of human rights generally
>
> Following the recent incident[38] at Manus Island, Australian Ethical conducted a thorough review of our portfolio – we're happy to confirm that to the best of our knowledge, we have no investments in companies directly associated with mandatory detention centres (Australian Ethical, 2014)

In a more forward-looking statement, AMP Capital has noted shifting "societal expectations" that require companies to "understand and manage the human rights risks they are exposed to, whether these risks reside in their business relationships and supply chain or in their own operations" and to expect investors to divest in companies that fail to do so (AMP Capital, 2015: 10).

The consumer/investor right to choose is being exercised both in the private and public spheres. In the latter case, digital and social media play a significant role. This leads to the final blurring of boundaries: that is, those between civil society and the public sphere, most commonly associated with the media. The NBIA campaign is two-pronged, involving a face to face challenge to investors, as well as an online campaign to inform the public and create an online pledge, in order to mobilize a broad support base that can be leveraged against other organizations and influential individuals associated with Broadspectrum. The Editorial in the Australian Financial Review (AFR) on October 3, 2015 (AFR, 2015) referred to the NBIA campaign as "activist warfare," suggesting it should be stopped. The use of such language is quite deliberate and plays to

[38] A reference to riots at the Manus Island detention center which left an Iranian refugee dead.

the government's framing of the asylum-seeker issue as a security issue. NBIA and other advocacy organizations in this space present a counter-perspective and so play an important and necessary role in informing the public. However, the case study also highlights that there is a personal aspect to the public and private sphere, which Habermas refers to as our "lifeworld" – the everyday domains of social life such as family, voluntary associations, mass media, politics, culture – as distinct from the "system" comprised of the State and the economy. It is this "lifeworld" which captures the integrated role of the citizen-consumer-shareholder who seeks to shape the system. Habermas describes two threats to the "lifeworld" from the system: first the system seeks to separate itself from the "lifeworld" and disconnect from societal norms and values; second the system seeks to colonize the "lifeworld" and exert control over it. We see both of these dynamics in play in this case study. The use of digital and social media by advocacy groups is proving to be an effective counter to these threats by expanding the public sphere as the site of debate, informing the public, and empowering the individual.

**Human Rights in the CAPA Program**

The human rights values at stake in this case study have been shown to be the target of an advocacy campaign mounted in the boardrooms of the investment industry as well as by direct online appeals to the citizen/consumer, with an ultimate goal of changing government policy. The significance of this case study in teaching and learning at CAPA Sydney is threefold. Firstly, within the Global Business Institute curriculum in international business and economics, the case highlights the emerging role and power of the citizen/consumer in holding business to account. Moreover, in the CAPA Sydney Program's political science course on campaigning for policy change in the digital age, the case offers an excellent illustration of the way in which a policy issue can be framed to align with campaign objectives, as well as the ways in which media stories about campaigns themselves may come to predominate in the public sphere. Finally, CAPA's connection of students in different locations through globally-networked learning activities allows them to deepen their comparative understanding of these issues. For example, European countries are beginning to frame the issue of North African and Syrian asylum seekers and refugees as a political and security challenge, rather than a humanitarian one. While the scale of the challenge is different, this path can lead to significant abuse of human rights, as the case of Australia has shown.

## Conclusion

Debates about the rights of displaced people seeking asylum illustrate competing views about the responsibility of the State *vis-à-vis* the private sector, many of which relate to issues of human rights. Other significant issues include ensuring affordable access to utilities, health, education, and housing; protection of the environment (including through market mechanisms); and the support of minority rights in the face of discrimination. In all of these cases, eventually the market puts a value on the risk of failing to take responsibility (and on occasion the benefits of being more inclusive) and finds a market mechanism – sometimes in combination with State legislation – to achieve the outcome that meets the expectations of society. The case of asylum seekers and their mandatory detention has yet to reach the same level of discourse and focus on solutions. The recent influx of Syrian refugees into Europe and continuing arrivals from North Africa present an imperative to determine overall responsibility for their human rights before governments in receiving countries follow the example of the Australian Government. Advocacy entrepreneurs such as NBIA are showing the way by reframing the debate in market and business terms:

> In the modern economy, no company operates in a vacuum. Corporations all over Australia work together to provide the financial bedrock upon which the appalling detention regime is built. But while they are the foundation of this abusive incarceration system, we are the foundation of their business model...
>
> We invest in them, either as individuals, or through our banks and super funds. We hire them to service our schools, hospitals and businesses. We consume products sold by their most valued clients and investors and we park our cars in their carparks. The network of money that keeps abuse in business is huge – but we're at the centre of it (NBIA, 2015)

This view is echoed by AMP Capital from the private corporate sector perspective: "At a basic level, the respect for human rights is fundamental to the long term functioning of society and economies in which companies operate and investors invest" (AMP Capital, 2015: 10). If capitalism is the central organizing principle of our society, then the NBIA strategy for achieving policy change directly or indirectly is both justified and appropriate.

# 03/

# POWER AND POLITICS


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# What Our Borders *Really* Protect: Human Rights, Undocumented Immigration, and White Privilege

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International borders, as they stand in most of the world today, can be classified as hard boundaries. As defined by Loren Lomansky, hard boundaries are "demarcation[s] not easily traversable at will which function to confer substantial benefits or impose substantial costs on individuals by virtue of which side of the line they happen to find themselves on" (Lomansky, cited in Scarpellino, 2007: 332). The division of the world's landmasses according to hard boundaries, then, creates a situation where some people are born into poverty and others into wealth. Those born into poverty have very little chance of overcoming this system to make a good life for themselves and their families. Hard international boundaries are maintained for political and economic reasons that fail to address the inequality created by such boundaries. Soft boundaries, on the other hand, are "characterized by the lack of impediment to the flow of goods, capital and people" (Scarpellino, 2007: 332). It is the end of this definition that renders soft boundaries much more desirable, from a human rights standpoint, than hard boundaries. According to the North American Free Trade Agreement, for example, goods and capital are already allowed to move freely across the border between Mexico and the USA, but people are not. This has created a situation where the "free movement" of cheap American food and products into Mexico and other Latin American countries has destroyed local farms and businesses, forcing large numbers of Latinos to cross the USA-Mexico border illegally in order to find work in the United States. This paper examines the case of the USA-Mexico border in order to argue that such hard boundaries violate human rights and perpetuate white privilege.

## Hard Boundaries Violate Human Rights

In her article, *"'Corriendo':* Hard Boundaries, Human Rights and the Undocumented Immigrant," Martha Scarpellino (2007) explores the question of whether hard boundaries violate human rights as set forth by the Universal Declaration of Human Rights (UDHR). Although she describes several consequences where hard boundaries are ethically indefensible, she ultimately concludes that the

only way hard boundaries actually violate human rights is as a result of the danger posed to those who attempt to cross the USA-Mexico border illegally. Scarpellino cites the fact that the "increase in recent years in the number of deaths of undocumented immigrants attempting to come to the United States… is traceable to the change in border control – to the hardening of the boundary" (2007: 339). The death toll has indeed been significant. Between 1995 and 2005, over 3,600 people lost their lives attempting to cross the border from Mexico to the United States – and this number only includes bodies found near the border. It does not account for bodies that remain undiscovered at the bottom of the river, in train cars, or elsewhere (2007: 340). In light of this evidence, Scarpellino concludes, "recent border policy and the hard boundary that results from it gives rise to structural or institutional violence that violates the right of undocumented immigrants to life, liberty and security" (2007: 331). Although it is certainly bad enough that US border policy has led to the deaths of hundreds of people, this is not the only way in which hard boundaries violate human rights.

Article 13 (2) of the UDHR states that "everyone has the right to leave any country, including his own." However, as Scarpellino (2007: 333) points out, "while the Declaration assures that the individual is free to leave his or her country…no other state is obliged to allow them to enter." Since the UDHR does not *specifically* state that other countries must receive individuals leaving their home country, Scarpellino (2007: 335) concludes that this aspect of hard boundaries, while ethically questionable, does not *technically* violate human rights. The wording in Article 22 of the UDHR, however, leads me to disagree with Scarpellino's assessment. Article 22 states that "everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and *international co-operation* and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality" (my emphasis). In a nutshell, this article dictates that nation-states must cooperate internationally to ensure that the economic, social, and cultural needs of each individual are satisfied. Therefore, although the UDHR does not specifically state that a nation must receive those who leave their home country when it is unable to provide for their economic, cultural, and social rights, the commandment of international cooperation would seem to imply that they are indeed morally obligated to do so.

Furthermore, Article 23 of the Universal Declaration of Human Rights outlines each individual's "right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment" (section 1) and "to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity" (section 3). In addition, Article 25 (1) states, "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family." US border policy and the North American Free Trade Agreement, which allows cheap American products (especially corn) to undercut local Mexican farmers and small businesses, coupled with strict US border policy, has engendered a situation in which citizens of Mexico find the rights outlined in Articles 23 and 25 to be unmet at home. Therefore, the decision to allow the free movement of goods and capital, *but not labor,* across borders has been detrimental to the ability of people in Mexico and other Latin American countries to provide for themselves and their families in a manner worthy of human dignity. As Scarpellino (2007: 341) puts it, "[h]ard boundaries restrain freedom of movement, yet migration may be the only way some people can satisfy their basic needs, if their state of origin fails to ensure that those needs can be met." Thus, by preventing Mexican and other immigrants from seeking economic opportunity in the United States, the hard boundary separating the two countries violates their human rights, as described by Articles 14, 22, 23 and 25 of the UDHR.

Finally, while there are legal channels to immigration into the USA, these channels are very difficult to navigate, and do not always lead to citizenship. A person can come to the United States as a refugee, for example, but the USA is not obligated to grant asylum. It is up to the asylum seeker to prove that he or she is worthy of asylum (in other words, that he or she is a victim of political persecution, and that this persecution would lead to serious injury or loss of life should the refugee return to his or her home country). This usually requires the help of an attorney, which is an expense that many refugees cannot afford. Furthermore, even if a person is able to engage an attorney and meet the burden of proof, the USA has the right to deny asylum for political reasons. Scarpellino (2007: 334) points out that "[t]he government may be reluctant to recognise refugees from a country with which it has a particular kind of political relationship" – granting asylum implies that the asylum seeker's home country is unsafe for at least some of its residents, and the USA may be loath to levy such criticism against a country with which it has a political relationship.

**Hard Boundaries Perpetuate White Privilege**

Edward P. Huntington, an American political scientist and author of such books as *The Clash of Civilizations and the Remaking of World Order* and *Who Are We? The Challenges to America's National Identity,* asserts that the large number of immigrants from Mexico and other Latin American countries "threatens to divide the United States into two peoples, two cultures, and two languages" because they reject "the Anglo Protestant values that built the American Dream" (Huntington, cited in Darder, 2007: 373-4). Most Americans who oppose undocumented immigration do not cite such ethnocentric reasoning, but nevertheless, racism is a major underlying cause of the hostility toward undocumented immigrants in the USA.

There are several ways in which hard boundaries perpetuate white privilege, including blatantly or covertly encouraging racial profiling, equating citizenship with personhood, and maintaining the conditions that led to the establishment of racial inequality by way of colonization and imperialism. The most easily visible of these three problems is the fact that hard boundaries encourage racial profiling. At times this is intentional and at times it may be subconscious, but it is nonetheless a real issue and one that cannot be ignored. In 1975, the US Supreme Court sanctioned racial profiling near the border in the case *United States v. Brignoni-Ponce*. In this case, it was ruled that a "Mexican appearance" was a legitimate reason, under the Fourth Amendment, to verify a person's immigration status. Thus, as Romero (2008: 28) argues, "racialized immigration law-enforcement practices allow a person's appearance to serve as 'reasonable suspicion' or 'probable cause.'" Therefore, since obviously legal immigration or citizenship does not change one's appearance, anti-immigrant sentiment does not affect only those who are undocumented, or even only immigrants. Racial profiling in the name of border security also affects Latinos who are American citizens by birth, even those whose families have been American citizens for generations.

The concept of citizenship, however, is in and of itself problematic. Although the Universal Declaration of Human Rights establishes rights based on *personhood*, when it falls to the nation-state to ensure these rights, a "subtle but profound shift takes place in terminology. What begins as a theory about the moral equality of persons typically ends up as a theory of the moral equality

of *citizens*" (Scarpellino, 2007: 335). As discussed briefly above, this provides a nation-state with a loophole through which it can deny certain rights to non-citizens, even those legally residing within the country. Furthermore, the idea of citizenship, at least in the United States, has decidedly racist roots. When the country was established, citizenship was intended for white men. In 1848, upon the end of the Mexican-American War, the USA granted citizenship to those (former) Mexican citizens living in the acquired land area, but Native Americans, the original inhabitants of the continent, and African-Americans, who had been forcibly relocated to American soil since the country's colonial foundation, were denied citizenship. In 1857, it was decided that Native Americans could become *naturalized* citizens of the United States, but only if they chose to leave their tribe. That same year, the Supreme Court reinforced the denial of citizenship to African-Americans when it decided in *Dred Scott v. Stanford* that African-Americans were not, and could not become, American citizens. This decision stood until 1868, when the Fourteenth Amendment granted citizenship to African-Americans. Just two years later, the Naturalization Act *limited* citizenship to whites and African-Americans, thus excluding Asians from the rights associated with citizenship. Several other racist restrictions on immigration and citizenship followed over the course of US history, including the

> 1882 Chinese Exclusion Act, the Gentleman's Agreement of 1907 between the US and Japan, the 1923 US Supreme Court case *United States v. Thind* (whereby immigrants from India were ruled to be ineligible for naturalization because they are not White), the 1924 national origins quota system (Romero, 2008: 27)

Citizenship was not granted universally to all Native Americans, the first people to inhabit the land now known as the United States, until 1924. Even today, immigration law makes it very difficult to become a naturalized citizen of the United States for those who do not have a close relative who is a US citizen. Since Caucasians still make up the majority of US citizens, the law still favors whites over nonwhites.

