

This article was downloaded by:[University of Westminster]
[University of Westminster]

On: 28 May 2007

Access Details: [subscription number 768378226]

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954

Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



The International Journal of Human Rights

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t713635869>

Universal Ethics and Elite Politics: The Limits of Normative Human Rights Theory

D. Chandler

To cite this Article: Chandler, D. , 'Universal Ethics and Elite Politics: The Limits of Normative Human Rights Theory', The International Journal of Human Rights, 5:4, 72 - 89

To link to this article: DOI: 10.1080/714003735

URL: <http://dx.doi.org/10.1080/714003735>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article maybe used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

© Taylor and Francis 2007

Universal Ethics and Elite Politics: The Limits of Normative Human Rights Theory

DAVID CHANDLER

This article draws out the strengths and weaknesses of normative international relations theory, which places human rights at the centre of a critique of international society. The attractive and radical nature of the critique of international society, based on the 'human wrongs' committed or acquiesced in by governments and international bodies, is weighed against the conceptual difficulties involved in replacing the classical liberal rights subject with a new universal subject. These issues are discussed with particular regard to the problems confronted in defining the substance of universal rights, their conceptual and theoretical justification, possible institutional alternatives to the existing international system and the crucial question of agency. The article highlights why the radical nature of normative theorising tends to establish rights independently of, or in inverse relationship to, the capacity of rights-holders and the problematic consequences of this both in theory and practice. It is suggested that it is this gap between claim and capacity which inevitably leads to a more critical approach to democratic mechanisms of decision-making, and to the political sphere itself, while privileging new forms of 'ethical' elite paternalism manifested in new Western-dominated international regimes of human rights protection and implementation.

Among international relations commentators today there is a strong consensus of support for the concept of universal human rights as a guide to ethical international policy-making. Since the end of the Cold War, there has been a dramatic shift in the emphasis of analysis in the international relations field, away from the realist study of power relations and towards a focus on normative human rights theory. This focus has been welcomed for bringing morality into the analysis of international relations. Its advocates argue that in an increasingly globalised world, we need universal standards that are based on the idea that we are human beings first and citizens second. Instead of rights

David Chandler, Leeds Metropolitan University

The International Journal of Human Rights, Vol.5, No.4 (Winter 2001) pp.72-89
PUBLISHED BY FRANK CASS, LONDON

being granted by an accident of birth, depending on which state we live in, human rights should transcend and subordinate national governments.

Normative theory can be broadly defined as covering: 'all political theorising of a prescriptive or recommendatory kind: that is to say, all theory-making concerned with what ought to be'.¹ The consensus on the need for the development of normative theory has developed in response to the 'realism' or *realpolitik* of the Cold War era, in which the focus was on power politics and there was little room for moral precepts in the understanding of the world. Philip Allott, for example, argues that traditional international relations theory is based on Machiavellism, 'the overriding of general moral duty by *raison d'etat*', a paradoxical 'morality of immorality'.² For Allott, this privileging of the political sphere over the ethical meant that international relations theory tended to be innately conservative and uncritical:

Machiavellism was...a calculated negation of a long tradition which conceived of values that transcend the power of even the holders of the highest forms of social power. Those ideas – especially ideas of justice and natural law, but also all those philosophies which speak of 'the good' or 'the good life' – were transcendental and aspirational and critical in character; that is to say they were conceived of as an *ideal* which could not be overridden or even abridged by the merely *actual*, and in relation to which the actual should be oriented and would be judged. The ideal makes possible a morality of society.³

Normative theory starts from the identification of certain moral precepts, the values which should be upheld by institutions or actors, and then submits institutions to critique in so far as they fail to match the normative ideas. In contrast to realist approaches to politics and international relations that have been accused of justifying the status quo, normative theory sets out a radical agenda of criticism. Ken Booth asserts that the narrow focus on the political sphere of state interests and inter-state rivalry in international relations theory has become a barrier to developing new approaches which can address the problems of the international arena: 'What is needed must have *moral* at its centre because the fundamental questions of how we might and can live together concern values, not instrumental rationality.'⁴ He argues:

To my mind the twenty-first will be the century of ethics, and global ethics at that. What I would like to see is a shift in the focus of the study of international relations from accumulating

knowledge about 'relations between states' (what might be called the 'dismal science' of Cold War international relations) to thinking about ethics on a global scale.⁵

Andrew Linklater similarly argues that international relations theory needs to develop a 'bolder moral standpoint'.⁶ The moral standpoint chosen by the majority of normative theorists is that of human rights and human wrongs:

How can we envisage greater attentiveness to claims advanced to mitigate or eliminate human wrongs?... One response is by way of reorienting inquiry into the character of world politics, injecting moral purpose at the centre of our evaluative procedures; international relations is a social construction, and its normative emptiness is not a necessity.⁷

David Beetham breaks down the complex activity of normative theory into a number of distinct elements.⁸ These elements form the structure of this article, drawing out the strengths and weaknesses of the theoretical attempts to place human rights at the centre of a critique of international society. Firstly, the analytical or conceptual component will be addressed, the meaning of universal human rights and the criteria for being able to tell whether or not these have been achieved in practice. Secondly, the justificatory component will be considered, considering why human rights should form the basis of an understanding of the international sphere. Thirdly, the critical aspect, considering the nature of the normative critique of the existing international order, and finally, the question of agency, the social or political agents which are envisaged as acting as the bearers of these normative ideas, will be addressed.

