

UN Human Rights Ethics

Against Dissensus in Elementary Ethics

By

Clark Butler

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Preface

A main difference between the League of Nations and the United Nations is that the UN is founded on an ethical principle governing individual conduct rather than the self-determination of nations. Yet the UN never presented its human rights ethics as a normative ethical theory comparable to competing theories such as utilitarianism or Kantian ethics. Instead it published the 1948 Universal Declaration of Human Rights, a document with numbered articles in anticipation of the two major human rights human rights conventions of the 1960s in international human rights law, one on “civil and political rights” and the other on “economic, social, and cultural rights.” This book aims to translate the 1948 UN Universal Declaration into prose comparable to the exposition of other normative ethical theories. It is addressed to all teachers of elementary normative ethics at the university level. The book makes a case for exercising and respecting human rights as the final standard of right and wrong in contrast to other widely known normative ethical theories.

This book acknowledges the failing of the United Nations to win universal support of the 1948 Universal Declaration of Human Rights by all member states of the UN. In 1990 Muslim countries substituted the Cairo Declaration on Human Rights in Islam, which as early as 2001 and 2003 was found incompatible with the UN Universal Declaration and hence with the European Convention on Human Rights by the European Court of Human

Rights.¹ Yet despite the fact that Afghanistan as a member of the Organization of Islamic Cooperation is a signatory of the Cairo Declaration, being most opposed to human rights ethics based on the Universal Declaration, an organization known as UN Women has worked through Afghan institutions to train local women for remunerable employment.

Since it is not enough for a normative ethical theory to be credibly true, such a theory is incomplete without a method of moral education. Hence the last chapter of this book proposes a method of moral education adapted to human rights ethics, a method that is absent in UN literature.

The UN Universal Declaration of Human rights declares numbered moral human rights without supporting them with argumentation. One reason is that UN subscription to one or another normative ethical theory could cause controversy among moral philosophers representing different world civilizations. Since human rights, including human rights education, were in the early 1990's handed to the newly created UN Office of the High Commissioner of Human Rights (OHCHR) rather than to UNESCO, the original educational arm of the UN, human rights education currently falls to the international human rights law profession rather than to normative ethicists. The fact that human rights education has fallen in the hands of the human rights law

¹ This 2019 website by the Parliamentary Assembly of the Council of Europe (PACE) discusses Islamic sharia law in Europe since 2001, when sharia was first denounced by the European Court of Human Rights for its alleged incompatibility with human rights. Notably in the Cairo Declaration of Human Rights in Islam freedom of religious belief is denied. In 2023 the European Court conceded the applicability of sharia law in local Muslim communities in matters of marriage and inheritance.

profession instead of moral educators detracts from human rights education being supported by any full normative ethical theory under UN auspices. Jacques Maritain, a Catholic moral philosopher on the Universal Declaration drafting committee, has held that the Universal Declaration is only a practical agreement by representatives of different cultures without any agreed theoretical foundation.² This book proposes a theoretical foundation on which all who look for such a foundation may be able to agree.

The law profession knows how to prosecute human right crimes, for example in the International Criminal Court, but is not trained to reduce human rights violations as public educators. We must not forget that the first person to speak of human rights (*les droits de l'humanité*) was not from the law profession, but was the philosopher Rousseau in 1762. (See Jean-Jacques Rousseau, *The Social Contract*, Book 1, Part.8, www.earlymoderntexts.com/assets/pdfs/rousseau1762.pdf). This is not to say that ethicists should replace the legal staff of the Office of the High Commissioner of Human Rights (OHCHR). The argument of this book is that the lawyers and ethicists in the UN framework should

² "How is an agreement conceivable among men assembled for the purpose of jointly accomplishing a task dealing with the future of the mind, who come from the four corners of the earth and who belong not only to different cultures and civilizations, but to different spiritual families and antagonistic schools of thought? Since the aim of UNESCO [United Nations Educational, Scientific and Cultural Organization] is a practical aim, agreement among its members can be spontaneously achieved, not on common speculative notions, but on common practical notions, not on the affirmation of the same conception of the world, man, and knowledge, but on the affirmation of the same set of convictions concerning action." Jaques Maritain, *Man and the State* (Chicago: University of Chicago Press, 1951), pp. 77-78. Maritain was a French Catholic member of the drafting committee for the Universal Declaration.

be complementary. Ethicists are not equipped to deal with high crimes against humanity.

