

# Some Examples of the Remarkable Resilience and Utility of the Idea of Human Rights

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It is noted in the Preface that this special issue of the *CJHR* was given impetus by the overlapping 40<sup>th</sup> anniversaries of the founding of the Human Rights Research and Education Centre (HRREC) at the University of Ottawa and the elaboration and adoption of the *Canadian Charter of Rights and Freedoms*. The perspective was intentionally forward-looking – outward and onward. It is my privilege, as HRREC Director, and as Co-Editor, here to add context in terms of some of the achievements through these two generations and their current trajectory, thereby situating the seven contributions to this special issue. These are my views distilled from a professional experience that coincides largely with the same 40-year period and arrives at the same shared forward-facing perspective and resolute engagement – confident in the still meritorious idea, message and utility of human rights in the world both at home and abroad.

It is trite to observe that we are living in challenging times – especially for human rights – where much is wrong, shameless violations have become commonplace, seemingly general impunity prevails and the persistent reproach of double standards<sup>1</sup> dominates. Confidence has been undermined and good will drained. We are overwhelmed and exhausted by the

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<sup>1</sup> This problem – increasingly voiced by governments and advocates around the world and often invoked as a slight against international human rights, humanitarian and criminal law – has begun to attract serious scrutiny led by some thoughtful young scholars. See e.g., Patryk Labuda, “Double Standards in International Legal Scholarship: Beyond US- and Anglo-Centric Culture Wars?” (In Double Standards and International Law delivered at Freie Universität Berlin, Berlin, 15-16 July 2024) [unpublished]; Olabisi D Akinkugbe, “Double Standards in the Reform of Investor-State Dispute Settlement” (In Double Standards and International Law delivered at Freie Universität Berlin, Berlin, 15-16 July 2024) [unpublished]; Naz Modirzadeh, “Keynote Event (IHEID, A2)” Address (in Double Standards and International Law delivered at Geneva, Switzerland 15-17 May 2025) [unpublished]; Nico Krisch, “Double Standards and their Limits in International Law” (in Double Standards and International Law delivered at Geneva, Switzerland 15-17 May 2025) [unpublished]; HRREC, *Report: Ottawa Roundtable on International Law & Double Standards*, (Ottawa: University of Ottawa, 2024), online (pdf): <uottawa.ca/research-innovation/sites/g/files/bhrsdkd326/files/2025-02/Report\_OttawaRoundtable\_InternationalLawDoubleStandard.pdf> [perma.cc/RXS4-5G47].

unending torrent of misinformation, disinformation and “fake facts”. Perhaps the human condition leans toward negativity amid ubiquitous risks and fears: bad news has always sold well. Perhaps the developed but slow-moving practices of human rights monitoring, capturing the constant din of all manner of violations and their cataloguing – evermore amounting to crimes – has surpassed societal capacity to absorb or possibly even to watch amid growing frustration and the competing urgency of everyday life. Probably the yawning gap between the promise of human rights and their delivery, between lofty declarations and evident failures of compliance – between the talk and walk of human rights – deserves the current popular skepticism.

The gaps between promise and delivery, declarations and practices, theory and lived reality are simply too great. The system for the protection and promotion of human rights (and arguably more so of humanitarianism) is not up to the task. How many more decades must we watch the swelling numbers of refugees and displaced (now likely having exceeded 120 million human beings)<sup>2</sup> while the ledger annually charts shrinking resettlement opportunities and inadequate resources, whether from the public purse or private charity. Not surprisingly, there has been “pushback” against and even rejection of the universal project and basic idea of human rights.<sup>3</sup> A feature of the volatile contemporary change, even of the State-based (Westphalian) system, is the reality of State fragility<sup>4</sup> – of those increasingly unable or unwilling seriously or fully to implement human rights – amid diminishing effective State authority and the play of more non-State actors of all kinds (corporate/private, including “defence”/military contractors [profiteers or mercenaries?], humanitarians, activists, religious groups, etc.).