WHAT ARE UNIVERSAL HUMAN RIGHTS?

It is generally accepted that the modern human rights movement was born during the Second World War. American writers usually focus on President Franklin D. Roosevelt's famous 'Four Freedoms' speech of 1941, while British commentators often cite H. G. Wells' 1940 publication *On the Rights of Man*. These early declarations of support for 'essential liberties and freedoms' maintained their cohering importance at the end of the war as the cornerstones of a new global order. This normative framework was intentionally abstract, as the new international order shaped by the leading world powers was still fractured by a division into sovereign states. All the leading powers were keen to defend the freedoms of national sovereignty for themselves as

well as to construct an international framework based on the nation-state.⁹

As upheld in the 1948 UN Universal Declaration of Human Rights, these rights could be claimed or aspired to with either market or state-regulated economies and abstracted from the political questions of what societies' priorities should be. This substantial ground of agreement could be achieved as the UN did not claim to be describing rights that were universally recognised in every state, nor did it attempt to enact these rights within universal law. Human rights were held to exist, not as legal rights but as universal moral rights. As Louis Henkin stressed:

When international law speaks of 'human rights,' it does not refer to, establish, or recognise them as international legal rights in the international legal system. By establishing interstate rights and duties in regard to 'human rights,' international law indicates its adherence to the morality and moral values that underlie them and strengthens the consensus in regard to that morality...¹⁰

Prior to the 1990s, there was little concern with developing normative human rights theory and little demand for any separate theoretical defence for human rights as distinct from political and civil rights. In the West, human rights concerns were seen to be largely synonymous with liberal democracy and the free market, highlighted in the ideological struggle against Cold War opponents, the Soviet Union and the states within its sphere of influence in Africa and Latin America. The leading Western states prioritised rights in the political sphere, civil and democratic rights, on the basis that these rights were of a qualitatively different standing to economic and social claims. The reluctance of major Western powers to go beyond abstract moral commitments to economic and social rights led to the establishment of two separate UN committees in the 1950s. These produced two separate international covenants in 1966, one on civil and political rights, and the other dealing with economic, social and cultural rights. The opposition of leading Western states to rights in the economic and social sphere was demonstrated in 1986 when the UN General Assembly adopted the Declaration on the Right to Development and the United States, Britain, Germany and Japan either voted against or abstained. This approach was also reflected in the human rights NGO community; Human Rights Watch, for example, did not abandon its long-standing opposition to the advocacy of economic and social rights until September 1996.¹¹

During the 1990s human rights have been reassessed through a critique of the centrality of political rights, which had been prioritised during the Cold War years. The UN Secretary-General Kofi Annan,

writing in the *Harvard Human Rights* journal, argues: 'Civil, economic, cultural, political, and social rights are essential for harmonious relations among individuals, groups, and nations and are universal, indivisible, interdependent and interrelated.'¹² Henry Shue similarly asserts that once one basic human right has been accepted, that necessarily implies further rights to security, subsistence and liberty to ensure that it is effectively implemented.¹³ David Beetham suggests that while civil and political rights are central to democracy, their acceptance implies the need for economic and social rights, which are necessary for civil and political equality, and also cultural rights, which are necessary for equality of citizenship.¹⁴ In this respect all rights, whether politically derived or morally grounded, are self-standing and equally important because they all contribute to the satisfaction of basic human needs.

While the advocates of human rights agree that formal political rights are not enough on their own, there is very little agreement on what the content of universal human rights should be. Jack Donnelly argues that there is 'nothing fixed or inevitable' about the list of rights.¹⁵ This is reinforced by Will Kymlicka and other rights theorists who suggest that the basic right to well being and quality of life cannot be determined on the basis of universal external standards. For these commentators, it is also necessary for needs to be assessed 'from the point of view of the person living it'.¹⁶ The content of human rights is then only limited by the degree of perceived human wrong, which it is necessary to abolish in order to guarantee human dignity to all. This depends on the level of economic, social and cultural change human rights advocates feel is essential to reach the goal of a society which meets human needs. David Beetham, for example, does not quite go so far as to argue for complete economic levelling but is nevertheless determined that human rights should go beyond guaranteed access to the necessities of life, such as means of subsistence, shelter, clean water, sanitation and basic health care, to include education and also the right to work.¹⁷

Many human rights advocates accept that there is little possibility of intellectual agreement on what constitutes human rights. Nevertheless, they make a powerful case for the possibility of moral agreement on human wrongs. Mary Midgley feels that 'whatever doubts there may be about minor moral questions and whatever respect each culture may owe its neighbours, there are some things that should not be done to anybody anywhere'.¹⁸ For Ken Booth, the meaning or content of universal human rights can only be drawn out by the focus on 'human wrongs':

What finally binds all this together and gives a firm anchorage for universal human rights is the universality of human wrongs.