Elementary ethics courses are highly enrolled in the United States and elsewhere as a survey of 2500 years of normative ethical theories, but with a disappointing lack of any professional consensus as to what the true normative ethical theory might be. Chapter Thirteen proposes a theoretical validation of UN human rights as the sole remaining norm in normative ethics among the wide ranging normative ethical theories considered in prior chapters. The chapter elaborates human rights ethics in the expository form typically used in accounts of normative ethical theories, but which the United Nations in its use of numbered articles of declarations and of treaties does not use.

Normative ethical theories are commonly divided into deontological theories based on duty for duty's sake and consequentialist theories based on duty for non-morally good results. Some add a third category, virtue ethics. UN human rights ethics, as Chapter Thirteen makes clear, is a non-deontological conse-quentialist ethics drawn from the Universal Declaration of Human Rights as rules of moral obligation. It includes a placeholder for virtue, namely the missing virtue of genuine dialogue between civilizations.

Part One of the book, following an introductory chapter, presents popular ethical theories that do not inspire many current moral philosophers to sustain them with reasoning. Part Two examines Immanuel Kant's ethics that made a significant impression academically, but that enjoyed limited subsequent popular support because of its complexity. Part Three examines selected

normative ethical theories with past or present popular appeal that have inspired subsequent academic support by moral philosophers. Part Four supports the human rights ethical norm that enjoyed popular support after World War Two. Parts One through Three develop a negative case for the human rights norm in ethics by proposing to explain why norms treated in these parts of the book should be set aside. Part Four gives a positive case for that norm, pointing to its merits apart from the demerits of other theories.

That the need for human rights ethics to be accessible by internationally shared reasoning has been especially felt in recent years which have witnessed the rise of authoritarian nationalism. This book has no chapter on ethical nationalism, since nationalism is not a normative ethical theory in competition with other such ethical theories. Cultural, economic, and military nationalism lies in identification with the national interest of one's nation to the exclusion of that of competing nations. But normative ethical theories, unlike nationalism, are not conducive to a competition between nations. In the best of circumstances the nationalists of a country do not go beyond supporting their teams in the Olympics.

Parts One through Four of this book analyze normative ethical theories concretely into alternative types. Part One considers a selection of currently popular ethical theories that today are largely unsupported by professional moral philosophers. Part Two examines Immanuel Kant's ethics that made a significant impression academically in the late eighteenth century, but that has enjoyed limited popular support since due its density. Part Three critiques selected ethical theories that have inspired academic support by classical moral philosophers beyond prior

popular support. Part Four is devoted to the human rights-based ethical norm based on the 1948 UN Universal Declaration of Human Rights that enjoyed its widest support in the wake of World War Two. No separate chapter is devoted to current care ethics, since Chapter Thirteen concludes that human rights ethics and care ethics are allied, contrary to what some feminists have thought. The chapter contains a full analysis of the Declaration, including due process courtroom rights dedicated to the legal enforcement of moral human rights in the Declaration. In fact a majority of Declaration rights are due process rights. Their function is moral training in anticipation of the day when legal enforcement is no longer so necessary because respect for civil liberty and civil rights has entered the mores of the peoples of the world. The concluding Chapter Fourteen on human rights education moves such education to the school room and in particular to the college level course on elementary ethics.

Some ethical theories—since the professionalization of philosophy, especially in Germany in the eighteenth century—arose as single-authored theories in rivalry among colleagues in the moral philosophy of a given generation. At times a normative theory gains temporary prominence among colleagues and then is forgotten except by historians of philosophy. Occasionally a single-authored ethical theory like Kant's escapes confinement among moral philosophers of a generation to influence the university educated public for more than a single generation. Kant responded not just to his contemporaries but to the whole history of modern philosophy that began in the previous century. Responding to the division in modern philosophy between seventeenth century Continental rationalism and eighteenth century British empiricism, Kant sought to overcome the divide by

distinguishing between an individual's empirical self and the same individual's rational self in an encompassing view of human nature. His ethical theory is subject to alternative interpretations, but is not a naturally arising moral theory in the general public. Yet it has offered material for the careers to professional philosophers validating or critiquing it.

This is not a book to persuade human rights professionals to become Kant scholars or close students of any other historical moral philosopher. Its aim is to abstract the normative ethical theory implicit in the 1948 UN listing of human rights. Since the Universal Declaration could not have existed over a century before in the age of European imperialism, human rights ethics could not then have existed as an established academic theory based on a consensus of that time.

