

Review essay

Hard questions for human rights

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Gillian Brock (ed.), *Cosmopolitanism versus non-cosmopolitanism: Critiques, defenses, reconceptualizations* (Oxford: Oxford University Press, 2013), vii + 331 pp., £55.00, ISBN 9780199678426 (hbk), ISBN 9780191757839 (ebk)

Cindy Holder and David Reidy (eds), *Human rights: The hard questions* (Cambridge: Cambridge University Press, 2013), xv + 472 pp., US\$99.00, ISBN 9781107003064 (hbk), US\$34.99, ISBN 9780521176262 (pbk), ISBN 9781107069343 (ebk)

Stephen Hopgood, *The endtimes of human rights* (Ithaca: Cornell University Press, 2013), xv + 255 pp., US\$27.95, ISBN 9780801452376 (hbk), ISBN 9780801469299 (ebk)

The idea of human rights appears to have become the premier normative idea in global politics. From the United Nations (UN) down, the institutions of the global political system reference human rights, and whereas once many took this to be mere lip-service to morality, it is now clear that for good or ill, the use of the idea has very real consequences. Both war and aid, for example, now engage the rhetoric and institutional machinery of human rights, whether under UN auspices or not (witness the Iraq War). Human rights are also recently on the lips of big business, which, like non-governmental organisations (NGOs) of various orientation, recognise their utility, although (one suspects) with a rather different set of motivations. Standard issues in the academic and policy debates over global justice – poverty, democratic voice, the seeking of asylum, development and global political economy – are increasingly discussed under the rubric of human rights. In all of this, it can seem that what one constituency articulates through human rights is very different to the understanding of another. This can lead to confusion about what precisely is meant by the idea of human rights, and what is supposed to follow from affirming its applicability in a given circumstance. It is not, as the rhetoric so often suggests, something that we all already understand and agree on. Hard questions need to be asked in order to analyse properly what is now a realm of ideas, institutions and practices of striking influence in the contemporary world.

Each of the volumes I discuss here deals in such hard questions for human rights; each is uncompromising in its determination to extend debate and challenge the

received wisdom. Each volume is also distinctive in approach and conception. Brock's edited collection is tightly conceived around contemporary debates in the political philosophy of cosmopolitanism. Holder and Reidy's volume is an extensive collection of interdisciplinary essays on human rights theory and practice. Hopgood's monograph requires us to consider whether the dominance of human rights in global affairs over the last three or four decades is in fact the good that many assume it to be. Across these differences are many shared concerns. In my discussion, I focus my attention on the arguments in these books that present both democracy and poverty as human rights issues, properly understood. But first, I introduce each volume in more detail.

Introducing the volumes

Both the cosmopolitans and anti-cosmopolitans of Gillian Brock's edited collection have significant arguments to offer those seeking to theorise human rights. The question of poverty and human rights is one of a number of questions highlighted in this volume, both by the vigorous and fresh contributions, and also by Brock in her excellent introductory chapter. There, she identifies 14 'core questions' that are at issue in contemporary debates over cosmopolitanism and that are examined in the volume. One basic question concerns what *distinguishes* a cosmopolitan approach to justice. This is a contentious issue, with contributor Michael Blake claiming that the term should be dropped because it no longer seems to do any distinctive work. Most other contributors seem to disagree with this view, while agreeing that questions about national and economic association, ideas of world citizenship and self-determination, the need for reform of global institutions and similar topics are all up for discussion within a cosmopolitan framework.

In Brock's introduction, these questions are systematically teased out. They are then considered in light of the various approaches taken by contributors (an eminent array of established and rising stars in the debates over global justice). For readers unfamiliar with these debates, the introduction will be particularly useful because the contributors do all push the discussion into new territory. Brock's guide will keep the less familiar surefooted.