Human wrongs are everywhere; all societies find it easier to recognise and agree upon what constitutes wrongs elsewhere than they do rights; wrongs are universal in a way rights are not; and a concentration on wrongs shifts subjectivity to the victims by emphasising a bottom-up conception of world politics.¹⁹

It is through this emphasis on 'human wrongs' that the redefinition of rights away from the narrow focus on the political sphere acquires a radical edge. Because the freedoms of the political and public sphere, the right to freely trade, vote, associate, speak, and so forth, are negative or value-neutral ones, they lack positive content. These rights do not establish how people should use their freedoms. For the advocates of human rights, the lack of content of state-based political rights is problematic, in that the sphere of freedom necessarily provides no guarantees of ends or outcomes.²⁰ For example, constitutional law does not specify the content of government decisions, only how they should be made. There is no guarantee that an elected government will not enact policies, which may make some people worse off or possibly harm the environment.

The content of universal human rights is concerned with making up for the perceived deficiencies of narrowly political rights. There is a human rights consensus that traditional democratic rights to civil and political freedoms are no longer, or never have been, adequate to safeguard the public or individual 'good'. The essence of human rights is the ring-fencing or protection of certain 'rights' that are too important to be left without guarantee. This process of 'ring-fencing' certain policy outcomes or objectives, which stand independently of the political process, has, as John Gentry notes, led to a focus on the assurance of outcomes rather than democratic processes.²¹ The following section considers the justification for this radical critique of the centrality of political competition and democratic policy-making.

JUSTIFICATIONS FOR TRANSCENDENTAL AND FOR POLITICAL RIGHTS

Initially it would appear that there is little justification necessary to uphold the importance of universal human rights. Human rights are commonly understood, literally, as the rights we have because we are human and from this flows their universality. This approach seems to be the one taken in the major international treaties and statements which are the founding documents for human rights campaigners. The Universal Declaration, the UN Covenants and the Vienna Declaration only provide a 'thin' answer to the basic conceptual and theoretical

justification for human rights.²² The source of internationally recognised human rights is identified as the inherent (moral) nature of the human being. Every person, simply as a human being, is entitled to human rights. The Universal Declaration, Article 1, states: 'All human beings are born free and equal in dignity and rights'. The Economic and Social and the Civil and Political Covenants of the UN assert that 'these rights derive from the inherent dignity of the human person'. The Vienna Declaration, in similar wording, states that 'all human rights derive from the dignity and worth inherent in the human person'.

While civil and political rights, as considered below, take as their foundation an individual capable of self-government, the advocates of human rights start from the assumption that this is a false universal subject. There are a number of well-established theoretical approaches that lend support to this critique of the political rights thesis. Many of these start from the observation that the formal equality of the legal and political sphere necessarily abstracts from differences and inequality in the social and economic sphere. These inequalities may not necessarily be resolved through political rights and many would argue that they are perpetuated through them. David Beetham, for example, suggests that the proper subjects of human rights, as distinct from civil and democratic rights, are those individuals who lack the capacities to act in a politically independent way. He argues that political and civil rights are 'of little value if individuals lack the personal capacities or resources to make use of the freedoms in question, and that legally established rights will be largely formalistic if the means necessary to exercise them are beyond people's reach'.²³ Ken Booth similarly locates the subject of human rights in the 'ethical communities' defined by exclusion from the political process:

Universal human rights are supposed to be invalid because there is no universal ethical community. But there is: the ethical community of oppressed women, the ethical community of under-classes; the ethical community of those suffering from racial prejudice; the ethical community of prisoners of conscience; the universal ethical community of the hungry...and on and on.²⁴

Neil Stammers rightly observes that the concept of human rights is premised on the '*vulnerability* of individuals...people require human rights to protect them from potential violations arising from the social contexts in which they find themselves'.²⁵ As Michael Ignatieff notes, we are increasingly made aware that it is man's wretchedness that necessitates the universal protections of human rights:

Nothing good has come of these experiments [in international intervention] except perhaps the consciousness that we are all Shakespeare's 'thing itself': unaccommodated man, the poor, bare forked animal. It is 'the thing itself' that has become the subject – and the rationale – for the modern universal human rights culture.²⁶