Normative ethical theories first emerge naturally without being created by moral philosophers, since some guidepost to conduct has always been necessary. Part One of this book examines a selection of spontaneously occurring ethical theories largely unsupported by moral philosophers. Naturally arising moral guideposts in the public domain have existed long before the existence of philosophy. Concepts of right and wrong did not first arise on the level of abstract theory, though philosophers eventually articulated them on that level. Part Three examines a selection of popularly arising moral theories which have been supported by some noted moral philosophers. Part Four begins with a chapter devoted to United Nations human rights ethics preceding the chapter the human rights education. No chapter is devoted to current care ethics since it is maintained that human rights ethics and care ethics are allied. After personally embracing

human rights ethics, I discovered the difficulty of teaching it without a pedagogical method. Chapter Fourteen on human rights education proposes that the human rights education of local populations is best done by native educators/facilitators in local languages who have been university-educated in international as well as their local languages. Human rights education is directed to the “free and full development of the human personality” (Universal Declaration, Article Twenty-Nine) and human rights ethics is hence a teleological ethics. Its aim is to show individuals greater possibilities of personal achievement by knowing and exercising human rights, not merely by legal training by due process to avoid the human rights violations which now attract the most attention in the public news.

Chapter One

Introduction

The United Nations does not mention “human rights ethics.” The UN does not develop a normative ethical theory anywhere comparable to normative ethical theories like utilitarianism or Kantian ethics. The UN through the Office of the High Commissioner of Human Rights (OHCHR) holds that the “rule of law” rather than the arbitrary “rule of men,” is “the vehicle for the promotion and protection of the common normative framework.... The rule of law is the implementation mechanism for human rights, turning them from a principle into a reality...”¹ Yet the most costly of human rights—namely economic, social and cultural civil rights—cannot be turned into reality by the rule of law or due process in cases of the violation of international human rights law. Cultural rights include the right to education including human rights education (Article Twenty-Six). Chapter Fourteen will describe a method of moral and human rights education contrary to the 1995-2004 Human Rights Education Decade of national human Action Plans voted by the General Assembly, a decade whose success was generally acknowledged to have been limited. The German political scientist Anja Mihr wrote after the Decade:

“HRE (Human Rights Education) became a widespread concept in the 1990s with the resolution of the United Nations General Assembly in 1994 on the Decade for Human

¹ See <https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/> and <https://www.un.org/ruleoflaw/thematic-areas/#>

Rights Education from 1995 to 2004. With this decade, all UN member states agreed to undertake measures to promote and incorporate HRE in the formal and non-formal education sectors. However, toward the end of the UN Decade it was clear that only a few governments had complied with these requests. Instead, most of the promotional work for HRE was done by non-governmental organizations... In the future HRE is expected to be more local and community based as well as more target group-orientated.”²

The OHCHR has singled out “freedom of expression” among human rights as a fundamental right covering other rights.

“Freedom of expression is a fundamental human right, enshrined in article 19 of the Universal Declaration of Human Rights. However, there are governments and individuals in positions of power around the globe that threaten this right. A number of freedoms fall under the category of freedom of expression. Freedom of the media is under attack in many places because of its essential role in ensuring transparency and accountability for public and governmental authorities.”³

Freedom of expression in Articles Nineteen is a key civil liberty right protecting one from unnecessary government intrusion in one’s life. Freedom of expression covers more particular civil liberty rights such as freedom of thought and belief in Article Eighteen, freedom of assembly and association in Article Twenty

² <https://doi.org/10.1093/acrefore/9780190846626.013.213>

³ <https://www.ohchr.org/en/topic/freedom-expression-and-opinion>

and democratic self-expression at the ballot box in Article Twenty-One.

Civil rights differ from civil liberty rights by protecting individuals from discrimination by other citizens rather than from unnecessary interference by government. Civil rights to a livelihood, subsistence and social security (Articles Twenty-Two-Twenty-Seven) are means to protect civil liberty rights of active participation in inquiry and in a democracy. The end beyond all human rights as the means is “free and full development” of each human personality (Article Twenty-Nine). Article Eighteen asserts that everyone has a right “to manifest his religion or belief...”. Article Nineteen protects the human right to “freedom of opinion and expression,” but also to the free exchange of information which is vital to progress in the sciences. Article Twenty protects freedom of “association and assembly” and thus communication between people with common causes. Article Twenty-One protects self-expression by the secret ballot vital to democracy.