Cindy Holder and David Reidy's volume, *Human rights: The hard questions*, is a wide-ranging interdisciplinary collection. Hardbound and approaching 500 pages, it consists of 23 contributions from a broad range of scholars, divided over 7 areas of interest. These divisions give the book its organisational architecture, but also offer a nascent intellectual pathway through the controversies associated with human rights. The initial section poses the simplest 'hard question' of them all: what are human rights? Subsequent sections tackle a range of thematic areas, many of particular urgency and relative novelty in contemporary global debates – crucially, environmental policy, questions of rights enforcement and the impact of the global economy. A more perennial thematic area concerns group rights and culture. The discussion of the right to democracy raises crucial questions about the whole human rights enterprise, some of which are taken up again in the final section, which asks 'are human rights progressive?' The difficulty of this question is not shirked by either the contributors to the section or the special sort of editorial brilliance on display in the way contributors here (as elsewhere in the volume) are chosen and curated.

The 'Afterword' of the volume is candid about the intellectual process of bringing the work together, and demonstrates the editors' seriousness of purpose. It discusses three additional questions that emerged as the book developed. The editors comment:

When we set out to put together this volume, we conceived of it as organized around a series of hard questions about human rights, increasingly familiar to both scholars and practitioners ... However, as the chapters began to come in, a different set of hard questions began to push to the surface. (458)

The editors rightly assess that these additional – subterranean – hard questions are what make the volume particularly interesting, setting it apart from any number of worthy but slightly predictable collections of essays on familiar human rights themes. I consider these questions in the final section of this review.

Stephen Hopgood has a 'Black Mass' on the agenda for human rights, according to the eminent human rights historian, Samuel Moyn (as per the book's dust jacket). *The endtimes of human rights* asks some very hard questions of human rights, and does so with a forceful determination to show where it has all gone wrong. If this book is read as a response to Holder and Reidy's question, 'are human rights progressive?', then a very sobering answer comes into view that challenges the discourses and institutional frameworks through which human rights are commonly understood. Hopgood's book takes us out of the philosophy classroom and makes an argument about human rights as they have taken root in the world. He discusses their role in political and legal institutions, their utilisation by civil society, such as global NGOs and local dissenters, and their hijacking by geopolitics and the interests of elite global humanitarianism.

Crucially, in Hopgood's argument, there are two forms of human rights. The first, *human rights* – lower case – is about local communities, grassroots people the world over, who seek to expose violence and abuse and bring accountability, healing, compassion, solidarity, equality and love. The second, *Human Rights* – upper case – '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' (ix, emphasis added).¹

Human Rights, on this account, have their origins in the history of international humanitarianism, which in itself represents a deeply complex series of transformations in the identity and meaning of moral authority in the West. At the heart of the humanitarian vision was the suffering innocent – a secular Christ-child – and the rest was a bricolage made up from the flotsam and jetsam left after the death of god. Lower-case *human rights* become *Human Rights* when conjoined with rising US power and traditional humanitarianism is overtaken by the mobilisation of norm-creation by global elites. *Human Rights* become a proxy for the exercise of elite power. However, argues Hopgood, *Human Rights* are on the wane. American power is in relative decline; a neo-Westphalian world is imminent. There, 'Lowercase human rights, a non-hegemonic language of resistance allied to a variety of causes and motivations, has no preset future' (178).

¹In order to forestall confusion, references to Hopgood's upper-case and lower-case usages of 'human rights' will be italicised below.

Hopgood's volume ends with hard questions left unaddressed. Not all will find his neo-Westphalian scenario plausible. Granting it for the moment, and taking cognisance of both his impassioned critique of *Human Rights* and his clear paean for *human rights*, we are left to imagine for ourselves what cultural and social resources might sustain that vision of resistance and emancipation. This has to be the most critical of the hard questions: how to proceed with a commitment to *human rights* in a *Human Rights* world.

Some hard questions

Human rights and democracy

This is difficult terrain. Politically and conceptually, the complications that exist in the relationship between human rights and democracy are many. They are also unavoidable; they are not questions that can be put to one side, because the absence or presence of either human rights or democracy impacts upon the absence or presence of the other. This is as much the case with the politics and institutions of both as it is with conceptual frameworks.

In Holder and Reidy's collection, this set of issues is addressed directly by three essays that respond to the question, 'Is there a human right to democracy?' Taken together, these are most instructive, not just regarding a human right to democracy, but also with respect to more fundamental questions: What do we talk about when we talk about human rights? What is it to have a human right? How do we know if something is a human right or not?