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<sup>2</sup> The United Nations High Commissioner for Refugees estimated 117.3 million people worldwide were, at the end of 2023, forcibly displaced due to persecution, conflict, violence, human rights violations and events seriously disturbing the public order with the total “likely to have exceeded 120 million” at the end of April 2024; see UNHCR, “Data and Statistics: Global Trends” (13 June 2024), online: <[unhcr.org/global-trends#:~:text=At%20the%20end%20of%202023,seriously%20disturbing%20the%20public%20order](https://unhcr.org/global-trends#:~:text=At%20the%20end%20of%202023,seriously%20disturbing%20the%20public%20order)> [perma.cc/DUY7-9ZJX].

<sup>3</sup> While engagement with the limits of human rights is not new and can be tackled constructively (see, e.g., Bardo Fassbender and Knut Traisbach, ed, *The Limits of Human Rights*, (Oxford University Press, 2019)), more challenging treatments can be seen in Amanda Murdie et al, *Contesting Human Rights: Norms, Institutions and Practice*, ed by Alison Brysk and Michael Stohl (Cheltenham, UK: Edward Elgar Publishing, 2019).

<sup>4</sup> For indicators, scores, rankings and comparative analysis since 2006, see, Fragile States Index: The Fund for Peace, “Analytics” (last visited 2 June 2025), online: <[fragilestatesindex.org/](https://fragilestatesindex.org/)>.

All that matters, some (increasingly loudly) say, is power and by “power” they mean force or might. This is the antithesis of human rights.

Despite the ebb and flow – the volatility and uncertainty – of our times, in fact the idea and message of human rights retains remarkable resiliency and purchase around the world. Popular cries for equality, dignity, inclusion, justice – the language of human rights – greatly animate and drive social movements and human development even as the organisations and institutions of the post WWII era appear increasingly unfit or indeterminate: What will come of all the commissions of enquiry, independent investigative mechanisms, the enormous backlogs of cases, reporting and recommendations largely unimplemented? Yet, demands for human rights are widely and loudly invoked. As the world changes – as assumptions of geography, history, various empires and affinities wane or are overtaken by new realities and new generations, some orthodox ideas of human needs, interests and aspirations persist even as they transform. History is marked by periodic milestones or inflection points – the Westphalian treaties, the Congress of Vienna and Berlin, the Treaty of Versailles and League of Nations, the United Nations Charter and Bretton Woods, the Helsinki Final Act, those post Cold War conferences, the advent of regional and other inter-governmental organisations, more recently the BRICS, G20+, the general rise of the Global South as well as bespoke minilateralism. Perhaps we are at or near such a point in history.

Interestingly, human rights remain, now domesticated in most Constitutions of the world<sup>5</sup> and in the principal instruments of virtually every inter-governmental organisation. Contemporary notions of human progress and social and economic development rest on sustainable peace which, in turn, depends substantially on respect for human rights. And as human development progresses, so the foci of attention and popular demands reflect these changes; thus, equity in the face of Climate Change, pandemic preparedness and response, global economic justice, armed conflicts (including, still, the nuclear threat), challenge the idea of human rights to respond not only coherently, but practically... to be meaningful for

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<sup>5</sup> Already twenty years ago, Hurst Hannum identified references to the *Universal Declaration of Human Rights* in then three-quarters of the world’s constitutions; see Hurst Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law”, 25 Ga J Int’l & Comp L 287 (1996) [esp. at Annex 1 (355 ff), reproducing many of the constitutional provisions referencing the UDHR]. For an online compilation of the world’s constitutions (which was an initiative of Jigsaw, formerly Google Ideas), searchable by topic, see Constitute, “Constitutions” (last visited 4 June 2025), online: <constituteproject.org/constitutions?lang=en&status=in\_force&status=is\_draft>.

everyone everywhere. Rightly, human rights are constantly (re)interpreted even re-imagined, tested and demanded to be made fit-for-purpose – whether new humanitarianism, environmentalism, or for the complexities of business (including new technologies) and human rights. We must move beyond the passing eras, contexts and priorities of previous generations to meet contemporary challenges and engage with the future viewed from today. Not surprisingly, thus, in Canada we now increasingly speak of *human rights* to health, to housing, to water, to clean environment – none of them in our *Charter of Rights and Freedoms* adopted just forty years ago.