Finally, hard boundaries perpetuate white privilege because they maintain the order established along with the foundation of modern day nation-states by European colonists, which, as Charles Mills (1997: 20) demonstrates in *The*

*Racial Contract,* was also the foundation of the racial inequality that still exists today. As Mills puts it, the "racial contract" is "clearly historically locatable in the series of events marking the creation of the modern world by European colonialism." International borders were created arbitrarily, many times without respect for pre-existing cultural nations, and often through the means of colonization (Scarpellino, 2007: 331). The establishment of international borders through colonialism was accompanied by the establishment of white cultural values as the norm, and the categorization of those who did not subscribe to the same cultural values (i.e. non-whites) as sub-human. For this reason alone, borders in and of themselves perpetuate the racism on which they were founded.

Furthermore, when people from different cultural backgrounds migrate to the United States, regardless of whether they do so through legal channels or whether they eventually become citizens or not, they are expected to "assimilate" into American society. While this is problematic to many Caucasian immigrants as well, especially those from non-English speaking nations, it is particularly problematic for people of color. "The preoccupation with assimilation," states Romero,

> results in accepting White, middle-class standards as the norm and in regarding racialized groups as departing from the norm – that is, as deviant… Focusing on assimilation not only conceals White privilege [but] policy recommendations generated from the focus on assimilation maintain the status quo, ignore White privilege, and set the agenda to disadvantage racialized groups further (2008: 25)

Finally, hard boundaries perpetuate white privilege by allowing "First World" countries to continue to control the wealth and resources they obtained through the exploitation of people of color and developing countries. Scarpellino (2007: 337-8) points out that "[w]ealth and opportunity are distributed unequally between nations; the happenstance of birth allots certain prospects to individuals." Since this unequal distribution of wealth is a direct result of colonialism, imperialism, and globalization, it is clear that the individuals to whom the happenstance of birth guarantees the most access to wealth are white people. Therefore, opening borders to immigration, and especially to economic refugees, would go a long way toward leveling the playing field and giving people of color a better

chance to access the wealth amassed by Europeans. In light of these facts, the defense of hard boundaries can be seen as resulting from a "deeply entrenched egotistic defense of privilege" (Darder, 2008: 374).

**The Real Problem**

More fundamentally, we might indeed argue that all the problems which restrictionists blame on undocumented immigration can be traced to capitalism, corporate greed, and globalization, and their colonial and imperial roots. These forces have led to a constricting job market in the United States, a decrease in wages in relation to prices and profit, anti-American sentiment abroad that threatens national security, and the overtaxing of the Earth's resources. Furthermore, globalization has led to developed countries controlling the vast majority of the world's wealth, and to the astronomical disparity between the global rich and poor. People in the Global South struggle to survive on wages as low as $2 a day, and when they cannot survive on this or cannot find work, many have no choice but to leave their homes in search of opportunity in developed countries.

In North America, for example, the North American Free Trade Agreement has undercut Mexican farmers and forced them to seek work elsewhere, thereby increasing undocumented immigration into the USA. Capitalism has therefore created the conditions that force many Mexicans and other Latin Americans into such desperate measures. Unfortunately, although the Universal Declaration of Human Rights decrees that all human beings have the right to employment and compensation sufficient for the satisfaction of their needs and a dignified existence, economic hardship is not among the conditions that qualify for asylum, at least in the United States. However, "US ethnocentrism…is often at work in the criminalization of immigrants, preventing the empire's pampered citizens [from] understanding life beyond material comforts" (Darder, 2008: 376). In order to protect, as Edward P. Huntington puts it, "the Anglo Protestant values that built the American Dream" (Huntington, cited in Darder, 2008: 373-4), many white Americans vehemently insist upon closing our borders, despite their roots in racism and imperialism. But, as Darder reminds us, a "border wall cannot contain the political mendacity, exploitive labor practices, and shameful poverty tied to the unchecked excesses of capital and efforts to safeguard capitalism" (2008: 377).

# Geopolitics and Human Rights: Ireland's Gay Marriage Vote and the Mediterranean Refugee Crisis

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## Introduction: Civil Rights, Human Rights, and the Geopolitics of "Progress" Narratives

In this paper, I analyze the relationship between geopolitics and human rights in two case studies from 2015: the Irish gay marriage vote of May that year – especially the selective media focus on the better funded versus grassroots "yes" campaigns – and the predominant focus on Syrian refugees versus others in the mainstream media coverage of the ongoing Mediterranean refugee "crisis." I argue that in both cases, the mainstream media's selective representation and distortion of the complexity of the grassroots "yes" campaigns *and* the refugee crisis reveals the close relationship between global geopolitics and discourses of human rights.

Throughout, I discuss both civil rights and human rights and, when discussing refugees' rights, LGBT (lesbian, gay, bisexual and transgender) rights and women's rights, there is a significant degree of overlap between civil rights and human rights: given that most refugees are excluded from participating in civil society because most are classed as stateless, refugees' rights can only be *legally* considered in relation to human rights. This is not going to change any time soon because the current political climate in Europe is markedly suspicious of refugees in particular and, as of January 2016, this suspicion is translating into active hostility.

For example, Stöckle and Wegscheider, in "Sexism is Not an Imported Product," note that the initial German media reports of the 2015 New Year's Eve sexual assaults in Cologne and Berlin actively focused on the involvement of refugee and other migrant men. This furthered suspicion and fear of these groups while diverting attention from the overall number of incidents of sexual violence in Germany. They go on to note that the perpetrators of such violence are "almost always men," but that there exists "no significant distinction according to religion, background, educational level or social status" (Stöckle and Wegscheider, 2016). While they do not suggest that the media is an "all powerful" ideological

influence on people's lives, their key point, in drawing attention to this media spin, is that it erases any discussion of the multiple ways in which sexism exists in German society and the fact that white German men and other white European men may also commit sexual assaults. Dana Regev also points out that even though these media reports claim to report "the facts," they fundamentally ignore the actual experiences of the women who were assaulted (Regev, 2016).

In contrast, Lyndsey Stonebridge, in her article "No Place Like Home: A Concise History of Statelessness," outlines how the civil rights afforded to European citizens today are directly connected to a much wider history of displaced peoples and refugees since *at least* the beginning of the twentieth century (Stonebridge, 2015). Thus, refugees' histories are part of civil rights histories in Europe. In the London context, a clear example of this prior to the twentieth century is how the term "refugee" was adopted from French into English (like many "loan" words) due to the influx of French Huguenots in the late seventeenth century. These refugees were fleeing religious persecution in Catholic France and their history is clearly visible in the urban environment, particularly on Fournier Street in the Spitalfields area of East London. This street was home to many French Huguenots, who were also silk weavers, and, thankfully, the buildings they lived and worked in survived the Blitz bombings. Indeed, the British high street fashion store, "Topshop," takes its name from how these silk weavers, in order to capture the most daylight, located their workshops on the top floor.

Moreover, whether to name refugee rights as civil and/or human rights parallels the history of women's rights and LGBT rights, especially for debates surrounding sexuality: women's groups, and LGBT groups, have for decades argued that sexual rights should be officially recognized as human rights, not *just* civil rights, and in 2015, the term "sexual rights," was adopted by the UN and the US Government. The latter, as Cara Anna notes, has adopted "sexual rights" in its future discussions of human rights and development (Anna, 2015). Given the historical reluctance of the UN and the US Government (especially during George W. Bush's administration) even to consider, let alone include, the term "sexual rights" in their policy documents, this recognition of sexual rights as human rights at the international level is highly significant.

However, while acknowledging the above milestone, any critical discussion of sexual rights as human rights must acknowledge the gap between the rhetoric of policy documents and people "on the ground." As Andrea Cornwall and Susie Jolly note in *Sexuality Matters*, there is a fine line between policy documents and international development agendas that are interpreted as needing to "manage" sexuality *and* people's lived, and material, realities (Cornwall and Jolly, 2006). This is especially important given the history of policing people's sexuality since the end of the nineteenth century. Joseph Bristow, in his book *Sexuality*, outlines how sexual identity terms such as lesbian and gay began to be codified at the end of the nineteenth century and, moreover, that this codification was bound up with the complex ways in which homosexuality was being "studied," medicalized, pathologized, and policed by sexologists and the medical profession, a process later subverted by its reclamation as a term by twentieth-century LGBT civil rights movements (Bristow, 1997).

Moreover, nation-states, and the broader global order, have been intimately involved in the policing of sexuality since at least the nineteenth century. In the US context alone, clear examples of the policing of people's sexuality (and gender, class, and ethnicity) include the laws which justified, and institutionalized, racial slavery, laws against "miscegenation" in the post-bellum period, the persecution of LGBT people during the McCarthy era, and the policing of gay and bisexual men, alongside the re-medicalization of homosexuality in response to the AIDS pandemic during the 1980s (Schilts, 1987). Though I am not arguing against the idea of human rights or civil rights here, I want to emphasize the reality that human rights campaigns, especially ones espoused by powerful nation-states and institutions, are always inflected by geopolitics.

Furthermore, critically informed and self-reflexive analyses of human rights must engage with Rahul Rao's critique that "history matters, as does geography" (Rao 2015: 44). Rao's article, "Global Homocapitalism," examines the reasons for international financial institutions' involvement since 2010 in anti-homophobia campaigns. His critiques of how and why LGBT rights are readily co-opted by *both* neocolonial agendas *and* neoliberal market forces are relevant for wider discussions of the history of human rights. Rao clearly exposes the ways in which human rights campaigns, such as the World Bank's campaigns to oppose homophobia, are closely enmeshed with neocolonial ideologies and, since the 1980s, neoliberal market forces. This is most visible in the discourse

of "bringing progress" expressed by anti-homophobia campaigns, especially because the ideologies that underpin these "progress" narratives clearly parallel the nineteenth-century humanitarian "civilizing" missions which legitimated imperial expansionism. For example, British imperial rule was justified via the idea of "bringing civilization" (read Christianity and British "culture") to colonized peoples and territories (Lambert and Lester, 2004).

Rao's articulation of the links between humanitarianism, neocolonial ideologies, neoliberal market forces, and "progress" narratives builds on the work of earlier postcolonial feminists such as Chandra Mohanty. In "Under Western Eyes: Feminist Scholarship and Colonial Discourses," Mohanty critiques western feminisms that promote neoimperial ideologies under the guise of "women's rights" (Mohanty, 2003). An often cited contemporary example of this phenomenon is George W. Bush's and Tony Blair's "War on Terror" which was in part framed by the idea of "bringing women's rights" to Muslim women in particular. Indeed, the "War on Terror," as Rao argues in his discussion of Jasbir Puar's work, is also connected to the geopolitics of LGBT rights because of the ways in which LGBT rights were actively mobilized for conservative agendas via what Puar terms *homonationalism* (Puar, 2008). This latter idea focuses on the ways in which, since 9/11, the USA (but also Britain, Germany, and Israel) have embraced LGBT rights as a marker of a country's "progress."

For Puar and her supporters, this uncritical idea of "progress" diminishes both domestic and international politics. Such "pinkwashes" (a term which deliberately echoes "whitewash") expose the complex imbrications of global geopolitics, for example highlighting the ways in which US global hegemony is expressed via its military power and foreign policy. There are also links with the Irish context here, too. In the case of the successful "yes" vote for gay marriage in Ireland in May 2015, grassroots campaigns forged clear links between LGBT people's right to marry *and* anti-austerity protests. Yet, the mainstream media's focus on the Irish "yes" vote strongly downplayed the divisive context in which this historic decision was made, such as the influence that the difficult economic conditions which Ireland has faced since 2007 exerted on the shaping of public opinion; the continuing lack of access to abortion services for women in both Northern Ireland and the Republic of Ireland; and the fact that Ireland has some of the most restrictive family rights laws for non-EU migrants (Luibhéid, 2015).

Furthermore, there is a fine, and somewhat unpredictable, line between human rights campaigns that replicate neoliberal, and neoimperial, ideologies *versus* discourses and campaigns that seek to maintain a relationship with the communities they represent. In the case of the Irish gay marriage vote, this is most visible in the sanitization of the grassroots "yes" campaign by both the mainstream Irish media and some of the more powerful "yes" campaigns. In the case of the Mediterranean refugee "crisis," its dominant representation as overwhelmingly a Syrian phenomenon is connected to the ways in which, since 9/11, western media outlets are geographically concentrated in countries where Syrian refugees are located, such as Turkey, Greece, Jordan, and Iraq. Thus, the media coverage of refugees is heavily shaped by the intense focus on the Middle East since 9/11.

**Contextualizing LGBT Rights and Ireland's Gay Marriage Vote**

The case of Ireland's gay marriage vote illuminates the ways in which successful grassroots "yes" campaigns self-consciously connected with broader critiques of Ireland's austerity measures. Anne Mulhall's argument about the role of Dublin's working class communities and her description of Ireland's "yes" vote for gay marriage as a "complex success" is particularly helpful for an understanding of this paradoxical dynamic (Mulhall, 2015).