The first essay, by Hilary Charlesworth, responds by looking at international human rights law. The idea of a right to democracy suggests the need for standards of international behaviour and their regulation, she notes, but how should these be articulated and implemented? The UN clearly plays a pivotal role here, but as Charlesworth reminds us, any reference to democracy engenders highly charged North/South political divides within the UN. These political divides go right back to the drafting of the *Universal Declaration of Human Rights* prior to its promulgation in 1948, when Soviet pressure ruled out affirming democracy explicitly. Thus, the Declaration's Article 21 'presents an election-focused notion of participation in government, strikingly without reference to the concept of democracy' (273). Similarly, Charlesworth says of the later Article 25 of the *International Covenant on Civil and Political Rights* (1966) that 'it is less than a right to democracy, rather a right of political participation and to political accountability through elections' (274).

After having also discussed regional systems of human rights, Charlesworth concludes that international law endorses an 'institutional account of democracy', an account that focuses on electoral competitions and avoids commitment to equality in a substantive manner. It does not, however, provide for a human right to democracy. In her closing discussions, Charlesworth notes the way human rights are 'deeply implicated in democracy', their symbiotic relationship and mutual dependence. Yet, these characteristics are seen more as 'the yeast for social movements' than as evidence of a right to democracy (282).

As we turn from this essay to the next two in the volume, we are confronted with a key question: Does international law's *failure to provide* a right to democracy mean that *there is no* human right to democracy? Might it not simply be read as a political failing of international law that the actors involved have not been able to set aside

their politics in order to *recognise* such a right? Fundamentally, do we only have human rights once they are established in international law? Carol Gould and Thomas Christiano in their respective contributions strongly contest such a claim. Both defend a human right to democracy understood as an intelligible ethical idea and a justified moral claim.

For Gould, human rights are not ‘limited to the legally recognised lists’ (288). Rather, they are normative and moral claims that call for the creation of institutions, including international laws, for recognition and protection. These institutions and laws recognise rights; they do not create them. Human rights are cosmopolitan, although institutionalised across levels of governance from the local to the global. Similarly, for Christiano:

In the absence of an international institution or even of a functioning state, one may still say that the human right to *x* exists since one is saying that the construction of institutions that include a conventional right to *x* is strongly morally justified. (303)

Christiano argues for a *moral* human right to democracy, not a *legal* human right (a key distinction, which may enable readers to agree with both him and Charlesworth).

A further question emerges regarding the relation of democracy and human rights as we examine the kinds of arguments that Gould and Christiano put forward for their respective versions of a right to democracy. Both are cosmopolitan or egalitarian in outlook. For both, these commitments entail an affirmation of democratic government as a matter of right for human persons. Not all theorists draw that conclusion. Gould, for example, criticises Joshua Cohen, who rejects the idea of a right to democracy (Cohen 2006). Gould finds this ‘mystifying’ (288), given his commitment to equal respect for persons. Charles Beitz, too, rejects a human right to democracy, preferring to defend a right to collective self-determination on the grounds that it is more universally justifiable (Beitz 2009). Christiano takes up this point, in part illustrating Beitz’s concerns, when he says:

What makes this a hard question is that it may seem that the human right to democracy is incompatible with the legitimate self-determination of peoples, at least when these peoples do not accept the egalitarianism at the heart of democracy. (301)

At this point, we have moved into the shadow of John Rawls, and in particular his *The law of peoples* (2001), an influence also deeply present in Brock’s volume on cosmopolitanism. The self-determining but not liberal-democratic societies mentioned by Christiano are called by Rawls *decent* societies, and Rawls argues that they should be accorded full standing in a just international order. Many cosmopolitans, including Laura Valentini in Brock’s volume, argue that Rawls’ position should be rejected. Reidy – this time as one of Brock’s contributors – makes what Brock rightly calls the ‘novel’ argument (26) that Rawls’ law of peoples can be understood as a fully consistent liberal cosmopolitan position. This involves accepting – as Rawls puts it, ‘without regret’ (Reidy, 193) – that we may live in a well-ordered, peaceful world in which some polities are liberal democracies and some are not.