Ronald Dworkin and the Human Rights Turn in Ethics

Human rights are first individual rights, not group rights. To use Ronald Dworkin’s metaphor, individual human rights “trump” utilitarian group rights of the greatest number to happiness.⁴ Yet group rights are explicit in the African Charter on Human and Peoples’ Rights (1981), but Africa is not alone. Declarations of rights in the defense of indigenous peoples abound.

⁴ Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977)

The United States and France both assert a group right as a people's right. The Declaration of Independence in its Preamble is a declaration by the American "people." The French Declaration of Human Rights and the Rights of the Citizen (1789) claims it to be inseparable from the French people whose representatives declared it. But, following Dworkin, human rights override the rights of any people's utilitarian right to the greatest happiness of the greatest number. Since individual human beings are not groups, group rights are not foundational human rights. But by the communications technology of today a fundamental individual human right to virtual assembly can ground a derived human right of all human beings as a group to a reduction of the global warming and the climate change which obstructs the best made plans of uncounted individuals in exercising the end of all human rights, individual personality development cited in Articles Twenty-Two, Twenty-Six, and Twenty-Nine of the Universal Declaration.

It is one thing to say that all humans ought to equally have human rights. Such a claim is true because the end of personality development is inconceivable without human rights as indispensable means to the end. To will the end is to will the means. Through his pithy saying about what trumps what, Dworkin inaugurated academically a shift from utilitarianism to human rights ethics coinciding with the Carter Administration's shift to a human rights-based foreign policy.

Since Dworkin was a noted philosopher of law and since the utilitarianism he targeted is a normative ethical theory, he illustrated the philosophy of law's adoption of a position among normative ethical theories. Yet many international human rights

law professionals, despite their concern to justify moral human rights, are not conversant in the field of normative ethical theories.

The central chapters of this book address well-known such theories which are critiqued in favor of human rights ethics as a normative ethical theory. The ethical value of an international human rights treaty for human rights protection can be recognized by citizens even of a state that has declined to ratify the treaty as international law. The UN Convention on the Rights of the Child, in effect in international law since 1991, is endorsed in professional psychological counseling circles committed to the best interest of children in the United States which, opposing it, has left it unratified. The American Psychological Association states that the defense of the rights of children has become prominently and widely discussed since the Convention on the Rights of the Child (CRC) was opened for ratification in 1989.⁵ They are invoked in discussions on current events and are influential in the creation of policy and programs that affect millions of children across the world.

The Preamble of the 1948 UN Universal Declaration refers to it as declared by the “conscience” of humankind outraged by the Holocaust. “Conscience” is not a moral standard, but is the consciousness of such a standard. The Declaration, not itself yet a convention of international law, balances moral affirmation with its abomination of the immoral “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.” The wording of the Declaration has become sacrosanct, and is not to be tampered with. If we begin it

⁵ <https://www.apa.org/about/policy/rights-child>.

becomes unclear where to stop. Yet such a document is subject to rational reinterpretation. Thus “man” used throughout the Declaration” means “human being.”

This is not to say that the Declaration cannot substantively be qualified further. Most significantly Amartya Sen and Martha Nussbaum have done so by their “capabilities approach” to implementing human rights. They have made us see that, in the gap between “the highest aspiration” of the people and the realization of these aspirations, the capability of individuals to actually realize their aspirations often remains hopelessly undeveloped.

“...many women... have lacked support for many of the most central human functions, and that lack of support is at least to some extent caused by their by their being women. But women, unlike rocks and trees and horses, have the potential to become capable of these human functions, given sufficient nutrition, education, and other support.”⁶

Without development of the capability of actually exercising a universal human right, which is to say without empowerment not excluding institutional reforms, the exercise of such a right often remains a remote potential, often discouragingly unrealized.

Normative ethics has remained, from its inception in the time of Socrates to this day, a nest of conflicting theories. However, the Declaration is potentially a normative ethical theory, which in Part Four will be put in the expository form of such a theory to eclipse

⁶ Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge New York: Cambridge University Press, 2000), p.110.

its alternatives. The Preamble to the Declaration anticipates the day when its implementation will be institutionalized through transfer of the responsibility to the member states of the UN. It states that “member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.”