On May 22, 2015, the Republic of Ireland became the first country in the world to vote "yes" to gay marriage by popular vote. The "yes" result was received with jubilation, both within Ireland and without, and not least because of the public backlash against the austerity measures put in place by the Irish Government since 2007. These austerity measures, as Roy Hearne outlines, especially affected Dublin's working-class communities and the employment prospects, and futures, of young Irish people (Hearne, 2015). Indeed, there is a striking connection between those most affected by Ireland's austerity measures and those who most strongly supported the successful "yes" campaigns. As Anne Mulhall clearly demonstrates in her article "The Republic of Love," the active political support of both working-class Dublin communities and young Irish people (see the twitter hashtag *#hometovote* for the latter) was crucial for the campaign's success (Mulhall, 2015).

However, the mainstream Irish media largely downplayed the role of working-class Dublin communities, and this watered-down version of the "yes" campaign

was mirrored in the global media coverage. Within the Irish context, this specific tactic of playing safe by not foregrounding grassroots movements was deployed by the bigger, and better-funded, "yes" campaigns which largely pitched to "Middle Ireland." In contrast to the mainstream media, many of us who attended the biennial *Queering Ireland* conference in August 2015 argued that who exactly constitutes the imagined community of "Middle Ireland" is vague, at best. In other words, these LGBT representations were safe, "middle of the road" and, quite simply, unreflective of Ireland's diversity. At worst, the pitch to "Middle Ireland" capitulated to a conservative, and inward-looking idea of who is included in the Irish "nation," despite significant changes to Irish national identity, and "Irishness," over the last forty years. Perhaps the most obvious example of these changes is the increasing separation of Church and State since the 1970s and the increasing choices available to women. Fintan O'Toole pinpoints these changes by comparing what was legally permissible for Irish women in the 1970s compared with 2012 (O'Toole, 2012).

However, while acknowledging these frictions within the "yes" campaign, the legalization of gay marriage in Ireland in May 2015 demonstrates that LGBT rights are now acknowledged as compatible with Irish national identity. Indeed, the "yes" vote for gay marriage was quickly followed by the Gender Recognition Act in July 2015. The latter Act allows the change of legal gender by self-identification alone rather than through medical or State intervention (Linshi, 2015). Furthermore, successful cooperation between grassroots campaigns and anti-austerity protesters continued to be active immediately after the "yes" vote by Irish feminists who sought to build on the popular support for the vote by pushing to change Ireland's restrictive abortion laws (McTeirnan, 2015).

Moreover, in light of the broader history of human rights and social struggles in Ireland, which reflects how the Catholic Church exerted an overwhelming influence on the Irish State since its formation, both the "yes" vote and the Gender Recognition Act reflect the growing secularization of the Irish public sphere since at least the decriminalization of homosexuality in Ireland in 1993. Diarmaid Ferriter encapsulates this by focusing on what is now permissible in discussions of sexuality in Ireland:

> By the early twenty-first century, the boundaries of what is and is not acceptable to publish in the realm of Irish sexuality have changed beyond recognition. There is a high premium placed on the value of personal

> testimony and the personalisation of debate, which have all combined to expose the myth of exceptional Irish sexual purity (Ferriter, 2009: 545)

Though Ferriter stresses that the dominant idea of tolerance in no way captures the complexity of attitudes on a micro-level, 2015 is clearly a symbolic year for LGBT rights in Irish history.

Moreover, the public recognition of LGBT rights in Ireland and their media coverage merit comparison with the media portrayal of the current refugee crisis in the Mediterranean. Achille Mbembe's concept of "the Age of Xenophobia" is a useful one in this context ("International Symposium," June 2015). The term "the Age of Xenophobia" was coined by Mbembe in response to some clearly xenophobic attacks against African migrants in South Africa (Mbembe, 2015). Though Mbembe focuses on South Africa, there are clear parallels to be drawn with the current refugee crisis in the Mediterranean. A particularly striking comparison may also be made between Mbembe's "Age of Xenophobia" and the discourses circulating around the social and political responses to AIDS/HIV in the late 70s and early 80s, which we might designate as the "Age of AIDS."

The phrase the "Age of AIDS" has been coined by Patton (2002) and others to describe the ways in which AIDS was constructed as a "social" illness, representing it as a turning point in history in the period. For many scholars, the "rupture" engendered by AIDS is encapsulated by distinguishing between the "time before AIDS" and "everything after"; it is from this sense of rupture that the term the "Age of AIDS" draws its discursive and imaginative power. For example, the 2014 film adaptation of Larry Kramer's 1985 play *The Normal Heart* vividly depicts this sense of rupture in New York City, depicting the devastating effects of AIDS on the city's gay community in the early 1980s (Murphy, 2014).

Similarly, we might argue that the ongoing refugee crisis in the Mediterranean (and the broader policing of foreigners by nation-states around the world) is best encapsulated via the phrase the "Age of Xenophobia." It allows us to frame the media responses to the refugee crisis in the Mediterranean and, increasingly, characterize the ways in which the media is shifting its depiction of the "refugee crisis" into a "containment crisis" confronting a "Fortress Europe" (Reuters, 2015).

**From the "Age of AIDS" to the "Age of Xenophobia"**

In her 2015 book, *Politics in the Corridor of Dying: AIDS Activism and Global Health Governance,* Jennifer Chan demonstrates that one of the major milestones of AIDS activism is that it catapulted human rights, and community, onto an international stage (Chan, 2015). However, Chan, like Mohanty, Puar, and Rao, also argues that human rights and community have been readily co-opted by many neoliberal discourses and agendas to the extent that some non-profits, institutions, and people are distanced from the communities they supposedly represent. But how is this reflected in the shift from "Age of AIDS" to the "Age of Xenophobia"?

The term "Age of AIDS" is largely used to describe the scale of impact that HIV and AIDS had on healthcare systems, the re-medicalization of sexuality (especially homosexuality) and, as previously mentioned, the fact that the social and political effects of AIDS on a global scale were unprecedented and created a "rupture" (Patton, 2002). AIDS, to echo the title of the 2014 UNAIDS fact sheet, "changed everything" (UNAIDS, 2014). However, the "Age of AIDS" is no longer as central to the modern global order in discursive terms. This is largely because of the fall in the number of new HIV infections per year since 2004 and the rise in the number of people worldwide who have access to the highly-effective drug cocktail to treat HIV (UNAIDS, 2014). It is also because, as Alan Whiteside describes, HIV/AIDS is no longer seen as "a discourse-defining health emergency":

> It is not a global issue. In wealthy countries, and most of Latin America, North Africa and the Middle East, the epidemic is concentrated and stable. This means HIV prevalence is below 1% in the general population. It may exceed 5% in specific "at-risk" populations but, as will be discussed, these are people on the margins. In Asia the feared extensive epidemic has not materialised (Whiteside, 2015: 459)

Though it is not clear from the above quotation, Whiteside proceeds to highlight what the contemporary challenges are for AIDS. Thus, he is not claiming that AIDS is "over," but, rather, he insists that it is not central to what we conceive of as global emergencies.

The "refugee crisis" in the Mediterranean, on the other hand, is a strong reflection of the "Age of Xenophobia." The influx of refugees who are attempting

to enter Europe continues to grow; at the time of writing precise numbers are difficult to gauge. However, the number of refugees who have sought to enter Europe in 2014-15 is widely considered to constitute the largest number of displaced people since World War II. Current estimates of numbers for 2015 suggest roughly 400,000 people (McFadden, 2015). Given this shifting context, the way in which the media has created a "hierarchy of refugee stories" is particularly noteworthy. This is both a *reflection* of the "Age of Xenophobia" and, additionally, an inevitable outcome of the contemporary geopolitics of human rights.

Caitlin Chandler, in her February 2015 blog, wrote about the ways in which the bias of the Western media has created this "hierarchy." Her description of this process is concise but starkly clear:

> ...in sharp contrast to the coverage of Syrian refugees, the Western English-language media has barely registered the escalating Eritrean refugee crisis. There have been few in-depth stories; absent profiles of Eritreans struggling to re-build their lives abroad; and rare editorials condemning the international community for not accepting more Eritrean asylum seekers or for failing to rescue Eritreans who are held hostage and brutally tortured in the Sinai.
>
> There are several reasons for this discrepancy: The Syrian war has forced three million people to leave the country and created an unprecedented flow of people into neighboring countries; it rightfully deserves significant and ongoing coverage. But the other reasons are about history, politics and power – the Middle East has received increased Western media coverage in the post-9/11 era. As a result, there's a media infrastructure; some of the main Syrian refugee camps are housed in countries where there were already bastions of foreign correspondents, and it's relatively easy for Western journalists to travel from Istanbul and Amman to camps along the borders of Turkey and Jordan (Chandler, 2015)

What is most striking here for our argument about the shift from the "Age of AIDS" to the "Age of Xenophobia" is that the Western bias towards one group of refugees (in this case, broadly, those from Syria) distorts the bigger picture of what we are actually talking about when we discuss the refugee crisis. This is nearly a direct parallel of the response to the early years of AIDS pandemic

(1981-1984) which, like the current refugee crisis, was marked by lack of strong leadership, uncertainty, and confusing messages (Chan, 2015: 52). Although the "Age of Xenophobia" may in no sense have the same influence over the global political order that the "Age of AIDS" has had over the last thirty-five years, it is critically useful, and important, to compare and contrast these two moments – especially in terms of illuminating the role of the media in shaping understanding and perception.

**Conclusion: Ireland and Europe – a "Cautionary Tale"**

Stephen Kinsella, in his concluding analysis of Ireland's austerity measures, offers a rejoinder to those who claim that Ireland is "a best model for austerity" by stating that the case of Ireland should be read as "a cautionary tale" rather than as any kind of a model of best practice (Kinsella, 2012: 232). While I am not advocating that Ireland's "yes" vote for gay marriage in May 2015 – nor the passing of the Gender Recognition Act in July the same year – should be read as cautionary tales in the same way as Ireland's austerity measures, I would certainly argue that the mainstream "yes" campaign's pitch to the fictitious "Middle Ireland" should make us wary of human rights campaigns *and* media coverage that over-simplify the idea of human rights.

Thus, although the shift from the "Age of AIDS" to the "Age of Xenophobia" is a discursive one rather than an absolute material, or social, re-orientation away from HIV/AIDS as a pressing issue, we also need to be skeptical of who exactly is framing the refugee crisis and *whose* stories (and by extension, whose human rights) are being highlighted to the exclusion of others. More crucially still, we need to acknowledge the multiple ways in which the ongoing "refugee crisis" in the Mediterranean (and indeed any contemporary human rights issue) forms part of a much longer, complex history.

Although the tide may be turning in the ways in which the German media are representing the living conditions of new refugee arrivals, the pernicious reporting of the New Year's Eve sexual assaults in Cologne was a clear expression of racist and anti-refugee prejudice. In this context, the role of grassroots movements, as we saw with the "yes" campaign in Ireland, provides a platform for necessary dialogue to take place, even given all the difficulties associated with the "Age of Xenophobia."

# Blood and Borders: Immigrant Children and *Jus Sanguinis*

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According to the Universal Declaration of Human Rights, "the family is… entitled to protection by society and the State."[39] The concept of family and national identity has been complicated, however, with the arrival of over one million migrants and refugees, including family units, to Europe in 2015 alone. In particular, Italy, known for its homogeneity, has seen a rise in the number of immigrants entering the country and creating lives there. Because the phenomenon of immigration is relatively new, the Italian Government is still trying to figure out how best to handle the situation by creating new laws that will allow them to have more power in deciding who can come and stay in Italy. After the immigrants are allowed to enter Italy and establish their lives in the country, they most often begin to build families, raising their children in their nation (*La Repubblica*, 2008). As the population of "foreign children" in Italy rises, a conflict begins to develop: although children are born in Italy, study at Italian schools, and recognize Italy as their home, they are still considered *stranieri* – foreigners – by Italian law and society.

When children are born in the United States, they are automatically considered American citizens due to the law of *jus soli* (*Yalla Italia*, 2011). The legal system in Italy, however, is different; citizenship is based not on the place of birth but on the nationality of the parents, a system known as the law of *jus sanguinis.*[40] The law of *jus sanguinis* originates in times of antiquity, when the Romans used this law as a way to differentiate between Roman citizens and the population that had been conquered and subjected to Roman law. The concept of *jus sanguinis* has remained in force until the present day: Italian law recognizes only the notions of "permanent resident," rather than full

[39] See Appendix 1, the United Nations *Universal Declaration of Declaration of Human Rights*, Article 16, paragraph 3.

[40] *Jus soli* (Latin) literally means "right of the soil" or "land": anyone born within a given territory is considered to be a citizen of that country. *Jus sanguinis* (Latin) means "right of blood": in this case, citizenship is not determined by place of birth but by the citizenship of the parents. Most countries with *jus soli* principles also recognize citizenship according to the principles of *jus sanguinis.* The reverse is not always the case; Italy recognizes *jus sanguinis* but not *jus soli.* In short, being born in Italy does not confer automatic citizenship.

citizenship for immigrants, resulting in serious consequences for the children of immigrants who were born and are educated in Italy.[41] The problem has become all the more pressing as the children of immigrants are integrated into Italian society, yet are considered foreigners by a law that discriminates against migrants and their children, reinforces the xenophobic views of certain politicians and citizens, and makes it difficult for immigrant families to become (and most importantly to feel) fully-integrated (Hajdari, 2004). An unfortunate consequence of *jus sanguinis* is that many Italians consider immigrants to be second-class citizens.