Whatever else may be said about this sophisticated re-interpretation of Rawls as a cosmopolitan, it would clearly rule out the institutional realisation of a right to democracy as per Gould and Christiano. Gould and Christiano support the kind of equal respect for persons that also makes Valentini reject Rawls’ law of peoples

(101–02). It would seem, then, that Reidy's position would also block their idea of the human right to democracy as a morally justified claim. This is because Reidy's cosmopolitanism would have to reject any moral claim that had more exacting standards than those of Rawls' decency – including egalitarian ones that *required* democratic forms of government.

Turning to Hopgood's book at this point is an exercise in contrasts. The question of a human right to democracy is not posed or discussed either directly as in Holder and Reidy, or indirectly as in Brock's volume. Hopgood analyses the colonisation and politicisation of human rights by elite international humanitarianism and American geopolitical power. If we want to look for anything like a human right to democracy in Hopgood (a task one suspects might amuse him), it must be looked for in the distinction that he draws between upper-case *Human Rights* and lower-case *human rights*. Hopgood's critique of *Human Rights* is acerbic. By contrast, he is passionate about *human rights*, by which he means the struggles of ordinary people against corruption and violence and for a life of dignity. This conception of *human rights* is present throughout Hopgood's volume, but it is clearly not his purpose there to justify or defend it. He describes it as 'a nonhegemonic language of resistance allied to a variety of causes and motivations' and because of this, it 'has no preset future' (178). This sentiment is not too dissimilar to the analysis from anthropologist Mark Goodale in the Holder and Reidy collection, which argues that the various uses of human rights by ordinary people around the world are too diverse to be shoehorned into a unified conception.

Hopgood does not provide an argument for *human rights*, but his various accounts of *Human Rights* at work show why the former are important. Hopgood rails against elite power and privilege appearing under the banner of human rights, knowing that when this happens, it is elite power and privilege that become further entrenched; emancipation for those who suffer and are dispossessed will not be found by that route. In contrast, Hopgood is interested in people 'banding together to demand their own freedom or justice in whatever language they prefer' (viii). This may not qualify as a human right to democracy in theoretical or institutional terms, but it is clear that for Hopgood, if human rights are to be of use, they must be instrumentally and tactically helpful in facilitating the will of a people in pursuit of freedom and justice. He declares our historical juncture the *Endtimes of Human Rights*, because in his evaluation, the powerful, elite global infrastructure of *Human Rights* fails to serve this purpose.

Poverty, the global economy and human rights

The two collections of essays include a number of contributions that explicitly address matters of poverty and global economic organisation. Hopgood's focus is elsewhere, but his overall argument displays a critical sensibility towards the ease with which the discourse of human rights can be co-opted by neoliberal economic systems that benefit established privilege. The discussion of these themes is of interest in two ways. First, there are the substantive questions of poverty, economic inequality and global political economy. Second, each contributor who engages with these themes also contributes in some way to the more conceptual set of debates about the very nature of human rights.

All contributors would agree that, as Saladin Meckled-Garcia puts it in Brock's collection, 'The existing global economic order clearly has grotesque effects in the

form of life-threatening poverty and unequal life prospects' (111). There is no doubt that this causes harm in areas that are widely discussed as human rights issues, particularly socioeconomic rights such as health, education, basic subsistence, shelter and so on. In Holder and Reidy, contributors look at the challenges here for international law, state action and global economic organisation.

Nonetheless, not all contributors think these issues should rightly be thought of as human rights issues. This debate runs through Brock's volume, with Meckled-Garcia, Elizabeth Ashford and Thomas Pogge in direct dialogue with one another. Other contributors, such as Samuel Freeman and Darrel Moellendorf, touch on similar themes. Brock's volume is particularly worth reading for this reason. I cannot engage deeply with the substance of the debate here, so will merely indicate the issues between the three interacting contributors: Meckled-Garcia, Ashford and Pogge.