We may be comforted by Steven Pinker's *The Better Angels of Our Nature: Why Violence Has Declined*<sup>6</sup> which assures us that the long arc of history demonstrates positive trends, and Karl Popper's *The Open Society and Its Enemies*<sup>7</sup> continues to convince intellectually and to soothe our liberal internationalist disposition (or yearning). Both have much to commend. But we must be attentive to those many – the swelling ranks of the poor, marginalized and alienated – who are not convinced and simply don't have the time in the face of immediate challenges of survival and their search for near-term solutions to inequalities attendant fast-paced globalization and painful disruptions. In short, a great many people are not feeling, enjoying or seeing the benefits of human rights. Promises of "in time" only invite ridicule while the "1%" or "0.1%" revel in spectacular gluttony and arrogance. The "billionaire class" belies nonetheless certain (often technological) progress but also rising awareness, expectations and demands. The non-billionaire class (i.e., the great bulk of humanity) has lost its willingness to tolerate – nay suffer and endure – the humiliation of manifest inequities amidst evident abundance. Beside Pinker and Popper, one must not fail to recall John Kenneth Galbraith's *The Affluent Society*<sup>8</sup> and his critique of "private affluence and public squalor". There is in the world a growing underclass or subalterns who see immediately the inequality and are not inclined to support it or the seemingly magical thinking of human rights that too often operates to shield it with perverse outcomes.

We cannot afford to ignore or have discredited the extraordinary progress achieved in just a handful of generations. Much sweat and many tears have been expended for the achievements which are undeniably

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<sup>6</sup> Steven Pinker, *The Better Angels of Our Nature: Why Violence Has Declined*, (Penguin Books, 2011).

<sup>7</sup> Karl Popper, *The Open Society and Its Enemies*, (Routledge Classics, 1945).

<sup>8</sup> John Kenneth Galbraith, *The Affluent Society*, (Houghton Mifflin Company, 1958).

remarkable and valuable. Sure, we can now see on our smartphones in real time the inequalities, insecurities and indignities that so many in the world suffer. But we possess a fat and detailed corpus of norms and standards plus a shared language of human rights against which we can exactly assess what we see and know to be violations and, thereupon, to consider what, instead, full and equal lives in dignity and rights should entail for everyone everywhere. That is an enormous achievement. That the ongoing struggle for human rights means to seek their effective enjoyment and full realisation is simply the constant task before us for which it now falls on this generation of young scholars and practitioners to carry on. They should be supported in holding high the torch to illuminate the path ahead. To this end, this special issue is rich both with imagination and concreteness and is, thus, a hopeful contribution that calls for and merits greater attention to and investment in the human rights project.

We must more fully use human rights. The language of “human rights” persists grounded on the essential assertion of the *Universal Declaration of Human Rights* and its universalist appeal: “All human beings are born free and equal in dignity and rights.” Simple and clear. Invoked. Claimed. Demanded. Human rights resonate and move to action. They inspire across all manner of social and cultural divides. And they can convince morally, logically and even economically. Together with problem-solving methods of analysis and policy-making, human rights offer real solutions to recurrent problems (like how to live together, how to share, how to be fair, how to design and implement good and effective governance, how to achieve justice and accountability, and how to survive). Unsurprisingly, human rights inform the Sustainable Development Goals agreed to be achieved by the world<sup>9</sup> translating human rights language and ideas (e.g. inclusion, real and effective equality in fact and of opportunity) into all policy areas.

An important quality of the idea of human rights is that it is purposeful and open-ended generating greater specificity, adapting to changing circumstances and remaining dynamic in tune with evolving human development. Thus, human rights demonstrate increasing precision, widening utilities and further engagement with the inescapable complexities of the world in which we live and are likely to live ahead as we

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<sup>9</sup> See, notably, United Nations Office of the High Commissioner, “OHCHR and the 2030 Agenda for Sustainable Development” (Last visited 4 June 2025), online: <[www.ohchr.org/en/sdgs](http://www.ohchr.org/en/sdgs)> [perma.cc/8VKA-ZPUN].

transition through the anthropocene and a new technology-led era of artificial intelligence, robotics, even androids and cyborgs; offering tremendous possibilities as well as dangers to human well-being and, of course, uncertainty. Human rights hold comparative advantages over competing normative and instrumental frameworks: universalist, open and inclusive, easy to grasp (i.e., they resonate), they are fundamentally just (i.e., fair), responsive to the wide scope of the human condition and experience, providing a developed and dynamic lexicon, holding considerable capacity, reconciling essential elements with flexible ones accommodating diversity of situations and the range of variable needs, interests and aspirations of people both individually and as groups. They are increasingly precise and practical (e.g. *vis-à-vis* business or other private relations). Still, system(s) elements beg to be developed or refined, even as there already exists a basic architecture of remarkable coherence and appeal.