The rejection of the concept of the self-governing political subject of necessity involves grounding human rights in the innate characteristics of being a human being. This universal capacity has been theorised in a diverse variety of ways. For example, on 'an identification of the needs and capacities common to all humans, whatever the differences between them'; a universal 'capacity for moral understanding and progress'; the 'thin' conception of rationality proposed by John Rawls; or the speech and listening capacities identified by Jean-Francois Lyotard.²⁷ For many of today's human rights advocates this essentially boils down to a capacity for moral reciprocity, 'feeling the pain' of others, or in the words of Michael Ignatieff: 'imagining the pain and degradation done to other human beings as if it were our own'.²⁸ However, having rejected the universal grounding of political and democratic rights for exaggerating human capacities or for ignoring the social and economic inequalities in society, the 'common needs and capacities' are necessarily those at the lowest level of human society. This approach inevitably tends towards a minimalist perspective of the human subject, where capacities are minimised and needs maximised.²⁹

However, there is a fundamental difference between deriving rights from the capacity of human subjects and deriving them from the incapacity of human subjects. The central component of all democratic systems of rights or legal systems, and their theoretical starting point, is the individual's capacity for self-government. The subject of the modern law is a person assumed to be a moral agent or self-willing actor. As a rights-bearing subject the person is not simply coerced into accepting the law by forces outside their influence. The law is seen to be freely accepted and to derive from their own will. The framework of regulation of the modern democratic system is historically and logically derived from the formal assumption of equal self-governing individuals, responsible and accountable for their actions and capable of rational decision-making. All modern doctrines of the enforcement of contract, the punishment of crime, the election of governments and the state system of international law rest on this core assumption.³⁰ This can be usefully highlighted by a brief consideration of the different facets of a modern state's 'rights-framework' or legal system.

Civil law is the clearest expression of the derivation of the law from the will of the self-governing subject. In enforcing the law of contract, civil law does not impose an alien or external goal onto individuals. In fact, the civil law only binds individuals to their word; this is an expression of the will of the legal subject as the contract is voluntarily made. There is no compulsion to higher policy goals or ends; the only object of the law is the contract between two equal contracting parties. Criminal law also assumes the equality and free will of the legal subject. The accused is represented at the court in the same way as for breaches of civil law and has the right to defend his interests in court equal to any other citizen. The law is binding on the individual as if it were a contract, although there is no formal contract beyond the assumption of assent to membership of a law-bound community (mythologised in social contract theory). This is clearly only notional assent, but it is through this fiction of consent that the equal rights of defendants before the law are enshrined. In constitutional law, the notional social contract is given content. For all its limitations, the principle of popular sovereignty is a thoroughly radical conception of authority from the people. It argues that the state's authority derives exclusively from the people, without any external source of either power or legitimacy.

This idealised picture reveals the centrality, to all aspects of the modern framework of rights, of the rights-bearing individual with the capacity for self-government. The source of particular state-based rights is the autonomous legal subject, rather than abstract humanity. As Hannah Arendt noted, reliance on the 'inalienable rights' of abstract humanity, human rights, would mean claimants falling back 'upon the minimum fact of human origin'.³¹ She cogently argued that the concept of rights could not exist independently of political society. For Arendt:

Equality, in contrast to all that is involved in mere existence, is not given us, but is the result of human organisation... We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights.³²

Even if the universal subject of human rights were clearly identifiable, it would be impossible to connect the abstract universal denominator of humanity with the concept of rights in any coherent way. Norman Lewis notes:

Placing the concept 'human' in front of 'rights' may represent a quantum leap up. But this is only in the abstract. No matter how these rights are presented, what they have in common is the fact that they are not derived from legal subjects.³³

THE LIMITS OF NORMATIVE HUMAN RIGHTS THEORY

81

This central distinction in approach to the rights-subject explains why the two different rights approaches have an opposing conception of the importance of the political sphere and its institutions at the level of the state and international society. This difference is highlighted in the following section, considering the radical nature of the human rights critique of the political sphere and the problems this poses for any practical alternative.