Meckled-Garcia argues that our concern with global poverty and the economic arrangements that cause it are not enough to assert a *global human rights deficit*. A state of affairs may well be deplorable, but further criteria must be satisfied for it to be properly characterised an abuse of human rights. This requires actions or failed actions of responsible agents. His core argument is presented in the following terms:

I argue that a human rights breach requires a recognizable *action* (or omission), direct or negligent, personal or collective, that constitutes an identifiable wrong towards a person. To be liable for a wrong of this kind one must either be the agent (individual or collective) performing the wrongful action, or one must collaborate with the wrongful action of another agent. For an action to wrong another it must itself *unreasonably* impose losses or increased risks on another person. This criterion distinguishes genuine complicity in a directed wronging from merely engaging with a network of causes that has negative consequences such as ... the road traffic system, with its yearly fatality statistics. (112)

Breaching human rights is about *agency* and *action*, and Meckled-Garcia concludes, having analysed a list of actions that are candidates for how the poor are wronged by the global economic system, that none of them produce the right kind of responsibility chains to constitute human rights breaches.

Ashford disputes this characterisation of the relationship between global poverty and human rights. She argues that Meckled-Garcia's approach 'reflects the current juridical focus' in which 'discrete harmful actions by specific agents' (130) are the appropriate concern of those looking for human rights abuses. In contrast, Ashford seeks to apply and extend a recent analysis by the late Iris Marion Young (Young 2011). Ashford argues for a human right to subsistence that is violated by present global and domestic social institutions that produce and accept severe poverty. She draws on Young to articulate how we are responsible for structural injustice, and argues beyond Young with respect to liability. Young agrees that liability is linked to action or agency in the past. Ashford argues, however, 'that structural injustice can in fact constitute a systemic human rights violation, and that the notion of liability itself should be broadened so that it can accommodate systemic human rights violations' (130).

One crucial move in Ashford's argument builds on Young's observation that we assume that there is something normal and acceptable about the status quo, even if it is not ideal. Because we accept the status quo, an abuse becomes for us something

that is done specifically to make people worse off with respect to that status quo. Yet, Ashford argues:

Systemic human rights violations *constitute* the normal background status quo. ... The assumption that a few specific perpetrators can be singled out as having sole responsibility for sweatshop labor, people smuggling, and so on, and that the role of institutions is to fulfill secondary duties to enforce a ban on such violations, is based on the implicit assumption that the empirical status quo is acceptable. This assumption is not justified unless the right to subsistence has been fulfilled. (153, emphasis added)

Thomas Pogge also responds to Meckled-Garcia, and as those who know his work would expect (Pogge 2008), he also responds critically: ‘Meckled-Garcia has not offered any good reason that would allow ordinary citizens of wealthy countries to dismiss out of hand the possibility that they may be implicated in a massive human rights violation’ (311). Pogge’s engagement with Meckled-Garcia is systematic and detailed and well worth reading.

Pogge’s chapter in Brock engages with a number of her other contributors, and in doing so, he highlights the way in which discussing human rights and poverty raises questions about *what* human rights are, and about *why* we engage the language and discourse of human rights. Is human rights language being used instrumentally, such as in *realpolitik*? Or is it being used in a principled fashion, to challenge wrongdoing? Or perhaps it is being used by a moralist, to guide or manipulate political sentiment.

Pogge says that his own analysis, which forcefully claims that global poverty is a human rights issue, is not designed to be accusatory, but emerges out of a sense of moral responsibility to help the world in which he lives become a less unjust place. He hopes ‘that others will apply my reasoning to themselves and find it compelling’ (312). He continues:

Predominantly first personal, the reflection I invite is moral rather than legal ... my objective is not to theorise about international or national law ... Rather, I think of human rights as not merely part of the law but also a moral standard that all law ought to meet and a standard that is not yet met by much existing national and international law. This understanding of human rights is consistent with how law itself incorporates human rights in a way that points beyond itself: to a normativity that does not depend on the law for its existence and cannot be revised or repealed by legislative or judicial fiat or by other lawmaking mechanisms such as treaties or international custom. (312)

This view is similar to the arguments of philosophers Gould and Christiano, and is also shared by international lawyer Adam McBeth, a contributor to the Holder and Reidy volume. It is what he calls ‘a purposive view’ (156) of our human rights obligations. As we will see, this view is important in his discussion of human rights and the global economy because it serves as a tool that enables legal scholars to broaden the scope of who or what can be held to be actors and agents in human rights abuse. Traditionally, for international law, the concern here has been with the state (154). But for many human rights advocates, this traditional view is inadequate, even obsolete, given that regulatory control is beyond the ambit of any one state, and arguably

of states working in concert, due to the nature of global interactions. Other agents and actors must be brought into the discussion.