This special issue appears in this larger context, hopeful spirit and historical development, offering a modest contribution to it. The contributions (four in English and three in French) reflect the bilingual character of the HRREC, the University of Ottawa and our country. Most are multidisciplinary, and a couple are interdisciplinary, reflecting the varied scholarship and inclinations of our HRREC members from different Faculties and their wide-ranging subject areas. The contributors are young scholars grappling with various problems, applying human rights in differing ways and emphases, and offering various solutions. They hold in common shared inspiration and hope. They employ the same basic conceptual framework and rely upon the same corpus of evolving norms and standards to address existing and emerging problems and challenges – whether matters of basic principle, regarding specific issues (like achieving reconciliation through the education of children) or even cases (notably the *Lubanga* case at the International Criminal Court). Ultimately, they want to make a difference.

A brief overview of the contributions to the journal – which arise from doctoral and some post-doctoral work in the process of completion or completed – demonstrates the diversity of the contributors and their interests, the richness of chosen topics, and the broad scope, utility and overall value of human rights. The contributions address areas of public policy and governance at various levels. These contributions also address different issues, including education, justice (in Canada and internationally),



protection (notably of Human Rights Defenders and of girls in situations of armed conflict), the reach and use of human rights concepts, emerging technologies, governance, ethnicity and the importance of the Arts. The issues are treated as they manifest for Canada in the world, in international relations and law, and in a specific country (i.e., in Canada and in South Sudan). The contributors themselves reflect perspectives of Canadian scholars, foreign scholars in Canada and those transitioning or having transitioned from the latter to the former. In order of appearance in this special issue, the contributions may be each summarized as follows.

*Van Armenian* shares his wonderfully interdisciplinary research and proposal for a transformative early education for Canadian children rooting and sustaining reconciliation between settler and Indigenous populations through a shift in Canadian identity that incorporates Indigenous soundscapes, specifically music from the land. His idea is that felt knowledge of Indigenous music would instil a *modus vivendi* based on shared references and experience and would not only counter the ongoing legacy of colonial erasure that divides, but help to “degenocide” by cultivating a new dynamic valuing the authentic sounds of Indigenous peoples and land. Armenian imagines a new generation of genuinely reconciled Canadians both knowing and feeling a shared belonging and respect literally grounded in the sounds of this land.

*Kirsten van Houten* focuses on a specific policy and programme of Canadian foreign policy: “Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders”. In marked contrast to the past policy of the preceding Harper Governments (which emphasised trade and eschewed human rights or similar possible “interferences” by Canadian missions abroad), Justin Trudeau’s Governments implemented an about-face by, *inter alia*, assisting Human Rights Defenders through the support of Canadian missions abroad resulting, not surprisingly, in some tensions leading, e.g., even to the closure of some missions.<sup>10</sup> Van Houten scrutinizes data from Global Affairs Canada headquarters, along with one field mission (the Canadian Embassy in The Philippines), whereby she focuses on the implementation of business and human rights principles – revealing the, so

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<sup>10</sup> BBC News, “Canada suspends operations at its Venezuela embassy” (3 June 2019), online: <[bbc.com/news/world-latin-america-48496542](https://www.bbc.com/news/world-latin-america-48496542)> [perma.cc/Z34C-MJ4A]; see Global Affairs Canada, “Canada suspends operations at Embassy of Canada to Venezuela” (2 June 2019), online: <[canada.ca/en/global-affairs/news/2019/06/canada-suspends-operations-at-embassy-of-canada-to-venezuela.html](https://canada.ca/en/global-affairs/news/2019/06/canada-suspends-operations-at-embassy-of-canada-to-venezuela.html)> [perma.cc/W6Q2-VAFV].

far, thin evidence of collaboration with civil society organisations and considering how the pro-active foreign policy may be more effectively and impactfully implemented.