THE POVERTY OF NORMATIVE PHILOSOPHY

As David Beetham notes, the essence of normative theory is the 'critical component' which asks two questions: 'How far are the criteria or principles entailed by the concept realised in a given situation or set of institutions? and How far does practice measure up to a justifiable normative standard or ideal?'³⁴ The normative critique of international society, based on the challenge of human wrongs is a very powerful one. As long as there are victims of human wrongs then existing institutions and legal frameworks are open for criticism and seen as vulnerable to the call for change. The commitment of normative international relations theory to 'placing the victims of the society of states at the centre of theorizing' has produced a stark moral critique of international society, sometimes referred to as 'critical international society theory'. Nicholas Wheeler argues: 'Critical international society theory places suffering humanity at the centre of its theoretical project exploring how the society of states might become more hospitable to the promotion of justice in world politics.'³⁵

The moral critique of existing practices can easily assume a radical appearance. But, as with any critique that starts from ethics rather than existing society, there is less need for serious consideration of the real and the profane. Ken Booth, for example, argues:

Westphalia, in its time, had represented a sort of anchorage, after the ravaging wars of religion. But the grammar of the system of state sovereignty and statism constructed from the seventeenth to the twentieth century led inexorably to the Holocaust and atomic warfare... In the killing fields at the apogee of Westphalia – Dachau and Hiroshima – 'Hell was here'.³⁶

According to this study, it is the striving for democracy and state sovereignty, allegedly products of the 'amoral' politics of 'realist' Machiavellism, which has led to the horrors of the twentieth century. If the political sphere is the cause of warfare and oppression, there is clearly little positive about politics or democratic government. In fact,

the human rights critique is in many ways a stunningly confident attack on the political sphere under the cover of ethics and morality. Transcendental moral values are portrayed as the progressive solution to the problems of the oppressive political sphere: 'This is the hope of progressively leaving behind the politics of the concentration camp – the ultimate sovereign space – for a cosmopolitan democracy aimed at reinventing the global human being.'³⁷

Interestingly, this point is the exact opposite of that made by Hannah Arendt in her acclaimed study *The Origins of Totalitarianism*, originally published in 1951. She made the vital point that state rights were taken away from the Jews and other minorities prior to their internment, that in fact it was the loss of political and legal rights that were the crucial precondition for the horrors of the concentration camp.³⁸ She further demonstrated, that for those lucky enough to escape, the stateless refugees, 'the only practical substitute for a nonexistent homeland was an internment camp', and in reality the only guarantor of rights was the nation-state.³⁹ Because human rights can only imply dependency on others, persecuted people, from the Jews in the 1940s to the Kosovo-Albanians in the 1990s, claimed not human rights but national rights of citizenship and fought for the establishment of the state of Israel and for an independent Kosovo.

Normative human rights theory, however, argues not for the extension of democratic and civil rights or for the rights of accountable and representative self-government but for a radical rejection of the political accountability of the public sphere. This theory is powerful as a critique of existing political institutions, but the problems become clear when the theory addresses alternatives, the institutional arrangements which can be derived from the starting moral precepts. It soon becomes apparent that the description of government abuses provides little explanatory depth and that the link from criticism of 'human wrongs' to a positive human rights framework is not straightforward, in theory let alone practice.

THE PROBLEM OF AGENCY

Underlining the consequences of the human rights discourse's dismissal of the political subject is the question of agency: 'which social or political groups might plausibly act as bearers, protagonists or beneficiaries of the values in question?'⁴⁰ At first appearances the human rights thesis seems to adhere to the view of the historical agency of collective humanity. Nicholas Wheeler argues that against the realist concern with power relations and states, 'especially important here is critical theory's project

of placing the powerless and dispossessed at the heart of theory and emancipatory political practice'.⁴¹ While Ken Booth maintains: 'The discourse of human rights is potentially crucial to human history because it is part of the language of the human species' self-creating emancipation from natural and societal threats.'⁴² A deeper consideration reveals that the implications of their critique contradict their extravagant emancipatory claims.

The problem is that the normative critique of the political subject makes an active moral agent difficult to locate. Where the political rights of the public sphere are non-specific as to ends or content, the human rights thesis is non-specific regarding the agency which can guarantee or implement these rights. For the founders of political and civil rights theory, rights could only be guaranteed by the subjects of the rights themselves.⁴³ If a right could not be protected, or exercised, by its bearers then it could no longer be a right, an expression of self-government. Democratic rights theorists developed this conception of the active and self-determining subject of rights in opposition to pre-modern hierarchical conceptions of rights as privileges bestowed on the deserving from above.

For the advocates of human rights, the legitimacy of the claim stands independently of, and sometimes in inverse relation to, the capacity of the subject. Because the human subject is defined as being without autonomy, some external source has, of necessity, to be looked to. The theorists of human rights find it difficult to come up with a cogent answer as to the external source that can be trusted to implement and guarantee human rights. In reinterpreting rights as a moral category, as opposed to a legal or political one, a contradiction appears between the enforcement and guarantee of human rights and the formal legal and political framework. The ambitious nature of the concept of human rights, which establishes the content of those rights independently from the capacity of its subjects, means that this gap between claim and capacity lies at the heart of the question of implementation.

