

UNIVERSAL HUMAN RIGHTS

IN THEORY AND PRACTICE

THIRD
EDITION

JACK DONNELLY

ALSO BY THE AUTHOR

International Human Rights, 4th ed. (2012)

Realism and International Relations (2000)

The Concept of Human Rights (1985)

Universal Human Rights in Theory and Practice

THIRD EDITION

Jack Donnelly

CORNELL UNIVERSITY PRESS | ITHACA AND LONDON

Copyright © 2013 by Cornell University

All rights reserved. Except for brief quotations in a review, this book, or parts thereof, must not be reproduced in any form without permission in writing from the publisher. For information, address Cornell University Press, Sage House, 512 East State Street, Ithaca, New York 14850.

First published 2013 by Cornell University Press
First printing, Cornell Paperbacks, 2013

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Donnelly, Jack.

Universal human rights in theory and practice / Jack Donnelly. — 3rd ed.
p. cm.

Includes bibliographical references and index.

ISBN 978-0-8014-5095-2 (cloth : alk. paper)

ISBN 978-0-8014-7770-6 (pbk. : alk. paper)

1. Civil rights. 2. Human rights. 3. Cultural relativism. I. Title.

JC571.D755 2013

323—dc23 2012039604

Cornell University Press strives to use environmentally responsible suppliers and materials to the fullest extent possible in the publishing of its books. Such materials include vegetable-based, low-VOC inks and acid-free papers that are recycled, totally chlorine-free, or partly composed of nonwood fibers. For further information, visit our website at www.cornellpress.cornell.edu.

Cloth printing 10 9 8 7 6 5 4 3 2 1
Paperback printing 10 9 8 7 6 5 4 3 2 1

Contents

Preface to the Third Edition	ix
Introduction	1
 Part I. Toward a Theory of Human Rights	
1. The Concept of Human Rights	7
1. How Rights Work	7
2. Special Features of Human Rights	10
3. Human Nature and Human Rights	13
4. Human Rights and Related Practices	17
5. Analytic and Substantive Theories	17
6. The Failure of Foundational Appeals	19
7. Coping with Contentious Foundations	21
2. The Universal Declaration Model	24
1. The Universal Declaration	24
2. The Universal Declaration Model	26
3. Human Dignity and Human Rights	28
4. Individual Rights	29
5. Interdependence and Indivisibility	31
6. The State and International Human Rights	32
7. Respecting, Protecting, and Providing Human Rights	36
8. Realizing Human Rights and Human Dignity	39
3. Economic Rights and Group Rights	40
1. The Status of Economic and Social Rights	40
2. Group Rights and Human Rights	45

4. Equal Concern and Respect	55
1. Hegemony and Settled Norms	55
2. An Overlapping Consensus on International Human Rights	57
3. Moral Theory, Political Theory, and Human Rights	60
4. Equal Concern and Respect	62
5. Toward a Liberal Theory of Human Rights	65
6. Consensus: Overlapping but Bounded	69

Part II. The Universality and Relativity of Human Rights

5. A Brief History of Human Rights	75
1. Politics and Justice in the Premodern Non-Western World	75
2. The Premodern West	81
3. The Modern Invention of Human Rights	86
4. The American and French Revolutions	88
5. Approaching the Universal Declaration	90
6. Expanding the Subjects and Substance of Human Rights	91
6. The Relative Universality of Human Rights	93
1. “Universal” and “Relative”	93
2. The Universality of Internationally Recognized Human Rights	94
3. Three Levels of Universality and Particularity	99
4. Relative Universality: A Multidimensional Perspective	103
7. Universality in a World of Particularities	106
1. Culture and the Relativity of Human Rights	106
2. Advocating Universality in a World of Particularities	112

Part III. Human Rights and Human Dignity

8. Dignity: Particularistic and Universalistic Conceptions in the West	121
1. <i>Dignitas</i> : The Roman Roots of Dignity	121
2. Biblical Conceptions: <i>Kavod</i> and <i>Imago Dei</i>	124
3. Kant	126
4. Rights and Dignity in the West	129
5. Dignity and the Foundations of Human Rights	130
9. Humanity, Dignity, and Politics in Confucian China	133
1. Cosmology and Ethics	133
2. Confucians and the Early Empires	139

3. “Neo-Confucianism” and Song Imperial Rule	142
4. Twentieth-Century Encounters with “Rights”	144
5. Human Rights and Asian Values	146
10. Humans and Society in Hindu South Asia	147
1. Cosmology	148
2. Social Philosophy	148
3. Caste	150
4. Hindu Universalism	153
5. Opposition to Caste Discrimination	154
6. Hinduism and Human Rights in Contemporary India	156