This paper begins with a short introduction to the history of immigration to Italy in order to establish a context in which to place the current problems. Next, the paper analyzes the legislative mechanisms that are in place to "regulate" immigration and establish the basis of citizenship. Specific examples of cases of immigrant children growing up in Italy will be included to illustrate the consequences of *jus sanguinis*. The paper then explores different outlets of expression, such as literature and media, that second-generation immigrants use in order to combat xenophobic legislation which endangers their basic rights and keeps them from being considered Italian. Throughout, I seek to prove that the Italian government's current notion of citizenship and approach to immigration is unjust, and provide examples of the second generation's attempts to combat its implications.

**A Short History of Immigration in Italy**

Slowly but steadily, Italian society is changing. Known for its strong cultural roots and long history, Italy is now developing into a multicultural nation. Between 1876 and 1976, Italy experienced a wave of emigration as twenty million Italians left their nation, traveling to North and South America and Australia in the hope of finding better job opportunities. While emigration benefited other emerging economies, the labor market in Italy began to experience a shock – work that was once done by Italians who had moved abroad was now left undone (Turco, 2005: 10-11).

It was not until the 1980s, however, that the gap that had developed in the labor force was filled by a wave of immigrants. During the late 1980s and

[41] Sun Wen-Long. Personal interview, March 12, 2012.

early 1990s, a wave of migrants from Eastern Europe entered Italy in search of a place to escape the problematic legacies of the Communist era – poverty, famines, and political persecution – and to find jobs (Ponzanesi, 2004: 13). In general, after moving to Italy and finding work, first-generation immigrants made many sacrifices – and, for the most part, found employment as menial labor – in order to give a better life to their children (Turco and Tavella, 2005: 142). While the number of immigrants entering the country continues to increase, the Italian authorities have sought ways to control migrant flows, utilizing strict – and, at times, arguably unfair – legislation to impede and even stop the arrival of immigrants (Wright, 2004: 94).

**Scrutinizing the Legislature**

Paradoxically, as long ago as 1948, following the collapse of fascism, post-World War II Italy created a constitution which in principle declared equal rights for all its citizens.[42] Yet the Italian legal system does not treat people equally and makes it difficult for "foreigners" to become citizens.[42] By the late 1980s, the Italian government began to realize the complexity of the immigration situation they were facing. With the aim to create a system that would better discourage the influx of people, the Italian legislators began to intervene, seeking ways to better control the number of those entering the nation. On December 30, 1986, the Parliament passed Law 943 which regulated immigration, defined the rules of immigrants working in Italy, and made it difficult for them to find work in any field other than domestic help (Turco, 2005: 13). With Law 943 and subsequent laws, the government introduced for the first time an instrument to limit the number of mandated permissions of residence (*permesso di soggiorno*) to 118,700 immigrants (Turco, 2005: 12).

Although Law 943 was an attempt to link work directly with citizenship, it did not deter immigrants from entering Italy. In 1990, the government gave out 217,700 permissions of residence, spiraling up to 700,000 by 2002 (Turco, 2005: 12). In addition, Italy operates within the European context and has been attempting, since the late 1990s, to link its immigration legislation with

[42] See "Diritto di Cittadinanza," Poggeschi Jesuit Centre, March 26, 2011, at http://associazioni.centropoggeschi.org/ for further details.

European laws. During that decade, the European Union began to concentrate its preventive efforts on immigration, establishing standards to keep numbers under control and to organize the process of citizenship. Legislation varies according to national history, particularly when that history includes a colonial past. In Spain, for example, rules concerning immigrant children born in Spain depend on the nationality of the parents: if they emigrated from a former colony, such as a Latin American country or the Philippines, the person has the ability to claim citizenship after only two years, rather than the six which are usually required.[43] France, an exception in Europe, has *jus soli*. There, children born on national soil are considered French citizens. In addition, at the age of thirteen, children may gain citizenship if they have resided in France and the parents decide to apply for citizenship (Vink and de Groot, 2010).

Italian law, by comparison, is much more hostile to immigrants. Not all children born and raised in Italy are considered to be Italian. Instead, citizenship is based on the origin of the child's parents. As of 1992, according to Article 2 of Law 91, a child, although born in the nation, is not allowed even to apply for citizenship until the age of eighteen (*Caritas Italiana,* 2010). As an illustration of this, Sun Wen-Long, the President of *Associna*, an association of young Italians of Chinese heritage, was born and raised in Italy. However, he was not granted his Italian citizenship until he was eighteen years and two months old.[44] Before then, although his residence in Italy was uninterrupted, he remained a foreigner in the eyes of the law and did not have the right to vote, although he was fully liable for taxes. A number of groups have argued that it should not be legal to enforce such "taxation without representation" (*Stranieiri in Italia*, 2012). Ethel Frassinetti, Director of *Legacoop Bologna,* argues that this is especially unlawful because immigrant workers produce over ten percent of the national Gross Domestic Product, thus making a significant contribution to the Italian economy (Frasinetti, 2010). Italian law considers immigrants' children to be immigrants themselves. Each year, the *stranieri* ("foreigners") must go to the *Questura*, an administrative body that is found in every province which provides passports for Italian citizens and permits for foreigners, to get their fingerprints done and their *permesso di soggiorno* renewed. If they do not take the proper steps, such *stranieri* will be prosecuted for breaking the law.

[43] See *Cittadinanze Umane,* Dir. Igiaba Scego, February 25, 2012, Rome.
[44] Sun Wen-Long. Personal interview, March 12, 2012.

A further example of harsh anti-immigration legislation is the *Martelli Law* (Law 39) which was passed in 1991. This law facilitated the center-right Italian government's aggressive immigration policies, including the close monitoring of net migration numbers. For example, a quota system was established with the labor unions, based on the demands of the labor market, to seek to ensure that immigrants had established employment before arriving in the country. This new law was a direct outcome of concerns at European level about Italy's role as a main entry point for immigrants in transit to the rest of the European Union, which drove the government's new, stricter policies (Council of Europe, 2005). A significant number of Italian politicians did not agree with the *Martelli Law* which, despite its attempts to set up a more refined immigration system, failed to address the management of the Italian coastline – the most open entry point for immigrants (Turco, 2005: 13). Without a clear definition of legal entry, and even with this quota system, Italy continued to see a rise in illegal immigration through these "porous" borders. This was for two main reasons: economic demand for increased labor; and Italian families' increasing demand for domestic helpers (2005: 37).

Current immigration and integration standards in Italy are based on two main laws. The first, the Single Act (no. 286) of July 25, 1998, sought to improve the effectiveness of the immigration system and control immigrant labor. This Act actively sought to discourage illegal immigration through much tougher deportation procedures and by promoting the integration of legal migrants. Under this legislation, in order to live in Italy, an immigrant needs firstly to have obtained a professional contract with an employer. The second law, the so-called *Turco-Napolitano* Law, established for the first time a procedure for permanent residency and was extremely strict about prevention and containment of illegal immigration. Critically, this law also integrated social rights into its legislation, "including immigrants' social rights, access to health services and family unification."

During the 1990s, Italian politics was largely dominated by a left-wing coalition led by the Party of the Democratic Left (PDS) (Messina, 1998). However, in 2001, power shifted decisively to the Right with the election of Silvio Berlusconi as Prime Minister for the second time. The new Berlusconi government, heavily influenced by Cabinet members from the nationalist *Lega Nord* ("Northern League") party, continued to tighten immigration

policies, promulgating the Bossi-Fini Law which decrees that all adult holders of the *permesso di soggiorno* must have an employment contract. Since that time, there has been a clear escalation of xenophobic sentiments among Italians. For example, in 2001, about sixty-nine percent of Italians felt that immigrants took jobs away from the "indigenous" population to the detriment of "Italian" families (Cavatorta, 2001: 27). Data on economic productivity does not sustain these opinions: immigrants continue to make an important contribution to the national economy. Negative perceptions of this kind have been deliberately stoked by the product of explicitly racist and xenophobic propaganda from political groups such as the *Lega Nord*. Their populist, right-wing politics has capitalized on public discontent to focus attention onto the immigrant as scapegoat for a whole suite of social and economic problems.

**Fighting for Equality**

Not all government officials are aligned with these anti-immigrant positions. In December 2011, after the killing of two Senegalese men in Florence, the President of Tuscany, Enrico Rossi, made an explicit plea for national change. He asserted the need to fight on the political front against laws which consider immigrants "less than human," and called for Italy to rid itself of "the culture of hate" (Ferrara *et al.*, 2011). In addition, Matteo Ricci, the President of the Pesaro province, has declared that he "who is born in Italy is Italian," bestowing honorary citizenship on 4,536 children who were born in that region during the last decade (Meletti, 2012). Nevertheless, Italian law still does not recognize those immigrant children who were born in Italy over the last twenty years and legislation continues to become stricter. This creates more difficulties for immigrants and their children, who are particularly susceptible to injustice and extremism. For example, Graziano Delrio, the President of *Anci* (the Association of Municipalities), and spokesperson for the *L'Italia sono anch'io* campaign,[45] recently noted that the children of immigrants are frequently unaware that they are not considered Italian in law and are not permitted to identify themselves as such, even though they may have grown up with an immense love for the country (quoted by BBC News, 2012).

[45] "I am Italy too," a nationwide campaign which fights on behalf of those who have grown up in Italy, and feel Italian, but yet do not have the legal stature and rights to which they should be entitled.

Organizations like *Anci* promote community engagement to fight against unjust legislation such as Law 91 and the *stranieri* system, uniting a number of related groups that support second-generation Italians, such as *Migrantes* and *Caritas Italiana. Anci* aims to change the law by raising awareness about the status quo, arguing that "not to give citizenship to these children that feel all the effects of being Italians will produce foreigners, with all the risks and known problems" (Manfredi, 2012). In order to amplify this message, *L'Italia sono anch'io* seeks to bring immigration to the forefront of public discussion, thereby changing cultural attitudes. The project aims to gather 50,000 signatures to draw government attention to immigrants' demands for citizenship and electoral rights,[46] as well as leverage the potential of social media to reach as many Italians as possible: there are currently 1,000 "friends" listed on the Facebook page of *Anci's* Bologna chapter alone.

Groups supporting second-generation Italians are thus becoming stronger and are gradually succeeding in their mission to support and to bring awareness to their cause. Although these voices are growing louder, they have not gone unchallenged in the new media. For example, Beppe Grillo, now a highly charismatic figure in one of Italy's newest political parties, *Movimento 5 Stelle* ("5 Star Movement"), rose to prominence as a satirical blogger critical of the *jus soli* campaign, writing in early 2012 that the sole objective of second-generation Italian organizations was to "distract Italians from their real problems" (Bini, 2012). By contrast, *Anci* argues that there needs to be a fundamental change in Italian culture, so that rather than practicing discrimination against those labeled as "Others," Italians should recognize and embrace the value of diversity. One spokesperson from *L'Italia sono anch'io* stated in Bologna that new programs need to be implemented in schools, teaching young people the importance of multiculturalism.

Perhaps the best way to combat the injustice of *jus sanguinis* is by raising awareness. Many Italians do not know how exactly Italian citizenship is established and have never heard any discussion concerning *jus sanguinis* versus *jus soli.* Others have never heard any serious discussion concerning citizenship and *stranieri*, only scandals and violent protests about the issue.

[46] See, for example, "Chi Siamo?" *L'Italia sono anch'io* (2011), online at http://www.litalia-sonoanchio.it/index.php?id=521>.

Therefore, one of the main aims of second-generation activists is to develop a more informed and educated citizenry.

More Italians are uniting in opposition against *jus sanguinis.* According to Ramona Parenzan, editor of *Babel Hotel* (2011), a multimedia collection of short stories, poems, and music which explores immigrant experiences and cultures in Italy today, the law of *jus sanguinis* is simply an act of "total ignorance and incivility."[47] In order to combat these laws and what she calls their *autentica follia* ("real madness"), Parenzan argues strongly for the need for new cultural initiatives and school programs to incorporate multiculturalism as a classroom topic, allowing Italian students to appreciate the world around them and mitigate against xenophobia.

Indeed, many schools are now educating Italian children to a culture of diversity, critiquing the ideology that still accepts the presence of *jus sanguinis* in Italian law. Sussanna Mantovani and Francesca Zaninelli, teachers at the *Facoltà di Scienza della Formazione* at the *Università di Milano-Bicocca,* explain that children should have the possibility of learning about other cultures because it grants them the opportunity to enrich their cognitive abilities and to analyze and explore other worlds, widening their horizons (Mantovani and Zaninelli, 2007: 173). In order to introduce different cultures to their students, Italian literature courses have added foreign literature to their syllabi so that students will hear different voices from new cultural contexts (Negri, 2007: 196-98). The educators hope to present children with the idea of cultural difference but common humanity, erasing the dichotomy of "us" versus "them."