The lower the capacity of the human subject the greater the need for some form of external assistance or grant of resources or regulatory power, yet the incapacity of the subject makes this grant entirely arbitrary and by no means guaranteed. With little agreement on the substance of human rights, or the means of implementing them, it is easy to see why the claims made are often declared to be normative 'wish lists'. To achieve the good ends of human rights advocates, as Donnelly notes, is 'to reshape political and social relations so that this moral vision will be realised': 'Human rights thus are simultaneously a "utopian" vision and a set of institutions – equal and inalienable rights – for realizing at least an approximation of that vision.'⁴⁴

The lack of an autonomous human subject means that human rights advocates' aspirations for a better and more just society must necessarily focus on a beneficent agency, external to the political sphere, to achieve positive ends. There may be a duty to act to fulfil human rights needs but there is no politically accountable institution that can be relied upon. In order to help bridge this gap, between the ideal critique of the real and solutions which are necessarily part of the profane reality, human rights advocates tend to privilege the role of institutions which can stand above political contestation. When addressing practical alternatives, the advocates of human rights are forced either to take existing political institutions, at state or inter-state level, out of the political sphere or to posit some form of alternative institutional arrangement, which is independent of politics.

For some theorists of human rights, the solution is to bring the state back into the analysis. But, of course, only if the political sphere is subordinated through the institution of forms of regulation independent of elected government. This can occur through political actors being bound by a higher law, safeguarded by an unelected judiciary through a Bill of Rights, and therefore capable of acting morally, that is, independently from the economic pressure of the world of business and the political pressure of parliamentary competition. However, the ideal of the state acting morally to guarantee a set of moral ends seems to fly in the face of the democratic political conception of the state, based on the need for political accountability and the representation of competing interests within society. To justify the subordination of the political process to higher moral ends, human rights theorists often stress the protective and morally progressive role of the state as the guarantor of democratic political rights as well as potential human rights. Donnelly, for example, asserts that the state has to play a central role in guaranteeing civil and political rights, through implementing legislation against discrimination, ensuring the procedural rights of individuals in the courts or creating an environment conducive to the development of civil and political freedoms.

Once democratic rights and civil liberties are seen to be dependent on the beneficent nature of state protection, as opposed to the reflection of the self-governing activity of the historical subject, it is then easy to assert an external mandate for the state, or other institutions, as the guarantor of individual rights. The anti-political critique of the human rights theorists shifts from condemning the 'concentration camp' of the politically-tied state to concluding that the morally-engaged state can be the guarantor of human rights. As Neil Stammers notes, the imperative of action to defend human rights ironically entails a *realpolitik* which is

highly state-centric and, in fact, not only reflects but also reinforces the highly uneven balance of existing power relations.⁴⁵ For many leading commentators, such as David Held, Martin Shaw, Bikuh Parekh, Michael Walzer and Fred Halliday, the leading Western states can act as the moral agents of humanity and have the duty to ensure the protection of human rights in those states that cannot be so easily trusted.⁴⁶ In effect, these authors openly argue for the subordination of the political will of less economically developed states to the economic and military strength of those in the West.

For more radical critics of international society the Western-led 'international community' is too tied to the *realpolitik* of the political sphere and incapable of being led by the morally pure human rights impulse:

We could be much more confident about military intervention/peace enforcement by the 'international community' if this so-called international community were more than a term of propaganda used by the governments of the G7 states... [F]or the most part the phrase 'international community' is a platitude, trotted out by the powerful when they want to legitimise a particular action... The cosy phrase 'international community' often represents the diplomatic equivalent of honour among thieves. Look at some heads of government or heads of state. Can we hope that this 'community' of dignitaries and states will deliver the world from massive human wrongs?⁴⁷

If the leading Western states cannot be trusted to act morally, then there is little hope that international society as it is constituted can guarantee human rights:

If the morality of international society depends upon the assumption that all states are morally valuable places, the daily reality of human rights abuses suggests that international society is failing as a 'guardian angel'... [T]he failure of the society of states to protect 'basic rights' fundamentally calls into question its moral legitimacy.⁴⁸

For these radical theorists, the practical alternative to the 'real' remains in the sphere of the 'ideal'. They agree with their less radical colleagues that the international sphere, or 'the global', is the key political space in which the solution to state-based politics can be found. Yet, instead of institutional perceptions of the 'global' grounded in Western political and military power, they counterpose non-political institutions. These will be composed of unelected NGO campaigners, liberal activists and

international lawyers, which are held to compose an incipient 'global' or 'transnational civil society' or held to potentially constitute future networks of interlocking realms of 'cosmopolitan democracy'. The problem is that these proposals remain no more than moral aspirations. As Mary Kaldor concedes, the concept of transnational civil society can not at this stage be classed as either 'a descriptive or analytical term'.⁴⁹ For Booth: 'Cosmopolitan democracy, if operationalised, would be a stronger safeguard against totalitarianism...than the ideals of Westphalia.'⁵⁰ Yet, as the world is organised today, divided into nation-states, 'cosmopolitanism' is an ideal not an active agent.