Therefore, we can see that while a theorist like Meckled-Garcia may seek to restrict the scope of human rights through a *philosophical* account of agency, action and liability, McBeth addresses the question of who the agents can properly be in extant institutional arrangements *under the law*. Can the law recognise agents other than the state as abusers of human rights (corporations, for example)? This in turn mediates who can act formally – with political and legal authority – on behalf of human rights. McBeth says:

The modern global economy poses challenges to a conception of human rights that channels all responsibility through the state, since much of the economic activity and the entities that drive it are themselves disconnected from the state and beyond the regulatory control of the state. (153)

If human rights are understood as claimed by citizens against states – if human rights are properly seen as protections of citizens against state power – how are human rights then to be understood as protections against the powers of *other* agents, that is, non-state agents? Indeed, can they be so understood? McBeth argues that they can, and he does so because, in agreement with Pogge and others above, he sees human rights as a standard that sits outside the law. Human rights, in a useful formulation by Amartya Sen, is first of all an ethical idea, which may subsequently be institutionalised and implemented in law (Sen 2004). Once the ethical idea of human rights gains traction, people use it to make political demands. Once a certain tipping point is reached, the idea of human rights becomes a key tool in shaping institutions and laws.

For McBeth and Sen, human rights pre-exist the law; the law is an instrument that ‘gives form to the state’s obligation to observe the right which derives from another source’ (156). This ‘purposive view’ allows McBeth to develop the argument in the following way:

The role of international legal instruments is to give effect to human rights by articulating obligations on states to respect, protect and promote human rights. To the extent that entities other than states are capable of infringing human rights, a purposive view of the law of human rights holds that such actors have an obligation, at a minimum, not to frustrate those rights. (157)

The critical target here is multinational corporations. McBeth’s purposive doctrine enables him to advance a normative critique of corporations’ activities in disregarding or abusing human rights. In international law, the most significant recent development on this front concerns the work of the Special Representative of the Secretary-General of the UN on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises. This work, led by UN Special Representative John Gerard Ruggie, has issued in ‘The guiding principles’ for business and human rights (Ruggie 2011), and a new frontier of international activity on the topic. Having surveyed these developments, McBeth nonetheless concludes that when it comes to operationalising human rights against the agents covered by the business and human rights agenda, ‘there is no comprehensive system ... only a patchwork of methods with limited scope and force’ (169).

This disappointing conclusion sets the scene for Tony Evans' questioning, in Holder and Reidy, of whether the international human rights regime can in fact be sustained in a world of global corporate interests organised on neoliberal lines: 'globalization structures the transfer of wealth from the poor to the rich, exacerbating existing inequalities within and between classes, rewarding capital at the expense of labor, and creating far more losers than winners' (182). Of particular concern here is trade liberalisation and its impact on social and economic rights, and the repeated pattern in global politics that sees popular unrest caused by economic precarity lead to the violation of civil and political rights by state forces in the name of 'riot control' (186). Evans argues that the human rights regime is not well adapted to contemporary global conditions, which are very different to those in which the regime had its origins:

The conclusion that the human rights regime reflects a particular historic socio-economic configuration, which is now in decline, leaves critics in the uncomfortable position of challenging one of the most totemic and emblematic symbols of what it means to be 'civilized' in the postwar world. If human rights offers a site for contestation under conditions of globalization, it is necessary to develop an account that explains the (re-)emergence of social, political, economic and cultural critique of rights [This] will provide the space for engaging in a discourse between the subjects of rights in response to the new dynamics of the current period. (188)

This is also how Hopgood understands the present juncture. It is one of immense change, in which existing economic and political structures are being significantly challenged. Many of these challenges stem from the increasingly multipolar nature of our era. Conservative religious doctrine and traditional values become present alternatives to modern secular human rights, rather than relics of the past, withering away as secularism triumphs. 'Authoritarian democracy' (167) as well as liberal democracy, women's rights as well as patriarchy will compete for global authority. Homophobia will be backed by strong states and powerful interests at the same time as others press for sexual orientation and gender identity rights to be recognised.