A number of authors have also used literature as a means of fighting for justice and basic human rights. For example, the Italian-Eritrean author, Erminia Dell'Oro, argues that literature can be a powerful tool with which to express cultural differences as such works can transport readers imaginatively to new places and diverse worlds (Dell'Oro, 2004: 45). For example, in Italo Calvino's short-fiction book, *Invisible Cities,* which has become required reading for Italian students, Marco Polo describes the many cities that he has encountered to the Mongolian Emperor Kublai Khan, sharing with him his experiences and adventures, using vivid language and evocative detail in

[47] Ramona Parenzan. Personal interview, April 1, 2012.

order to allow the emperor to feel as though he had traveled to these places himself (cited in Dell'Oro, 2004: 45-46). Just as Marco Polo has the ability to use his words to transport Kublai Khan to new cultures and worlds, migrant authors can powerfully express what it means to live "between" two cultures. Thus, the concept of growing multiculturalism in Italy is being introduced to young people using literature and education: one such seminar, entitled *Eufemia*, was organized by the Association of Solidarity and International Cooperation and focused on extending Calvino's metaphor of "invisible cities" in order to explore immigrant life and intercultural societies, in a way akin to the plurality of cities recounted in the novel (LVIA, 2002).

Although literature is a crucial means of translating the experience of the "Other," other groups have also found multimedia a useful way to disseminate information on the immigration issue. The web television group, *Lookout.tv,* has created a video series which present stories promoting Italian multiculturalism. The editor of the second-generation blog, *Yalla Italia,* Akram Idries, born in Italy and accustomed to its culture, is interviewed in one of the programs. Although Idries is a busy engineering student, he makes time to contribute to, and edit, the blog, because he believes in the importance of teaching and learning about multiculturalism and providing outlets for second-generation bloggers (Akram, 2011). In addition, *Lookout.tv* has created a video in which a number of Italians from Milan and Rome are asked questions concerning citizenship and second-generation Italians (*Lookout.tv,* 2011). During the interviews, respondents are asked whether or not second-generation Italians have citizenship. All of the interviewees responded that they thought that they did. This demonstrates clearly that many Italians are unaware of the actual legal status of second-generation immigrants. This lack of awareness is what drives groups like *Lookout.tv* to utilize new media to enhance awareness of citizenship and the importance of intercultural communication in Italy. YouTube has also become a platform for advocating the rights of second-generation immigrants. More and more people are ready to speak out against the legal injustice inflicted on those who are considered to be "foreign."

## Conclusion

Post-war Italy created a constitution that declared equal rights for its citizens. That modern and progressive outlook does not align with reality: the Italian

legal system treats "foreigners" as less than equals. If a person is born in the USA, he or she is automatically considered a citizen. This is due to the law of *jus soli.* In contrast, in Italy a person can be born and be assimilated into Italian culture, but is still considered a foreigner by the Italian Government if his or her parents are not "native" Italian. Many people are now facing the challenge caused by *jus sanguinis*. Although they were born in Italy, these people are treated like any other immigrants, having annually to get their fingerprints taken to renew their *permessi di soggiorno*. Moreover, though they have to pay the same taxes as "Italians," they do not have the right to vote. To change this unjust situation, several civil and human rights organizations have banded together to advocate changes to immigration and citizenship policies. Imaginative literature and online media have also been used as tools to bring public attention to this issue. As Italians and immigrants alike begin gradually to have a better understanding of these issues, greater opportunity arises for change to occur, opening the door to equality for all those living in Italy.

# 04/

# PRACTICING JUSTICE


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# The Impact of Prison Visits in Teaching Human Rights to Students

**Anne Driscoll**
Irish Innocence Project at Griffith College and Schuster Institute for Investigative Journalism, Brandeis University

## Introduction

On May 18, 2015, I watched Angel Echavarria take his first unshackled steps as a free man. Echavarria had been wrongly convicted of a murder in 1994 and, before he was finally exonerated, he had spent twenty-one years in prison – nearly half his life – for a killing he never committed. As the senior reporter for the Justice Brandeis Law Project at the Schuster Institute for Investigative Journalism at Brandeis University in Massachusetts, I spent nine years of my life investigating his wrongful conviction case in order to come up with convincing evidence of his innocence – knocking on neighborhood doors and interviewing witnesses, reading thousands of pages of court documents, reviewing microfiche and databases and, importantly, visiting Angel Echavarria himself in prison. Much of my work was conducted alone on the streets, in courthouses, or at the library, but I was never alone on the prison visits. On those occasions, I almost always brought along the students working as researchers on the project and invariably, these visits were the richest and most rewarding aspect of the work they did for the project.

The student exit surveys taken on graduation, or after students left the project for other pursuits, would consistently rate the time working at the Justice Brandeis Law Project as the most important facet of their college experience and, just as reliably, they rated the prison visits as the most significant part of that project experience. Anecdotally, in those exit surveys, respondents asserted that working on the project – and especially the visits – helped them to understand the root causes and impact of wrongful convictions. Particular importance was given to the visits, which they felt helped them connect personally to the cases on which they were working.

It was obvious that these were personal connections that stretched beyond the prison walls. The students regularly sent letters, birthday and Christmas cards, and photos of their pets. Sometimes, on those occasions when the prisoners

would happen to call the Justice Brandeis Law Project office while the students were there, they would crowd around the speaker-phone and chat away with a prisoner who was using his precious money and time to keep connected. That connection interested me enormously. Why was it important? What did it achieve for the students? Yet, equally as important, what did it mean for the prisoner; or, for that matter, the investigation? What was the nature of this relationship and what did it teach us?

Prior to my work as a journalist, I began my career as a social worker, working with girls who were involved in the court system (I still am a licensed certified social worker in Massachusetts). As a social worker, I knew firsthand that the therapeutic relationship between a social worker and a client is about validating that client's experience, as well as acting as a witness for that person. The validation of someone's experience, and acting as a witness, also happens to be the role of a journalist – which may explain why I found it relatively easy to slip from one career into the next. The difference between the two is that in the case of a social worker, the validation happens behind closed doors, but in the case of a reporter, it is broadcast to the public. However, after nearly a decade of working as an investigator and project manager on innocence projects, I found that this particular work – innocence work – seemed to be a hybrid of sorts. I was acting both as a witness and as a reporter, validating that someone had been wrongfully convicted and then reporting this to the world.

This relationship between wrongly-convicted people and the person who is seeking justice for them is a unique bond for many reasons. You are free, but the prisoner is not, so you are therefore a lifeline to the outside world. Yet, perhaps most important of all, the role of acting as a witness for someone who has been wrongfully convicted is particularly profound because you are validating someone who the world does not believe. You are taking a singular stance and saying, "I believe you," when the rest of the world has condemned this person. Thus, to offer students an opportunity to step into such an extraordinary relationship is to present them with a chance for an especially rewarding – and unparalleled – educational experience.

**The Growth of the Innocence Movement as a Human Rights Issue**

The first Innocence Project was launched in 1992 in New York, by Barry Scheck and Peter Neufeld, after DNA evidence began to be used in courts as an effective

tool for proving guilt or innocence. Prior to the introduction of DNA as forensic evidence, it was widely assumed that if someone was convicted, they were most likely guilty. However, research conducted since then suggests that somewhere between 2.3% and 5% of all convictions are actually of innocent people. In the USA alone, that would mean that if one were to take the more conservative figure of 2.3% of the 2.3 million people incarcerated in American jails, then 52,900 of them are innocent – a staggering sum. That only reflects the number currently in prison; it does not include any of those who have either served their sentence or died in prison (Liptak, 2008).

The realization that the judicial system is fraught with weaknesses that lead to wrongful convictions has spawned a burgeoning human rights movement. The so-called innocence movement began with the first Innocence Project two decades ago and has now become a worldwide social justice campaign. This campaign has evolved, with a fair amount of overlap, in three distinct phases: first, the recognition that not all convictions are correct and, in response, the birth of innocence projects to overturn miscarriages of justice; second, the growing body of research investigating and identifying the causes and factors leading to a wrongful conviction; and third, the determination of policies and practices to prevent wrongful convictions.

There are now sixty-eight innocence projects that are members of the umbrella Innocence Network organization. Research that has been conducted thus far into factors leading to wrongful convictions suggests that the most common causes of wrongful convictions include eyewitness misidentification, false confessions, inadequate legal defense, police or prosecutorial misconduct, faulty or overstated forensic evidence, or "snitch" (informant) testimony. Collectively, the recognition that innocent people are convicted of crimes they did not commit with a fair amount of regularity has launched what is widely considered to be the most recently-identified global human rights and social justice issue. Of the sixty-eight innocence projects sanctioned by the Innocence Network, about fifty-five of them are in the USA. The newest growth of the worldwide innocence movement is now occurring outside of America.

**The Irish Innocence Project**

The Irish Innocence Project was launched in Dublin in 2009 by its founding director, David Langwallner, barrister and Dean of Law at Griffith College. It is the

only innocence project in Ireland and provides all its services for free. The Project investigates and seeks to overturn cases in which people claim that they are factually innocent, yet have been convicted of a crime they did not commit. The Irish Innocence Project works to find new, or newly-discovered, facts or evidence that show that there has been a miscarriage of justice under the mandate of the Criminal Procedure Act 1993 and the posthumous pardon procedure. It is the only innocence project in the world whose home is a two-hundred-year-old former prison, where at least one man, Joseph Poole, is believed to have been wrongfully convicted, hanged and is buried in an unmarked grave somewhere on the grounds. It is one of only two of the sixty-eight projects recognized by the Innocence Network that has both law and journalism students working cooperatively on cases.

The Irish Innocence Project currently has about twenty-two students from Griffith College and Trinity College working on about thirty presumed innocence cases, under the supervision of about ten *pro bono* lawyers. It was recognized by the Revenue Commission as a tax-exempt educational charity in December 2014. The Project achieved its first exoneration, of Harry Gleeson, in January 2015; Gleeson, who was executed in 1941, was to receive the first posthumous presidential pardon in Irish history (O'Brien, 2015).[48] The case was widely covered in the Irish and international press. For example, *The Irish Times* published an article on April 6, 2015, entitled "How Harry Gleeson was wrongly hanged for murder in 1941":

> Harry Gleeson was convicted and sentenced to death for murdering Mary "Moll" McCarthy, a single mother of seven, whose body he found in his uncle's Co Tipperary field in November 1940. She had been shot twice in the face. He was executed five months later, in April 1941.

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[48] Innocence Project case notes, posted online on August 2, 2015 by Gemma Deery, reported the following details about this case:

> Mr. Gleeson was charged, tried and convicted for the murder of Mary "Moll" McCarthy in 1940 and sentenced to death by hanging in 1941. However evidence uncovered through the work of the Irish Innocence Project and the Justice for Harry Gleeson Group has resulted in the first posthumous pardon in the history of the Irish State. David Langwallner, Dean of Law at Griffith College, Director and founder of the Irish Innocence Project, said, "Nothing can adequately comfort those who have fought to exonerate Harry Gleeson but this posthumous pardon and the clearing of the good name of Mr. Gleeson is a proud moment for everyone involved (Deery, 2015)."

David Langwallner worked on the case in conjunction with Griffith College student caseworker, Tertius Van Eeden.

> The Government will grant the State's first posthumous pardon after barrister Shane Murphy reviewed the case and found the conviction was based on unconvincing circumstantial evidence. The Government has apologised for the execution. The review found that *gardaí* [state police] and the prosecution withheld crucial evidence at trial, including a statement showing that *gardaí* fabricated evidence against Gleeson to prejudice the jury (McGuire, 2015)

The Innocence Project contributed submissions to a High Court case that resulted in an outline of how to obtain access to post-conviction DNA testing, a procedure that did not exist in Ireland previously. The Project also hosted the first ever international wrongful conviction conference and film festival in June 2015. David Langwallner and the Project were recognized at the AIB Irish Law Awards as Pro Bono/Public Service Lawyer/Law Firm of the Year in 2016. Finally, the Irish Innocence Project, along with the Italy Innocence Project, are co-directors of the just-launched European Innocence Network which will be vetting and validating existing, developing, and new innocence projects in Europe.

When I began my work as a US Fulbright Scholar with the Irish Innocence Project, I sought to teach the law students working on the project investigative and interviewing skills which might help them to progress their cases. My proposal was to introduce to the law students all the journalism skills that could be useful in gathering new or newly-discovered evidence to support an application for a miscarriage of justice. Within weeks of my arrival, the director recognized that innocence projects are investigative projects, and that it therefore made sense to expand the Irish Innocence Project to include journalism students at Griffith College. We also further expanded the project to include students from CAPA The Global Education Network, who assisted in promoting public understanding of the work of the Irish Innocence Project.

As part of my Fulbright initiative, I encouraged the law and journalism caseworkers to make more prison visits. My experience with the Justice Brandeis Law Project demonstrated the value these visits had. I had seen that they promoted a bond and commitment between student and client, enhanced a greater understanding of wrongful convictions as a human rights issue, improved the investigation by unearthing new leads or avenues to pursue, and provided emotional support to the client and satisfaction for the student. For all of those reasons, I sought

to support those increased visits, so I applied for, and received, a grant from the St. Stephen's Green Trust to underwrite the cost of those visits. The St. Stephen's Green Trust is a grant-making organization that has been, among other endeavors, supporting prisoners, prison care, and prisoner families since 1992 and, in that time, has distributed more than 1,500 grants totaling about 6.5 million Euro to more than 850 organizations.