Unable to get beyond 'wish lists' or the compromise of bringing the state back in, it is at the level of practical alternatives where the normative agenda of universal human rights appears weakest. Many of the most ardent human rights advocates are quite willing to admit that their anti-political project is 'ridiculously utopian', but they would rather criticise with moral conviction than compromise their principles with an involvement in the profane world of politics.⁵¹ Some of these commentators may distance themselves from the advocates of a more hierarchical world order of 'flexible' notions of sovereignty where new NATO-led 'coalitions of the willing' can take military action outside the control of the UN Security Council and international law.⁵² However, their critique of the existing UN-managed international order, based on ideals of sovereign equality and the principle of self-government, provides a powerful moral legitimisation for the advocates of a more militarised and unequal world order.

CONCLUSION

What was lost in the promulgation of human rights theory in the 1990s was the connection between rights and subjects that can exercise those rights, which was at the core of political accountability and democracy. Once the historical and logical link between rights and the subjects of these rights is broken, then democracy becomes a meaningless concept. The epistemological premise of democracy is that there are no final truths about what is good for society that can be established through the powers of revelation or special knowledge. If we accept that people are the best judges of their own interests, then only self-determination can be the basis for collective self-government. Democracy therefore is only a means to an end, to the realisation of the public good, because it allows people to define what that good is as well as to control the process by which it is realised.

Donnelly recognises the implications of the human rights discourse for democracy and explains that, while democracy is concerned with

who ought to rule, human rights are concerned with what the rulers of the people do and how they rule. He asserts that in this sense human rights are 'profoundly anti-democratic', because their aim is to frustrate the will of the people when necessary.⁵³ Whereas representative government works to realise the derivation of the state from the will of the people, human rights theorists seek to subordinate the will of the people to ethical or moral ends ruled over by a less accountable elite. The traditional conservative critique of democracy was that of the 'despotism of the multitude', today's human rights advocates dress these nineteenth century arguments in the twenty-first century garb of normative rights theory.

Once humans are universalised, not as competent and rational actors capable of determining their own view of the 'good' but, as helpless victims of governments and the forces of the world market or globalisation, then democratic decision-making clearly appears as dangerous abroad and as problematic at home. Wheeler, for example, suggests ways of preventing domestic electorates from constraining policy-makers in the West from following a normative foreign policy agenda.⁵⁴ In fact, the logical conclusion of normative human rights approaches would be the end of democratic politics as a sphere for the resolution of social questions of the distribution of goods and policy-making. Moral or normative commitments to human rights goals inevitably legitimise policy-making by less accountable elites. Ethical decisions must, by definition, be non-democratic – not judged by popular will but by ethical ends – and therefore tend to be decided not by elections but by ethics committees of the 'great and the good'. Ken Booth may well be right that the twenty-first century will see the rise of international policy determined by the normative claims of ethics and morality. However, it will then be not the 'ethical communities' of women, the underclasses, the racial discriminated or the poor and hungry who will be emancipated and empowered, but rather the Western elites freed from the constraints of the domestic electorate at home and the constraint of respect for sovereign autonomy abroad.

NOTES

1. G. Stoker, 'Introduction: Normative Theories of Local Government and Democracy' in D. King and G. Stoker (eds) *Rethinking Local Democracy* (London: Macmillan 1996), pp.1–27.
2. P. Allott, 'The Concept of International Law', *European Journal of International Law*, Vol.10 (1999), p.34.
3. Ibid, p.35.