Departing from a decidedly wider view, *Évelyne Jean-Bouchard* tackles the idea and prospect for transitional justice in Canada *vis-à-vis* Indigenous women in terms of the universalist conception of “world society” (and related “world polity”), which she applies through a feminist law lens. In doing so, she reveals the impact of the discourse of human rights and argues for the need for a feminist law and victim-centred approach while drawing from the strategies and work of Indigenous women in Canada. Although the distance traveled between theory and practice is considerable, her article aims at concrete, human rights-based outcomes.

With an arguably similar approach – universalist, yet with specific victim-centred application – *Bahati Mujinya* drills down in the fields of International Humanitarian Law and International Criminal Law to scrutinize the nebulous “active participation” in the hostilities which defines the status of combatants with major implications for their treatment – notably in the case predominantly of girls (i.e., female children) being used as sexual slaves or similarly victimized in the context of armed conflicts. Using an intersectional and victim-centred analysis, the article reveals the character of the situation of the girls and their appropriate treatment, notably for post-conflict rehabilitation. The detailed International Criminal Court case of the *Prosecutor v Thomas Lubango* provides the concrete material for the analysis.

The theme of universality is given explicit treatment by *Slava Balan*, who asserts the essential requirement of the precept for human rights as a globally relevant proposition and project. He subjects the theme to critical analysis, where he observes that – neither in law, nor in fact – does Canada apply substantially or coherently the universalist human rights framework. Drawing on some comparative research, Balan calls for a new and “more European” approach to applying international human rights norms and standards (to which Canada has largely and voluntarily acceded). He sets this out through what he characterizes as “a deep and comprehensive statutory human rights framework” that would meaningfully realize human rights for everyone in Canada through concrete and consistent applications of the relevant norms and standards.



Perhaps a specific 21<sup>st</sup> century challenge of Balan's critique is addressed by *Tenille Brown* in her treatment of fast-paced emerging or emerged technologies that are rapidly transforming our world yet have so far escaped adequate (or any) regulation, notably in terms of relevant human rights norms and standards. Brown argues for regulation that is inspired by and consistent with human rights, from (and through) the earliest process of innovation and adaptation, in effect, to get ahead of the developments which typically result in situations of post facto catch-up as human rights are belatedly considered if ever fully applied. Brown advocates mainstreaming human rights by foregrounding them in processes of technological innovation – "rights by design" rooted in the creation of new technologies and maintained through their development and various applications.

Finally, *Aboubacar Dakuyo* examines the challenging situation of the world's newest State, South Sudan, in attempting to reconcile the formal law required of a contemporary State with diverse customary law of a developing post-colonial and newly independent State. Taking a normative approach to legal pluralism, Dakuyo reveals both the many challenges but also opportunities arising from the political transition and State- and nation-building projects. In this, he argues for particular attention to, and commends, human rights as a valuable normative framework that can deliver both conceptual coherence and legal efficacy. Although focused on the case of South Sudan, the analysis and lessons hold significance for much of the world (including Canada) wrestling with the same or similar challenges of reconciling cultural and politico-legal diversity.

A debt of gratitude is owed to each of the contributors, in particular the two Guest Editors with whom I had the pleasure to observe and work over many years, as they completed their own programmes of study and matured as highly competent and committed scholars. Gratitude is also due to the *CJHR* editorial staff and especially Editor-in-Chief Professor Short who agreed to publish this compilation and, with the editorial team, demonstrated care and considerable patience in bringing it to fruition. Of course, for the contributing young scholars, this publication constitutes valuable dissemination of their work with the hope it may enjoy impact especially with relevant policy- and law-makers. Finally, the spirit of collaboration between the Universities of Manitoba and Ottawa is a good example of Canadian human rights scholars and centres linking arms in a productive way which, I hope, may give rise to further such collaborations for both the scholarly community and ultimately for the intended

beneficiaries of our individual and collective work as the promise of human rights continues to inspire and serve new generations.