In the application, I identified the following expected benefits or outcomes of the grant:

1. Support prison visits by Irish Innocence Project staff/students and one-to-one contact to better progress innocence cases, keep inmates engaged and informed, and work with them during their incarceration and afterwards to rebuild a sense of mastery and control over their lives and thereby improve adjustment to life outside.
2. Enhance and expedite the progress of cases as direct inmate involvement can improve new case leads, strengthen investigations, and further avenues of exoneration.
3. Deliver emotional support, both during incarceration and post-exoneration, by those who have specialized experience and skills dealing with innocent convicts, or those who have been exonerated themselves.
4. Work with the families of wrongly-convicted people to engage them in the progress of their cases and assist with the transition before and after exoneration.
5. Assist exonerees to achieve an enhanced transition to mainstream life.

To gauge the impact of this grant, I first sought to gather anecdotal information from the students and asked them to write an assessment of their prison visits. Overwhelmingly, these assessments were very positive. I have received scores of such assessments, but I am including just one that is representative of the others here. The following is a summary of a visit by a student that occurred on March 13, 2015:

> On the 13th of March, as a part of the Irish Innocence Project I was awarded the opportunity to visit two of my clients in Midlands Prison. This experience has benefited me in a number of ways, most notably it has granted me new perspectives on both the ongoing cases and the criminal justice system.

During my study of Criminal Law and the Justice system, it became apparent to me how often, due to the nature of our legal system, the victim is left out of the process entirely. In the Innocence Project, many of our clients are victims of a miscarriage of justice. In visiting the prisons we are able to include them in the process as much as the case will allow. During the visits, I had noticed that both clients, in different ways, had not been listened to, and in turn some crucial parts of the case were not addressed. These visits awarded my fellow caseworkers and me the opportunity to set aside time, away from court transcripts and correspondence letters and to listen to our client's account of the incident in question. As a result of this, we have now a number of previously unknown avenues to pursue and a greater understanding of the intricacies of the case.

In addition to the above, the prison visits allowed my fellow caseworkers and me to put a name to a face. During our studies, it is often the case that we are removed from the reality of conviction. Simply reading facts and statistics remove the humanity from the subject; this enabled me to regain the humanitarian perspective, which I had previously lost.

The project as a whole does not function simply to seek to find new fact evidence, but to provide a degree of emotional and personal support for our clients. Without such visits, this support would be near to impossible, as the personal element would be completely removed. We now hope to keep our clients up to date on the case and hope to meet with them soon. Resulting from these frequent updates, our clients will hopefully achieve a sense of security in knowing their voice has been heard.

In conclusion, I would consider the prison visits to be the most defining experience I have undergone during my time on the Innocence Project. It has allowed me to gain new perspectives on the realities of conviction and the importance of the Innocence Project as a provider of a voice to those who have been rendered voiceless.

It was so clear from these written assessments that these relationships between student and prisoner were so very important that I decided to devote two sessions at the Irish Innocence Project International Conference on Wrongful Convictions, Human Rights and the Student Learning Experience

and Wrongful Conviction Film Festival to exploring them. The idea of the two days of programming was three-fold: firstly, to increase public awareness and understanding of wrongful convictions as a human rights and social justice issue; secondly, to promote the role of both law and journalism in pursuing miscarriages of justice; and thirdly, to inspire a new generation to get involved with this issue. The following is a sample outline of the two sessions which took place on June 26, 2015 before two hundred delegates from fifteen countries:

**Session 3: STUDENT LEARNING EXPERIENCE**

**14:40 Discussion 1: An International Perspective from Educator and Student**

*Moderator:* Keith Findley, former president of Innocence Network, co-director of Wisconsin Innocence Project

*Discussants:* David Langwallner, Irish Innocence Project director; Sharon Beckman, Boston College Innocence Program director; students Grace Kelly-Hogan, Sinead Mac Fhionnlaoich, Tertius van Eeden & Therese Ekevid

15:20 *Discussion*

**15:35 Discussion 2: Relationships that Teach: Student, Exoneree, and the World**

*Moderator:* Anne Driscoll, Irish Innocence Project manager

*Discussants:* Julie Marku, wife of prisoner Mark Marku; Katie O'Leary, Student; Uriah Courtney, exoneree; Justin Brooks, California Innocence Project director

16:15 *Discussion*

I have been to a number of Innocence conferences, but this was the first time I had seen the student learning experience acknowledged and honored. I felt that it was important to do this because students do so much of the investigative and research legwork of the project, and are therefore the backbone of the project. I felt it was crucial that their contributions be validated. Additionally, I had witnessed the transformative power of the relationship between prisoner and student and wanted to explore the nature of that relationship and its impact. The response to these two sessions was overwhelmingly positive and many conference delegates specifically mentioned that they had never seen this topic explored at any other conference.

As a result of both the written student assessments and the feedback from the two conference sessions, it seemed prudent to further quantify the impact of prison visits with a detailed survey. The written assessments were powerful, compelling and useful, but I decided to create a survey as a quantitative assessment tool.

I created a survey of ten questions which were intended to gauge the impact of prison visits on the student, the prisoner, and the investigation, as well as assess whether this experience enhanced an understanding and commitment to human rights and social justice. There were twelve respondents and two of the twelve had been on two visits, so there were fourteen responses in total.

The responses indicated an overpowering support for prison visits as a way to increase understanding of human rights and social justice, as nearly 80% of respondents stated prison visits increased their understanding of human rights and social justice to a significant degree or very much. In addition, roughly 96% of respondents said that prison visits increased their commitment to human rights and social justice to a significant degree or very much.

All of the respondents also found that the prison visits helped them to understand the prisoner to a significant degree or very much (100%); roughly 93% indicated the prison visit was a positive experience for the respondent, either to a significant degree or very much; and roughly 93% responded that it was a positive experience for the prisoner, either to a significant degree or very much. 90% indicated the prison visit impacted them emotionally, either significantly or very much, and roughly two-thirds believed that it helped the investigation to a significant degree or very much. Lastly, 100% of respondents felt that the prison visits should be an integral part of the Innocence Project work, either to a significant degree or very much.

**Conclusion**

Only recognized in the early 1990s, the field of wrongful convictions is a new, and evolving, human rights and social justice issue, and the ways in which we inspire and educate students about this issue are also new and continue to develop. I would suggest that one of the most impactful ways that we can teach students about the causes and casualties of wrongful convictions is by offering them a seat – not in a classroom, but rather in a prison visiting room.

# When Innocent People Plead Out: Lessons from the Brian Banks Case

**Justin Brooks**
California Innocence Project, California Western School of Law

In 2002, Brian Banks was a sixteen year old with an amazing life ahead of him. He was a star linebacker at Long Beach Poly, one of the premier high school football schools in the United States. He had verbally committed to playing at USC, one of the best college football teams in the country. Everyone who saw him play believed he was destined for the NFL.

Brian's dreams began to unravel on Monday, July 8, 2002. He was attending summer school when he asked his teacher if he could leave the class and use his cell phone in the hallway. He needed to call a reporter who was covering the football team and wanted Brian's comments. The teacher agreed and gave Brian the attendance sheet to drop off at the principal's office.

On his way to the office, Brian ran into Wanetta Gibson, a fellow student, coming out of the girls' bathroom. They talked for a few minutes and then decided to go to a stairwell commonly known as "The Spot," a place where students went to "make out." They quietly walked by classrooms where classes were going on because "The Spot" was in a building that was used for adult classes and was off limits to the high school students.

When Brian and Wanetta got to the stairwell, they began kissing, hugging, and fondling each other, but the two did not have sex. Shortly thereafter, Brian returned to his class and Wanetta returned to hers. Wanetta's teacher asked why it took so long for Wanetta to go to the bathroom. She shrugged her shoulders and took her seat. According to Wanetta's teacher, nothing about her seemed out of the ordinary; the teacher got upset about the length of time Wanetta was in the bathroom and advised the entire class that he would not be issuing any more bathroom passes.

After this punishment was issued to the class, Wanetta tapped her classmate, Sharell Washington, on the shoulder. Wanetta handed Sharell a piece of paper and said, "Here, read this." According to Sharell, Wanetta did not appear to

be upset and nothing seemed unusual about her demeanor. The note stated that Brian had raped her. Class ended at 12:30 p.m. Wanetta walked to the entrance gate to meet her older sister, Ericka Rhodes. Wanetta told Ericka, "Brian made me have sex with him today." Ericka brought Wanetta to the principal's office where she wrote out a statement claiming that Brian dragged her to the stairwell and raped her. The police were called.

When the police arrived at school, Brian saw them and wondered what was going on. Even after he found out the police were talking to Wanetta and her sister, he still was not concerned. It was only after he was told that the police were looking for him that he decided to skip football practice and go home. Brian told his mother that the police were looking for him. She asked him if he had done anything wrong and he said, "No." It would be the last conversation they would have outside a correctional facility for six years.

Although a rape kit came back negative for his DNA, based on Wanetta's statements, Brian was charged with rape and kidnapping and incarcerated in a juvenile facility. His mother sold her car and house in order to pay a lawyer to defend him. Over the next year, Brian missed his senior year of high school and all of his dreams of playing college football disappeared while he awaited trial. His lawyer presented several deals to him, offered by the prosecution in exchange for pleading guilty. Brian refused them all, consistently stating his innocence.

On the day of trial, July 8, 2003, Brian's lawyer told him she had a deal that he had to take. In exchange for a plea of no-contest, he could get a deal that would possibly lead to probation; the worst-case scenario would be that Brian would spend five years in prison. If he did not take the deal, his lawyer told him he would likely be convicted and sentenced to forty-one years to life. The difference between taking the deal and not taking the deal was life or death. Brian cried and asked if he could talk to his parents who were waiting outside for the trial to begin. The lawyer said, "No, it is your decision and you need to make it." Brian's parents were surprised when he entered the courtroom and entered the plea; they were heartbroken when, instead of probation, he was sentenced to five years in prison.

In 2008, Brian was released and began to struggle with the life of an ex-offender on parole for a sex crime. California passed a new law forcing him and all convicted sex offenders to wear ankle monitors that needed to be charged twice a day. He was prohibited from living near schools or parks and forbidden to go anywhere where children gathered, including the beach. As a convicted sex offender, Brian's life became a series of terrible jobs. He would get offers for good jobs, but they would soon be revoked when the employers discovered his status.

On February 28, 2011, Brian got a strange "friend request" on Facebook from Wanetta, who wanted to let "bygones be bygones." Brian met with her, and she was recorded on video admitting she had lied about the crimes.

**Lessons about the Justice System**

There is much that can be learned from this case. Fundamentally, the most significant lesson is that we have a criminal justice system in which innocent people sometimes plead to crimes that they did not commit. Faced with the risk of a life in prison, Brian's lawyer advised him to plead and he took that advice.

The Supreme Court has recently ruled that our criminal justice system has become a system of plea-bargaining, not a system of trials.[49] In the state system, 94% of cases are resolved by plea. In the federal system, 97% of cases are resolved by plea (Goode, 2012). A very small percentage of cases go to trial, and thus the system has become geared toward pleas.

The United States incarcerates a higher percentage of its citizens in prison than any other country in the world. It also has the largest prison population in the world (ICPR, 2015). The court system has become so overrun with criminal cases that adequate time and resources for trials do not exist. Judges must keep their dockets under control; prosecutors must get through their caseloads, while defense attorneys worry about the great risk of going to trial, knowing that if they lose, their clients will face the maximum sentence, literally being punished for exercising their constitutional right to a trial.

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[49] *Missouri v. Frye* (2012) 132 S.Ct. 1399, 1407.

As sentences have increased over the past few decades, exacerbated by the "War on Drugs," mandatory minimums, three-strikes laws, and the use of the death penalty, the risks of going to trial have increased. The use of plea-bargaining has skyrocketed. In 1980, 19% of all federal defendants made it to trial, meaning they did not take a plea deal, and by 2010, fewer than 3% of all federal defendants went to trial (Raskoff, 2014).

In the case of Brian Banks, the reliance on plea-bargaining resulted in a seventeen-year-old child, moments before a trial that could result in a life in prison, being forced to make an impossible decision. Should he roll the dice – against his lawyer's advice – and pick door number one in the criminal justice casino? Should he risk a life in prison because he knows he is innocent? Should he trust a system that has already locked him up for a year and taken away his senior year of high school and his dreams of playing football at USC? Instead, should he take door number two in the hope that he will get probation and get back to school, maybe even get a second chance at football? If he were to choose this option, the worst-case scenario would be that he would make it out of the situation alive – and out of prison in his twenties. This is a decision no one should have to make, let alone a seventeen-year-old.

Brian's story is not just about him. He represents all of the unlucky men and women whose accusers have not come forward to recant their false accusations. Without the surprising Facebook "friend" request that led to the recantation, Brian would be a convicted sex offender for life. Others in similar situations are sitting in prison or otherwise living a life with a damning criminal record.

**Educational Lessons**

The California Innocence Project is a law school clinic at California Western School of Law in San Diego. We represented Brian on his *habeas* action, seeking his exoneration. The primary mission of our project is to release innocent clients from prison, but as a clinic we also strive to educate our law students through the work on each case. Brian's case provided an outstanding educational vehicle for our students' learning. Beyond learning the shortcomings of our system, particularly the plea-bargaining process,

students were deeply involved in the investigation. They went to the high school where the rape allegedly occurred and mapped out the accuser's story. That investigation revealed inconsistencies in the prosecution's case. Students honed their client management skills when dealing with Brian's frustrations throughout the process. Students tracked down the remaining physical evidence and police reports, and questioned witnesses. They read through all of the legal documents. Finally, they assisted in the litigation process with research and writing.