4. K. Booth, 'Human Wrongs and International Relations', *International Affairs*, Vol.71, No.1 (1995), p.110.
5. Ibid, pp.109–10.
6. Cited in N. J. Wheeler, 'Guardian Angel or Global Gangster: A Review of the Ethical Claims of International Society', *Political Studies*, Vol.44, No.1 (1996), p.128.
7. R. A. Falk, 'The Challenge of Genocide and Genocidal Politics in an Era of Globalisation', in T. Dunne and N. J. Wheeler (eds), *Human Rights in Global Politics* (Cambridge: Cambridge University Press 1999), p.191.
8. D. Beetham, 'Theorising Democracy and Local Government', in King and Stoker (note 1), p.28.
9. N. Lewis, 'Human Rights, Law and Democracy in an Unfree World', in T. Evans (ed.) *Human Rights Fifty Years On: A Reappraisal* (Manchester: Manchester University Press 1998), p.89.
10. L. Henkin, 'International Human Rights as "Rights"', in J. R. Pennock and J. W. Chapman (eds) *Human Rights, Nomos XXIII* (New York: New York University Press 1981), p.269.
11. W. Korey, 'Human Rights NGOs: The Power of Persuasion', *Ethics and International Affairs*, Vol.13 (1999), p.172. M. wa Mutua, 'The Ideology of Human Rights', *Virginia Journal of International Law*, Vol.36 (1996), p.619.
12. K. Annan, 'Strengthening United Nations Action in the Field of Human Rights: Prospects and Priorities', *Harvard Human Rights Journal*, Vol.10 (1997), p.1.
13. H. Shue, *Basic Rights* (Princeton, N. J.: Princeton University Press 1980), pp.5–87.
14. D. Beetham, *Democracy and Human Rights* (Cambridge: Polity Press 1999), p.114.
15. J. A. Donnelly, 'Ethics and International Human Rights', *Human Rights Working Papers*, No. 1 (December 1999), University of Denver Graduate School of International Studies.
16. M. Freeman, 'Are There Collective Human Rights?', in D. Beetham (ed.) *Politics and Human Rights* (Oxford: Blackwell 1995), p.34.
17. Beetham (note 14), pp.97–8.
18. M. Midgley, 'Towards an Ethic of Global Responsibility', in Dunne and Wheeler (note 7), p.160.
19. K. Booth, 'Three Tyrannies', in Dunne and Wheeler (note 7), pp.62–3.
20. F. Klug, *Values for a Godless Age: The Story of the UK's New Bill of Rights* (London: Penguin 2000).
21. J. A. Gentry, 'The Cancer of Human Rights', *Washington Quarterly*, Vol.22, No.4 (1999), pp.95–113.
22. Donnelly (note 15), p.8.
23. Beetham (note 14) p.96.
24. Booth (note 19), p.61.
25. N. Stammers, 'A Critique of Social Approaches to Human Rights', *Human Rights Quarterly*, Vol.17 (1995), p.491.
26. M. Ignatieff, *The Warrior's Honor: Ethnic War and the Modern Conscience* (London: Chatto and Windus 1998), p.5.
27. Beetham (note 14), p.93; J. W. Nickel, *Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights* (Berkley: University of California Press 1987), p.41; S. Mendus, 'Human Rights in Political Theory', in Beetham (note 16), p.14.; J. Lyotard, 'The Other's Rights', in S. Shute and S. Hurley (eds), *On Human Rights* (New York: Basic Books 1993), p.138.
28. M. Ignatieff, 'Human Rights: The Midlife Crisis', *New York Review of Books* (20 May 1999), pp.58–62.
29. A. Gerwith, 'The Basis and Content of Human Rights', in Pennock and Chapman (note 10) pp.119–47.; L. Doyal, and I. Gough, *A Theory of Human Need* (London: Macmillan 1991).
30. J. Heartfield, 'Rights and the Legal Subject', Freedom and Law discussion paper, 1996.
31. H. Arendt, *The Origins of Totalitarianism*, new edn (New York: Harvest 1979), p.300.

32. Ibid., p.301.
33. Lewis (note 9), p.85.
34. Beetham (note 8), p.28.
35. Wheeler (note 6), p.127.
36. K. Booth (note 19), p.65.
37. Ibid., pp.65–6.
38. H. Arendt (note 31), pp.296–7.
39. Ibid., p.284.
40. Beetham (note 8), p.29.
41. N.J. Wheeler (note 6) p.128.
42. K. Booth (note 19), p.31.
43. J. Rosenberg, 'Just War and Intervention: The Challenge of the International for Social and Political Thought'. Paper presented at Sussex University International Relations/Social and Political Thought joint seminar series, 'The Kosovo War: Perspectives from Social, Political and International Theory', Summer, 1999, Available from: www.sussex.ac.uk/Units/SPT/seminars/kosovo/seminar1.
44. Donnelly (note 15), p.16.
45. N. Stammers, 'Social Movements and the Social Construction of Human Rights', *Human Rights Quarterly*, Vol.21 (1999), p.992.
46. D. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press 1995); M. Shaw, *Global Society and International Relations: Sociological Concepts and Political Perspectives* (Cambridge: Polity Press 1994); B. Parekh, 'Beyond Humanitarian Intervention', in H. Cullen, D. Kritsiotis and N.J. Wheeler (eds), *Politics and the Law of Former Yugoslavia* (Hull: European Research Unit/ University of Hull 1993); M. Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books 1997); F. Halliday, *Rethinking International Relations* (London: Macmillan 1994).
47. Booth (note 4), p.121.
48. N. J. Wheeler (note 6), p.127.
49. M. Kaldor, 'Transnational Civil Society', in Dunne and Wheeler (note 7), p.195.
50. K. Booth (note 19), p.57.
51. M. Kaldor (note 49), p.212.
52. See further, D. Chandler, 'International Justice', *New Left Review*, Vol. 2, No.6 (2000), pp.55–66.
53. J.A. Donnelly (note 15), p.41.
54. N.J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press 2000), p.303–4.