For Hopgood, this is the *neo-Westphalian* world: 'a world of renewed sovereignty, resurgent religion, globalized markets, and the stagnation or rollback of universal norms about human rights' (166). Neo-Westphalia is a result of the fracture of the global political system, previously underwritten by Europe and in the 20th century sustained by European ideas and American power. In Hopgood's analysis, however, American power is retrenching, Europe's modernist norms are no longer hegemonic, and the claims of its humanist morality are no longer seen as universal and impartial. Neo-Westphalia, he says, 'means more politics, less morality, and less Europe' (177). That is, the European humanism drawn on to create human rights institutions in the hope of making the world a better place will be replaced with pragmatism and expediency. These institutions and the associated discourses will be used to achieve the political goals of their increasingly diverse geopolitical masters.

European traditions of humanism and humanitarianism are losing traction and influence. Hopgood hedges his bets on whether this loss of influence also applies to America. As noted, he argues that America's power is retrenching, but he also

suggests that America may find the political will to sustain its primacy. If it does, then the global *Human Rights* regime will also be sustained (170). In any event, other players are on the rise, and many of them show less interest in human rights. Hopgood is certain that the indifference of powers like China and Russia is a sign of things to come (175).

‘Rights, practice, reality and hope’

My subtitle here is taken from Holder and Reidy’s brief afterword, which I mentioned when introducing the volume. As noted, they found that in addition to the specific substantive hard questions they had set their contributors (namely, the right to democracy, the global economy, climate change, women’s rights, group rights and moral progress), there were three other general and abstract hard questions that emerged. Reading, teaching and discussing their collection with these three questions in view adds an additional – and in my view crucial – dimension to the intellectual endeavour to hand because these questions generate critical reflection of a fundamental kind. They can also be usefully applied to Brock’s collection and Hopgood’s argument.

First, Holder and Reidy ask, ‘What are people doing when they appeal to human rights?’ As we saw in our discussion above of the right to democracy, it is clearly the case that the international lawyer and the philosopher can be doing something different from one another, even when they are being asked the same question. From Brock’s volume, we saw the way in which Pogge reflected on the purpose of his arguments about rights and responsibility, which was ‘to work toward a less unjust global order’ (311). Beyond academic reflection, human rights are used in a multiplicity of ways, and certainly not always in line with their ostensible ‘justice-oriented’ normativity. States can and do use human rights law and discourse for purposes of *realpolitik*. Furthermore, as Hopgood clearly brings out, the markets in humanitarian concern (figurative and literal) play a big role in shaping who does what and why with an appeal to human rights.

The second question concerns whether different human rights ‘actually reference the same kind of norm’ (461). Despite the fact that we do usually reference human rights as being one thing, they are not. If I tell you I am interested in human rights in Australia, this does not specifically tell you what I am interested in at all. Am I interested in freedom of speech? Or is it labour law? Perhaps it is paternalistic and racially discriminatory government activity towards Indigenous peoples, or the indefinite detention of minors seeking asylum. Is there something fundamental that ties these disparate political and ethical issues together as a matter of principle? Is there a ‘unified set of practices’ (463) that engages each of these areas (and the many others embraced under the human rights rubric) such that they hang together other than contingently and as a matter of conventional practice?

Holder and Reidy’s final question concerns how the advance of human rights is reflected in the lives of real people. For the legal philosopher Allen Buchanan (in Holder and Reidy), the moral and conceptual improvements that are marked by appeals to human rights ‘are surely among the most significant that human beings have yet achieved’ (415). For Goodale, Buchanan’s sense of optimism is misplaced. Goodale says:

What the ethnography of human rights practices in different parts of the world revealed is the fact that human rights have shaped what might be called 'legacies of human experience' in ways that have introduced new lines of contradiction into processes of social change, political transition and economic reform ... leading to a set of ambiguous judgements about the consequences of human rights for moral agency as purposive social action. (432)