Part IV. Human Rights and International Action

11. International Human Rights Regimes	161
1. The Global Human Rights Regime	161
2. Political Foundations of the Global Regime	170
3. Regional Human Rights Regimes	172
4. Single-Issue Human Rights Regimes	179
5. Assessing Multilateral Human Rights Mechanisms	190
6. The Evolution of Human Rights Regimes	192
12. Human Rights and Foreign Policy	197
1. Human Rights and the National Interest	197
2. International Human Rights and National Identity	199
3. Means and Mechanisms of Bilateral Action	201
4. The Aims of Human Rights Policy	204
5. Foreign Policy and Human Rights Policy	205
6. The Limits of International Action	208
Appendix: Arguments against International Human Rights Policies	210

Part V. Contemporary Issues

13. Human Rights, Democracy, and Development	217
1. The Contemporary Language of Legitimacy	218
2. Defining Democracy	220
3. Democracy and Human Rights	222
4. Defining Development	225
5. Development-Rights Tradeoffs	227
6. Development and Civil and Political Rights	230
7. Markets and Economic and Social Rights	231
8. The Liberal Democratic Welfare State	233

14. The West and Economic and Social Rights	235
1. The Universal Declaration of Human Rights	236
2. Domestic Western Practice	238
3. The International Human Rights Covenants	241
4. Functional and Regional Organizations	243
5. Further Evidence of Western Support	248
6. Understanding the Sources of the Myth	250
7. Why Does It Matter?	252
15. Humanitarian Intervention against Genocide	254
1. Intervention and International Law	254
2. Humanitarian Intervention and International Law	255
3. The Moral Standing of the State	257
4. Politics, Partisanship, and International Order	259
5. Changing Conceptions of Security and Sovereignty	261
6. Justifying the Anti-genocide Norm	263
7. Changing Legal Practices	264
8. "Justifying" Humanitarian Intervention	265
9. Mixed Motives and Consistency	266
10. Politics and the Authority to Intervene	268
11. Judging the Kosovo Intervention	269
12. Darfur and the Future of Humanitarian Intervention	271
16. Nondiscrimination for All: The Case of Sexual Minorities	274
1. The Right to Nondiscrimination	274
2. Nondiscrimination and Political Struggle	276
3. Discrimination against Sexual Minorities	277
4. Nature, (Im)morality, and Public Morals	280
5. Strategies for Inclusion	285
6. Paths of Incremental Change	289
References	293
Index	317

Preface to the Third Edition

Pierre Vidal-Naquet, one of the great classicists of our time (although perhaps better known for his human rights work as a historian of French crimes during the Algerian war), observed that “for reasons that are my own and are probably not too ‘rational,’ in Greek studies the article is much easier for me than the book” (Vidal-Naquet 1986: xv). Much the same is true of my writings on human rights, which “naturally” seem to be more or less self-contained but interconnected units of about eight thousand words. The first edition of *Universal Human Rights in Theory and Practice* represented the coalescence of several essays written in the early and mid-1980s that were linked by their defense of a conception of “universal” human rights that acknowledges and incorporates the obvious historical contingency of both the idea of human rights and its dominant international expressions. The second edition represented both a continuation of the process of essay accumulation and a response to the aging of the first edition. This third edition is more of the same.

The first edition, which I delivered to the press in the fall of 1988, bore the unmistakable stamp of the Cold War. The second edition, delivered at the end of 2001, reflected its post-Cold War context. This edition, delivered in the middle of 2012, reflects, I hope, a more nuanced engagement with globalization and the special context it provides for discussions of universality. And this changing context is an important part of the book. Although primarily theoretical, it engages, both directly and indirectly, issues of immediate political significance.

I have deleted all or most of four chapters, added five that are largely or wholly new, radically reorganized the material in three others, and updated and refined most of the rest. The result is a third edition that is about half new. It is, however, a genuine third edition (rather than a fundamentally new book), with the same substantive focus, the same basic arguments, a similar

structure, and much the same feel. Those who liked the first two editions will, I think, find this a rejuvenated version of the book they have known. Those who did not like them will, I am sure, find fresh provocations. With luck, this edition may attract some readers not familiar with the earlier editions.

Permission to reprint material that has appeared previously, in different form, has been granted by The Johns Hopkins University Press, which gave permission to reprint here as chapter 13 a revised version of "Human Rights, Democracy, and Development," *Human Rights Quarterly* 21 (August 1999), and MIT Press, which gave permission to reprint as chapter 12 a much shortened version of "International Human Rights: A Regime Analysis," *International Organization* 40 (Summer 1986).

This book has grown, almost organically, over the course of thirty years. Like most authors, I have accumulated numerous debts in writing (and rewriting) it. I am afraid, though, that I simply cannot adequately acknowledge them. Rather than rely on faulty memory and even worse record keeping, let me simply say thank you (you know who you are).

It is much easier to acknowledge my personal debts—to my wife Katy and son Kurosh. The first edition of this book was part of my introduction to Katy. The second edition appeared just when she arrived in this country. She has lived with me through the production of the third edition, without question the best decade of my life. And with her and our son—who although only fifteen months old has long since figured out that computers unfairly interrupt the essential work of paying attention to him—I am looking forward to the time between now and the fourth edition.