The type of learning that can occur working on real cases is unparalleled. With traditional classroom teaching, it is fundamentally impossible to duplicate the level of intensity and specificity involved in a real case. When a student is working with a real client on a real problem, they are motivated in a unique and powerful way. Also, when they are working with real documents within real systems, they are truly learning their profession. The payoff for the students comes when we are victorious and a wrongful conviction is reversed. This is far more gratifying and memorable than a mere good grade. There is also a great deal of learning that results when we *fail* to exonerate our clients: the students learn all the same skills that they learn in successes, and they also have their first lessons in dealing with failure as a lawyer.

In Brian's case, there was a happy ending. The District Attorney ultimately conceded his innocence and Brian was exonerated. After his exoneration, he was offered several try-outs with NFL teams. He played for a short time with the Atlanta Falcons, ultimately gaining a great job as an executive with the NFL.

As stated, the most important lesson of Brian's case is that innocent people do sometimes plead guilty. That is an important lesson for the criminal justice system as we look at reforms; but it is also an important lesson for law students, who, as future defense attorneys and prosecutors, must remember this possibility and attempt to prevent future Brian Bankses from having to make such impossible decisions.

# Why Tragedy Matters: Private Action, Public Justice, and the Theater

**Michael Punter**
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Drama is all about people; or rather, it is all about their behavior. When we sit down to watch a play or binge-watch a compelling new series on Netflix, we are involving ourselves in a character's actions and their consequences. Those actions are often transgressive and generate varying levels of conflict. In this respect, the theater is a place where the idea of human rights is tested all the time. Drama requires us to think about situations of high emotion and conflict, both to feel them and to reflect upon them. Often, characters resist state-created laws to achieve a goal that seems more pressing or more profound to them personally. Sometimes, the nature of injustice generates feelings so extreme that we are challenged to find a method of dealing with them.

Western drama is a strange hybrid. Like every ancient performance tradition of which we know, it has its origins in religious practice. The theater of ancient Athens was dedicated to a god: Dionysus. Difficult, shape-shifting, and deeply-connected to intoxication, wildness, and fertility, he presided over the festivals and spaces of the sixth and fifth century BCE. But the most remarkable thing about the theater of this period is the shift from storytelling to showing. The first poet-performer we know of was called Thespis, but we have no records of his work. Was he storytelling in the same traditions as the mysterious Homer, the name we give to the author, group of authors, or tradition of narration that yielded the works that constitute the (relatively recent) beginnings of European literature: *Iliad* and *Odyssey*? The creator of western drama, and therefore its most important practitioner, was the playwright Aeschylus. He, according to tradition, added the second actor on the stage, and created the possibility of relationships played out before our eyes, the possibility of the gods and heroes appearing "live," so to speak. Sophocles added a third actor, giving us, as I constantly remind my students, an odd number, and the possibility of a majority and a minority upon the stage. It is probably not a coincidence that this occurred at the time of the Athenian democracy.

Tragedy, the oldest and most rarefied of all western theater genres, is the focus of this paper. It is one of the three species of drama that Aristotle identified

in the fourth century BCE, along with Comedy and something called the Satyr play (which has nothing to do with the more familiar genre "satire"). Indeed, Aristotle was the first thinker we know about to consider western dramatic performance in such an analytical way in his work *Poetics*. I will return to his thoughts in time, but it is worth considering what others in the space of over two thousand years have considered the primary purpose of tragedy. In *An Apology for Poetry*, Phillip Sidney wrote that tragedy:

> Openeth the greatest wounds and showeth forth the ulcers that are covered with tissue, that maketh kings to be tyrants, and tyrants manifest their tyrannical humours; that with stirring the affects of admiration and commiseration, teacheth the uncertainty of this world, and upon how weak foundations gilden roofs are builded (Jones, 1930:31)

Sidney offers us tragedy as a means of displaying pain, but also as a kind of warning regarding the nature of governments. We could argue that the tragedies of Shakespeare form the vibrant locus for anxieties about both rule and inheritance. For Racine, in his introduction to *Berenice*, the experience of viewing tragedy ought to be enobling and uplifting:

> It is enough that its action shall be great, that its characters shall be heroic, that the passions shall be aroused through it, and that the whole effect shall be that majestic sadness which constitutes the whole pleasure of tragedy (1968 [1668]: 171)

Perhaps most remarkable is the approach taken to tragedy by the German philosopher Friedrich Nietzsche. In his astonishing work of 1872, *The Birth of Tragedy*, he describes the Athenian theater as a focus for contending cultural forces within western civilization, embodied by the divinities Apollo and Dionysus. Apollo is represented by the spoken word that permits the rationalizing of thought and desire. By contrast, Dionysus, who embodies instinctive emotion, is represented by the songs and dances of the Chorus. These forces exist in a state of perpetual tension in the shift from mythic rite to organized narrative and argument. For Nietzsche, the perceived Athenian "Golden Age" was ended by the arrival of Socrates and his incessant questioning which eroded faith in the gods and the mythic dreamtime of ancient heroes and their deeds. Nietzsche's vision is both fascinating and compelling, but it is hard to know to what extent it can be developed using the source materials, the texts

themselves. However, his views continue to challenge us regarding the nature of theater's development. As Peter Burian observes in "Myth into *muthos*: the shaping of tragic plot":

> The opening of tragic discourse to sophistic rhetoric and Socratic rationalism may be seen not as the assault on myth that Nietzsche deplored but rather as a recognition that myth had already lost much of its prestige as a tool for the discovery of truth and the advancement of social dialogue. Once myth is in doubt, tragedy becomes marginal (Burian, 1997: 208)

In the nineteenth century, there was a tendency to view both classical tragedy and the works of Shakespeare as embodying some kind of timeless secret, a truth that had been encoded within them. Even in the twentieth century, with the influence of new movements on literature and performance, scholars still focused upon concepts of "meaning" in texts, rather than seeing them as artifacts representing certain communities at certain times. The great Shakespearean scholar A.C. Bradley, writing in the early twentieth century, was still able to refer to tragedy as "a painful mystery," as though the text itself contained some greater, concealed meaning; that it could somehow be "solved" by the insightful scholar. In the 1960s, Moses Finley applied anthropological theory to Classical Greek culture, placing Athenian tragedy in a more specific context as a community religious celebration with a complex and nuanced relationship to the democracy. For example, Finley's description of the approach of Euripides reflects a growing movement to contextualize the art works within their social and political environment:

> …he, like his predecessors, could probe with astonishing latitude and freedom into the traditional myths and beliefs, and into fresh problems society was throwing up, such as the new Socratic emphasis on reason, or the humanity of slaves, or the responsibilities and corruptions of power. They did so annually under the auspices of the state and Dionysus, before the largest gatherings of men, women and children (and even slaves) ever assembled in Athens (Finley, 1963: 106)

Criticism of the last few decades has continued to explore the texts as cultural products of the communities of fifth-century BCE Athens. Simon Goldhill has written of the Athenian theater as a mechanism for "talking to the city

about the city," presenting the drama and its spoken text as a locus for social struggle. He writes:

> Tragedy as a genre, tragic language, is in this way a fundamental element of the fifth century enlightenment – an exploration of the developing public language of the city, performed before the city. Staging the *agon*, dramatizing the corruption and failures of communication, displaying the conflicts of meaning within the public language of the city, provoke the audience of tragedy towards a recognition of language's powers and dangers, fissures and obligations (Goldhill, 1997: 148)

Edith Hall draws attention to the "multi-vocal" nature of tragedy that allowed different viewpoints to be presented from a variety of different types of characters, including women, foreigners, and slaves. This created a contradictory situation that has helped to sustain tragedy's appeal over time:

> Athenian tragedy's claim to having been a truly democratic art-form is therefore, paradoxically, far greater than the claim to democracy of the Athenian state itself. The tension, even contradiction, between tragedy's egalitarian form and the dominantly hierarchical world-view of its content is the basis of its transhistorical vitality: it is certainly an important reason why it is proving so susceptible to constant political reinterpretation in the theatre of the modern world (Easterling, 1997: 126)

Hall's conclusion is an extremely persuasive one. Within many tragedies of the fifth century BCE, we find paradox enacted within the action of the drama itself. For example, it is surprising to find within the texts of Greek tragedy the high number of occasions in which the one, the minority, is found to be "right" in terms of what might be called "natural justice." Perhaps the best-known example is in the *Antigone* of Sophocles, where the daughter of Oedipus begs her uncle Creon for the right to bury her brother according to custom. However, he is considered a traitor, and so her request is refused. When Creon confronts her, he asks her if she understood that she was violating the laws. Her response is interesting:

> ANTIGONE: What laws? I never heard it was Zeus
> Who made that announcement.
> And it wasn't justice, either. The gods below
> Didn't lay down this law for human use.

And I never thought your announcements
Could give you – a mere human being –
Power to trample the gods' unfailing,
Unwritten laws. These laws weren't made now
Or yesterday. They live for all time,
And no one knows why they came into the light
(Meineck and Woodruff, 2003: 21)

Here, the heroine must break human law in order to enact a greater, older requirement and rite. The consequences of not obeying this deeper law will be far greater than the loss of her own life:

ANTIGONE: But if I let the corpse – my mother's son –
Lie dead, unburied, that would be agony (22)

In *Poetics*, Aristotle was lecturing several decades after the death of Euripides, the last of the three great dramatists whose work we possess. Although he is by no means an eyewitness to the plays of the fifth century BCE, he is closer than any other source we presently have. *Poetics* differentiates between drama and other categories of composition; considers the origins of the respective genres; offers a description of tragedy and comedy and even analyzes the most effective sort of structure and composition. The significance of Aristotle's influence upon medieval thought and the Early Modern and Neoclassical periods means that his work attained greater influence in posterity than it ever had in the ancient world. Many tragedies of the fifth century BCE deviate from the so-called Unities of time, place, and action that are, not altogether accurately, attributed to the philosopher, but that did not prevent Aristotle's views on dramatic construction from becoming widely admired by both artists and scholars. However, the aspect that I wish to focus upon here is Aristotle's views on what tragedy was intended to do, or rather, what type of experience it was expected to put its audience through.

In Book Six of *Poetics*, Aristotle briefly describes the experience of audiences of tragedy: he calls it "catharsis." As he taught, "tragedy is an imitation, not of men but of actions and of life," and catharsis was the response to seeing that action played out. This idea has produced multiple definitions over time, partly because Aristotle does not dwell on the idea or expand it to any great degree. He refers to it in his work *Politics* in relation to music, and the calming

effect that music can have on those suffering emotionally extreme states. As Malcolm Heath has written:

> Catharsis does not purge the emotion, in the sense of getting rid of it, it gets rid of an emotional excess and thus leaves the emotion in a more balanced state, mitigating the tendency to feel it inappropriately (Heath, 1996: xxxix)

Aristotle's philosophy is remarkably different from that of his predecessors and tutors, Socrates and Plato, and possesses a clear focus on the material world before us. He is also consistent in the broad theme of his philosophy: the attainment of "the Golden Mean." In the *Nicomachean Ethics*, Aristotle describes this: "the mean is the point of excellence." In Book Two, he develops the idea further:

> Virtue, then, is a state of character concerned with choice, lying in a mean, i.e. the mean relative to us, this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it (Ross, 1942: 6)

Virtue is not the product of a flash of Platonic insight, but the result of habit, of conditioning oneself to styles of behavior that are consistent and sustainable. To exist within the Mean is not to be average, or never to give in to extremes of emotion (the *Ethics* – significantly in this context – makes it clear that it is right to be angry about injustice, say), but it is to be in control of oneself and not a slave to desire or patterns of behavior that risk your life, or those of your kin and community. In this respect, it is possible to see an analogy, as the Catholic scholar Father Joseph Koterski does, between behavior outside of the Mean and conditions related to addiction. This can take the form of an excessive love of certain substances and habits, but also suggests an insistence on certain modes of behavior that are inflexible and not helpful. In this respect, we might see *Antigone* as the tragedy, not of a defiant young woman, but of Creon, her uncle, who seems addicted to a literalist position regarding the laws of Thebes. If we accept this, then it is not the loss of Antigone's life that is the main source of tragedy, but the suicide of Creon's son Haemon, who cannot live without her.

Is it possible that we can be "purged" of a certain feeling by seeing it enacted? Or is it simply instructive, a warning in theatrical form regarding extreme behavior?

It is the "liveness" of tragedy that is the reason for its success, and perhaps explains in part the criticism and interrogation of models of virtue and beauty that Nietzsche blames for the end of a perceived "Golden Age." Athenians were seeing their own *muthoi*, the gods and heroes of cosmic time or dreamtime in their own profane time. They were sharing a space with gods in the theater, and therefore forced to see the excesses of the most powerful and the responses of their cultural ancestors.