Hope is sustained, however, and for Holder and Reidy it comes in the form of the belief that things can be better than they are presently (466). This, surely, is at the heart of what Hopgood references when he, despairing of *Human Rights*, nonetheless affirms that *human rights* will always go on and will always be worth the struggle. Hopgood prefaces his volume with a discussion of the relationship between the people of East Timor and the norms, practices and global institutions of human rights (upper- and lower-case). He concludes this reflection with a tribute to Segio Viera de Mello, who was the administrator of the UN transitional government that oversaw East Timor until 2002. De Mello was later assassinated in Baghdad in 2003, while serving as the UN High Commissioner for Human Rights. De Mello held that human rights should be a popular culture of innovation 'truly owned at the national and sub-national levels' (xv). Hopgood's concluding reflection on de Mello seems an apt summary of many of the most important lessons to be learnt from these three volumes:

In his complicated legacy, de Mello represented *Human Rights* but understood them as *human rights*. To work they had to belong to the people. He combined the pragmatic search for a political solution with a commitment to the *idea* of global norms. What mattered was reaching a workable compromise which real people would actually endorse. Complexity in his own life nurtured perhaps a sympathy within him for the complicated reality of any and all human endeavor. As *Human Rights* lose their force in the neo-Westphalian world of declining American power, so local interpretations of what rights are and which rights might be sustainable will be essential if *human rights* are to flourish. To achieve this, democratizing *Human Rights* (that is, transforming it into *human rights*) is an essential first step. (xv, emphasis added)

In these words, and in the life of this human rights advocate and administrator, we can identify Holder and Reidy's subterranean questions. The first question (what are people doing when they refer to human rights?) is clearly at play in the tension between *Human Rights* and *human rights*, and in the commitment to establish global norms that will also genuinely resonate at the local and grassroots levels. The second question, concerning which norms are being privileged in the institutionalisation of human rights, is also critical. *Human Rights* norms, Hopgood argues, preference the interests of global humanitarianism and the states that already dominate the formal mechanisms and institutions of the global human rights regime. By contrast, *human rights* norms are about the struggles for emancipation, resistance and justice fought by and for ordinary people. This contrast may be overdrawn at times, but it points to a real and constant dilemma that concerns the way in which the successful institutionalisation of rights demands can alter their nature, the norms and interests with which they are properly associated, and the forms of politics that flow from these changing associations.

Finally, there is the question of how human rights are reflected in the lives of real people. For de Mello, it was critical that human rights were for the ordinary people. Once human rights became proxies for interests other than those of ordinary people, they had lost their legitimacy. For Hopgood, this is where *Human Rights* have gone wrong; it is why he argues that *Human Rights* must be democratised. By this, he is not arguing for democracy as a human right (although many would accept this as its implication). He is, however, calling for a rejuvenation of the essential moral and political purpose of human rights: 'our shared interest in fair and equal treatment' (viii), combined with the instinctive demand that says 'No more, stop, enough!'² in the face of gross injustice to human persons.

References

- Beitz, C. 2009. *The idea of human rights*. Oxford: Oxford University Press.
- Cohen, J. 2006. Is there a human right to democracy? In C. Sypnowich, ed. *The egalitarian conscience: Essays in honour of G.A. Cohen*. Oxford: Oxford University Press.
- Pogge, T. 2008. *World poverty and human rights: Cosmopolitan responsibilities and reforms*. Cambridge: Polity Press.
- Rawls, J. 2001. *The law of peoples*. Cambridge, MA: Harvard University Press.
- Ruggie, J.G. 2011. *Guiding principles on business and human rights: Implementing the United Nations 'Protect, respect and remedy' framework*. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. 21 March, UN Human Rights Council.
- Sen, A. 2004. Elements of a theory of human rights. *Philosophy & Public Affairs* 32: 315–56.
- Young, I.M. 2011. *Responsibility for justice*. Oxford: Oxford University Press.

²Or 'Chega!', in Portuguese. This is the name given to the report published by East Timor's truth and reconciliation commission. It is available at URL: <<http://www.cavr-timorleste.org/en/chegaReport.htm>>.