Introduction

This book aims to explicate and defend an account of human rights as universal rights. I do not, however, argue that human rights are timeless, unchanging, or absolute. Quite the contrary, I show that any list or conception of human rights—and the idea of human rights itself—is historically specific and contingent. Nonetheless, I argue that the particularity of human rights is compatible with a conception of human rights as universal rights.

The book is divided into five parts. Part I sketches the outline of a theory of human rights. Chapter 1 begins analytically, looking at the character of rights in general and human rights in particular. Chapter 2 then provides a largely descriptive sketch of the dominant contemporary understanding of human rights. Chapter 3 considers the two principal theoretical challenges to this dominant understanding, namely, the status of economic and social rights and the near complete absence of group human rights. Chapter 4 then offers a liberal, substantive justification of this model.

Part II turns to the issue of the universality and relativity of human rights. Rather than see this as an either-or choice, or even a matter of degree, I argue in chapter 6 that in some important senses of the term “human rights” these rights are universal but that in other, no-less-important senses they are not. I also argue that in some important senses of the term “human rights” these rights are relative, but in other, no-less-important senses they are not. These arguments build not only on the theory outlined in part I but also on chapter 5, which demonstrates that ideas and practices of human rights, in the Western and non-Western worlds alike, are an entirely modern (and in many ways a twentieth-century) phenomenon. Chapter 7 then explores some of the implications of this understanding, focusing on the issue of responsible advocacy of universal human rights in a world of particularity.

Part III continues the discussion of the historical particularity of human rights in the context of the foundational claim in contemporary international

human rights law that human rights derive from the inherent dignity of the human person. Chapter 8 shows that in the West prior to the late eighteenth century, “dignity,” rather than being a term of universalistic inclusion, was a particularistic term of hierarchical exclusion; only a small portion of the population was seen as having dignity. The contemporary notion of universal human rights, in other words, rests on a radical democratization of the notion of dignity, seen as an inherent attribute of all human beings rather than the achievement of a small elite. Chapters 9 and 10 develop similar arguments for Confucian China and Hindu India.

Part IV turns to the international politics of human rights. Chapter 11 provides an extended survey of multilateral human rights regimes. Chapter 12 considers bilateral foreign policy.

Part V concludes the volume by examining four contemporary areas of political controversy: the relationship between human rights, development, and democracy; Western attitudes toward economic and social rights; humanitarian intervention; and discrimination against homosexuals. In each case I try to show that a clear theoretical grasp of human rights and the particular character of their universality can make an important contribution to ongoing national and international policy debates.

Two general themes merit emphasis here. The first is methodological: the necessarily multidisciplinary character of the study of human rights. The second is more substantive: the interaction of theory and practice.

Consider the range of issues covered by the Universal Declaration of Human Rights, which recognizes personal rights to life, nationality, recognition before the law, protection against torture, and protection against discrimination on such bases as race and sex; legal rights to a fair trial, the presumption of innocence, and protections against *ex post facto* laws, arbitrary arrest, detention or exile, and arbitrary interference with one’s family, home, or reputation; a comparable variety of civil liberties and political rights; subsistence rights to food and health care; economic rights to work, rest and leisure, and social security; social rights to education and protection of the family; and the right to participate in the cultural life of the community. A comprehensive account of these rights would require that we combine, at minimum, the perspectives of law, political science, economics, and sociology—plus philosophy, if we want to understand the conceptual foundations of human rights and the justifications for this particular list.

The study of human rights is an inherently multidisciplinary enterprise. One of my principal aims is to take seriously this often stated but rarely heeded methodological dictum. To do justice to the scope and complexities of human rights, and to increase understanding of human rights, material and perspectives from various disciplines and subfields are offered. Within my own discipline of political science, I draw principally from the subfields

of political theory and international relations. I also draw heavily on work in philosophy, history, and international law. The result, I hope, concretely illustrates the fruitfulness, even necessity, of approaching human rights issues without regard to conventional disciplinary boundaries.

The importance of the interaction of theory and practice is especially striking when we consider the practical implications of the theoretical arguments of relativism considered in part II. The way in which we think about a problem does not determine how we act. It may, however, influence behavior. The way problems are conceptualized may also be important for justifying actions and policies. For example, if it can be established that the sacrifice of human rights is not an imperative of development, but merely a convenience for those who control development policy (or even simply a cover for their self-enrichment), then repressive regimes are deprived of one important defense of their human rights violations.

Clear thinking about human rights is not the key to the struggle to implement them. It may not even be essential to successful political action on their behalf. In fact, such a utopian belief in the power of ideas is itself a dangerous impediment to effective political action. Nonetheless, conceptual clarity, the fruit of sound theory, can facilitate action. At the very least it can help to unmask the arguments of dictators and their allies.

This book thus aspires not merely to analyze the interaction of theory and practice but also to contribute in some small way to improving practice. Such a hope underlies, and perhaps even justifies, not only this book but also much of the scholarly literature on human rights.