The first word of Homer's *Iliad* is "rage." The Attic Greek word is *menin*. The specific rage is that of Achilles, the greatest hero of the Greek side who has been mistreated by his commander, Agamemnon. His rage leads him to abandon the Greek offensive against Troy for the comforts of his tent. Finally, it is also his rage that leads to the poem's conclusion, as he rejoins the war to avenge the death of his friend Patroclus at the hands of the Trojan prince Hector. Achilles confronts Hector, pursues him and finally stabs him in the throat, killing him. The moving conclusion of *Iliad* dwells on Hector's father Priam's attempt to get his son's body back for proper burial. Extremes of behavior were familiar to the Athenian audience, and in the mythic cycles, behavior ossified into habit. The entire cycle of the Troy narrative depended upon emotional extremity: the world of the ancestors was not a peaceful one. So how did the audience of fifth-century BCE Athens view this activity from their urban setting? *Iliad* warned, of course, of the fall of a city, and the loss of laws and status, of home and hearth, of defeat and exile, that could come from constant conflict. For them, *Iliad* must have contained a strange kind of warning – the fate of their traditional enemy might be their fate, too.

There is a paradox at the heart of *Iliad* that must have been apparent to members of its audience. It is the persistent contrast between the Greeks – never called by that name but by various tribal ones, such as Achaeans, Argives, Daneans, Myrmidons – in their wild, makeshift camp on the shore near Troy, and the civilized, urban Trojans, who return from the battle each day to the structured life of family and its extended and enlarged unit, the polis. For example, Hector returns from the battlefield to his wife Andromache and his son Astyanax. His warlike appearance frightens the child, so he discards his helmet. Hector's subsequent attempt to rejoin the battle is halted by the fact that the baby will not let go of his father's hair. It is, alongside Hector's death, the most moving scene of the epic.

It is a sign of the poem's sophistication that it depicts the Trojan, Asiatic "Other" as something culturally rich, complex, and tender. The Trojans can never be truly wild in warfare – despite almost breaking the Greek wall and burning the ships just before the return of Achilles to the fray – because they must return to "home and hearth" each night. It can be argued that it is freedom from that life, from the complex world of domestic arrangements, which permits the Greeks the power to finally overwhelm and annihilate their settled, urban enemy. This occurs when Achilles, grief-stricken at the death of his friend Patroclus, rejoins the battle and enacts the most terrifying rampage of violence, culminating in what can only be described as war atrocities. In this section, the slaughtered Trojans become numberless and die dishonored. This section culminates in a war with nature itself, as the river – which the hero is clogging with Trojan corpses – rebels against him. This represents the terrible limit of rage, and in the period after Hector's death, we see attempts to prevent similar outbreaks of it by the application of some form of justice. The heroes are admirable, but they also represent the past. Their right to glorious, emotionally-driven vengeance cannot work in the city of the fifth century BCE. Indeed, atavistic behavior like theirs would destroy the human rights of all but the most powerful. The threat to civilization from extremity of behavior is clear.

*Iliad,* and the host of mythic narratives that derive from it, might be viewed as a locus for hopes and anxieties about the city. In the play *Philoctetes*, composed by Sophocles and performed in 409 BCE, the hero, a wounded, poisoned, and abandoned veteran of the war with Troy, describes being without a city as a fate worse than death. It is probably not a coincidence that this play was produced towards the end of Athens's disastrous war with Sparta, a conflict that would deliver the death blow to the city's "Golden Age." In the epic poem *Odyssey*, it is the desire for *nostos* or homecoming that leads the hero Odysseus to endure the loss of his men and ships. It might be argued that the epics and the plays that come from them – the whole body of mythic materials – exist to express and share anxieties about private and public action. There is a constant seeking out of codes and protocols, of processes for checking behavior so that it exists within certain contexts and parameters. In the final book of *Iliad*, the wrath of Achilles subsides in dialogue with the father of his last victim, the Trojan king Priam. A peace accord, of a kind, is finally reached. It is revealing that the first word of Odyssey is "man"; the Attic word is *andra*, and the focus is upon the nature of Odysseus, a man of "many ways," championed by the goddess of strategy, statecraft, and the city: Athene.

There is clear evidence of a process at work in the only complete trilogy of tragedies that we have, *Oresteia* of Aeschylus, presented in 458 BCE. As I have already mentioned, Aeschylus should be seen as the innovator who created western drama by adding an actor and therefore showing the gods and heroes in present time. *Oresteia* contains three plays: *Agamemnon, Libation Bearers* and *Eumenides* ("Kindly Ones"). The Athenian audience would have seen all three plays on one day at the festival of Dionysus in spring. The story concerns the bloody fate of the House of Atreus, beginning with the Greek commander, Agamemnon. He returns home victorious from the war with a number of Trojan prizes, among them Cassandra – a princess cursed to see the future but never to be believed. Far from enjoying the glorious *nostos* he hoped to receive, Agamemnon is met by his wife Clytemnestra who has plotted for ten years to avenge the death of their daughter, sacrificed by Agamemnon to gain a following wind for the Greek fleet. Clytemnestra murders Agamemnon and then welcomes her lover, Aigisthus, to the house. The terrified Chorus hear of the killing, and of the murder of Cassandra. Having satiated her own personal rage, Clytemnestra calls for an end to violence, appealing to the incredulous Chorus of aged citizens:

> CLYTEMNESTRA: Forget us.
> Find some other blood-gutted
> Family tree of murder –
> Go and perform your strange dance
> Of justice in their branches.
> Leave us.
> I ask for nothing,
> Now the killing is over –
> Only to be left in peace
> (Hughes, 1999: 79)

If *Oresteia* teaches us anything, it is that extremity breeds extremity. Powerful feelings cannot be commanded to stop, at least not by mortals. They require some sort of process if they are to be neutralized.

The second and third plays of the cycle develop the theme of private justice and its consequences. In *Libation Bearers*, Clytemnestra is troubled by dreams and sends a group of slaves with libations to Agamemnon's grave. She hopes

to placate his furious spirit. At the grave, her daughter Electra waits for news of her exiled brother, Orestes. Using the device of a lock of hair and a footprint – a trope later mocked by Euripides – she learns that her brother is alive. He arrives with their cousin Pylades and they plan vengeance. Aigisthus is quickly trapped and dispatched, but it is the confrontation between Orestes and his mother that the audience would have most wanted to see. Faced with her exposed breast, Orestes understandably hesitates, but urged on by Pylades – a near-silent character up to this point – Orestes completes his mission; but this is not performed without terrible cost. At the end of the play, he initiates the dramatic action of the final play of the trilogy by apparently seeing the Erinyes or Furies, a host of vampire-like creatures who demand blood for blood. Ted Hughes's version of the play expresses this beautifully:

> ORESTES: The earth is teeming
> With these creatures –
> Apollo, you did not warn me!
> They are climbing out of the earth,
> Out of their burrows in old blood.
> Eyes like weeping ulcers,
> Mouths like fetid wounds.
> Their whips whistle and crack
> (142)

At this point, only Orestes can see the Furies, but we are being prepared for rage – the emotion that began the entire cycle of the Trojan War – to be made physically manifest, as though it were being summoned by a séance. In *Iliad*, the muse is invoked to sing of this subject, but in the work of Aeschylus, rage, in twelve terrifying manifestations, rises from blood to create an opponent far more terrifying than the armor-clad, urban enemies of Troy. It is what the theater can do over epic storytelling: it can actually *show* us.

The final play, *Eumenides*, is perhaps the most extraordinary. The location of the play is telling: Orestes, on the run from Delphi and under the protection of Apollo, ends up hiding in a temple in Athens. So, the final act of this bloody *nostos* and its consequences is staged in the city itself, as though we have come here to solve the problem of private grievance and revenge once and for all. Now the audience of the play has returned "home" too. In Athens, Orestes falls under the protection of the goddess of the city herself,

the goddess Athene. She creates the first trial on the western stage, pitting twelve ordinary Athenians as jury, against the Chorus of Furies, to determine the fate of Orestes.

> ATHENE: Herald – assemble the city:
> Let one blast of your trumpet open heaven
> And shake all Athens to its feet.
> All jurors and citizens, you people of Athens,
> Assemble in silence. Acknowledge what I have created
> To serve men,
> To establish justice now, and throughout all time to come
> (171)

As John Burgess has written:

> …the widening of the decision-making powers, so that the responsibility belongs not to an individual but to a group, is an important step in the final settlement. It is important too that justice is something that gods and humans make together (Burgess, 2005: 53)

A solution must be achieved via a process that is not simply arbitrary, that aligns with the principle of just legal process, with some rudimentary notion of what we now recognize as a core element of human rights. The city of Athene (goddess of statecraft) provides the location for the means of dealing with extreme behavior and transforming it from its corrosive nature into something else. A debate ensues with the god Apollo called to give evidence. This action replaces the bloody *quid-pro-quo* that constitutes the dramatic action of the trilogy up until this point. Athene addresses the seething Furies:

> ATHENE: The world hurled in anger
> Shall be caught
> In a net of gentle words,
> Words of quiet strength.
> The angry mouth shall be given a full hearing.
> I understand your fury.
> But the vendetta cannot end,
> The bloody weapon cannot be set aside.
> Till all understand it
> (Hughes: 185)

The Furies respond, insisting that nothing can cheat them of what they have been promised: the opportunity to torment Orestes for all time. Athene's response seems to refer directly back to the mythic cycle of the Trojan War and to the habit of endless vendettas that the city, her city, cannot now countenance for the sake of its own longevity:

> ATHENE: Do not madden our young men
> With the hiss of the whetstone
> And the dream of the plunging blade.
> Do not swell their pride
> With the dream of purging themselves
> Of all their bloody violence
> In the rapture of battle
> (187)

To prevent the Furies running riot in Athens, the goddess effects an extraordinary transformation, ending the Furies' life of perpetual pursuit and giving them settlement in a cave beneath the city as *Eumenides* – Kindly Ones. For this, they offer a prayer of protection over the city with a very specific focus:

> CHORUS: Never let civil war, the most
> Malignant of all misunderstandings,
> Divide Athens.
> There is no hope nor future
> For a land
> Whose mind is split
> Into two, and where each half
> Strives only to destroy the other.
> Give Athens a single mind, a whole mind,
> As a marriage
> Gives to two strangers
> One child
> (192)

The trilogy resolves itself, as *Iliad* does, by returning to a key image: the parents and the child. In *Iliad*, the image is of a parent begging to be reunited with a child, the child in question being the dead Trojan hero, Hector. In *Eumenides*, the image of contented parenthood is a simile for a peaceful, urban political

body. It is hard to get away from the Aristotelian model, created a century later in philosophy that was powerfully influenced by the life of the drama. In this model, a city exists within the Golden Mean when its people accept due process, the act of listening and the act of speaking, respectfully observed. *Oresteia* dramatizes the means by which private justice can be transformed into a sustainable public model.

Modern theater, in its best manifestations, is informed by its ancient parent. At its best, it permits the demonstration of extremity and transgression, the pushing of boundaries and the challenging of authority. In this sense, it is always more free than the State that is permitting its production, since it allows the dramatization of multiple voices. As in the Athenian version, it is the process of expression that is so important. It challenges the need for extreme responses and the idea of private justice, and offers instead the public act of speaking and of being heard, the journey of due process. The human rights of the populace are thus protected and the risk of extremity from injustice is reduced.

# 05/

# APPENDIX

The Universal Declaration
of Human Rights

# Appendix

**Universal Declaration of Human Rights**
Adopted by the United Nations General Assembly on December 10, 1948

***Preamble***
*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,*

*Now, therefore, The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.*

***Article 1***
*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

***Article 2***

*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.*

***Article 3***

*Everyone has the right to life, liberty and security of person.*

***Article 4***

*No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.*

***Article 5***

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

***Article 6***

*Everyone has the right to recognition everywhere as a person before the law.*

***Article 7***

*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

***Article 8***

*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

***Article 9***

*No one shall be subjected to arbitrary arrest, detention or exile.*

**Article 10**

*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

***Article 11***

*1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.*

*2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.*

***Article 12***

*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

***Article 13***

*1. Everyone has the right to freedom of movement and residence within the borders of each State.*

*2. Everyone has the right to leave any country, including his own, and to return to his country.*

***Article 14***

*1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

*2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.*

***Article 15***

*1. Everyone has the right to a nationality.*

*2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.*

***Article 16***

*1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*

*2. Marriage shall be entered into only with the free and full consent of the intending spouses.*

*3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*

***Article 17***

*1. Everyone has the right to own property alone as well as in association with others.*

*2. No one shall be arbitrarily deprived of his property.*

***Article 18***

*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*

***Article 19***

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

***Article 20***

*1. Everyone has the right to freedom of peaceful assembly and association.*

*2. No one may be compelled to belong to an association.*

***Article 21***

*1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*

*2. Everyone has the right to equal access to public service in his country.*

*3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

***Article 22***

*Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.*

***Article 23***

*1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*

*2. Everyone, without any discrimination, has the right to equal pay for equal work.*

*3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*

*4. Everyone has the right to form and to join trade unions for the protection of his interests.*

***Article 24***

*Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.*

***Article 25***

*1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

*2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.*

***Article 26***

*1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*

*2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*

*3. Parents have a prior right to choose the kind of education that shall be given to their children.*

***Article 27***

*1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.*

*2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*

***Article 28***

*Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.*

***Article 29***

*1. Everyone has duties to the community in which alone the free and full development of his personality is possible.*

*2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*

*3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.*

***Article 30***

*Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.*

***Signatories:***

*Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay. Peru, Philippines, Siam, Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela.*

***Abstentions:***

*Belorussian Soviet Socialist Republic (SSR), Czechoslovakia, Poland, Saudi Arabia, South Africa, the Soviet Union, the Ukrainian SSR, and Yugoslavia.*

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