Yet when states take responsibility for implementing human rights by treaty obligations, they are tempted by derogations that can diminish the merit of the Universal Declaration. Nations agree at least in principle that certain rights in the UN Universal Covenant on Civil and Political Rights cannot be derogated, notably rights corresponding to Article Five of the Universal Declaration: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The UN then concedes for its part that in emergency situations member states can derogate other human rights, such as the right to free democratic elections in a time of civil war. The UN warns against the abuse of the right of derogation, for example by authoritarian governments seeking to hold onto power in the face of public uprisings. “The derogation mechanisms in Human Rights Law can only be invoked in case of public emergency threatening the life of the nation, such as an armed conflict.”⁷

Parts One through Three of this volume critique past and present normative ethical theories generally. The ethical theories treated here may be called global theories. The result is that no chapter is

⁷ <http://casebook.icrc.org/glossary>

devoted to a thinker as important as John Rawls because his preferred ethical theory lacks a global audience. His books *A Theory of Justice* (1971) and *The Law of Peoples* (1999) show his preferred ethical theory to result from an individualistic thought experiment more typical of Western culture. He pictures a just constitution as one in which individuals imagine the constitution they would prefer if they knew nothing of themselves beyond the fact that each is abstractly a human being “in the original position.” He admits that such a constitution would embody certain human rights.

For example, no one in the original position would know whether one is a man or woman, and thus would not subscribe to a constitution treating the rights of men and women unequally. This reasoning is of course not the origin of the actual Constitution of the United States, but it is conceivably a constitution for which more individualistic Americans could opt by their attraction to the idea of a constitution decided under a “veil of ignorance” as to who in particular each is. If the idea of generating a constitution by such an individualistic thought experiment is culturally more attractive to Americans, it is not the sort of constitution to which what Rawls calls non-Western “decent” peoples under collectivistic authoritarian governments are attracted. By the same token there will be no chapter here on Confucianism as an expression of Chinese culture.

Part Four elaborates human rights ethics in the expository form typically used in accounts of normative ethical theories, but which the United Nations in its preference for articles of declarations and treaties does not use. After the 1948 Universal Declaration, the UN launched a program for the creation of international human rights

law transforming the Universal Declaration into two global international law treaties opened for signature and ratification in 1966: the International Covenant on Civil and Political Rights took effect in 1976, and the International Covenant on Economic, Social, and Cultural Rights came into force the same year.

The 1948 UN Universal Declaration remains a moral declaration appealing to conscience containing no treaty obligations of any state. The covenant on civil and political rights is used in an attempted behavior training of nations that have ratified it, which are periodically tested for compliance with the rights to which they have agreed. Such training by the UN occurs by periodic country reports submitted by ratifying nations to independent experts from the OHCHR Human Rights Committee who respond publicly. An Optional Protocol allows the Committee to hear individual complaints of alleged violations by national governments. Since the UN publishes country reports, member states can be embarrassed. Even compliant conduct resulting from such training may not be internalized in the character of national actors before a longer-term pattern is observed.

In 1993, in large part to wars and human rights violations surrounding the breakup of Yugoslavia, oversight over human rights was handed to the legal staff of the new Office of the High Commissioner for Human Rights (OHCHR). The law profession knows how to prosecute human rights violations and crimes, but is not trained to reduce violations as educators. This book does not embrace the view of the OHCHR that the rule of law is the general “implementation mechanism for human rights, turning them from a principle into a reality.” The rule of law to be successful needs to be supported by the rule of civilized custom.

The last chapter on human rights education argues that the human rights education of local populations is best done by native educators/facilitators in local languages, but who have been university-educated in one of the five international languages recognized for use by the United Nations. Human rights education is “directed to the full development of the human personality” (Universal Declarations, Article Twenty-Six). Its aim is to show local populations possibilities of greater individual achievement by knowing and exercising their rights, not merely by avoiding violations. Every attempt needs to be made to demonstrate to nations which do not support all rights in the Universal Declaration that human rights in the name of the personal fulfillment of a nation’s citizens cannot promote the personal fulfillment of its citizens without invoking rights in the Universal Declaration to which a given nation may object.

The three central parts of the book critique familiar normative ethical theories in a certain order. Part One considers popular ethical theories that today are infrequently recognized by moral philosophers who sustain them with reasoning. Part Two examines Immanuel Kant’s ethics that made a very significant impression academically, but that enjoyed limited subsequent popular support in part due to its complexity. Part Three examines theories that have enjoyed popular appeal and inspired academic support by moral philosophers. Part Four supports, as a normative ethical theory, the human rights-based ethical norm that enjoyed popular support in the wake of World War Two through the Universal Declaration. No separate chapter is devoted to current care ethics since it is argued that human rights ethics and care ethics are concurrent.

Implicit normative ethical theories first emerged naturally in the human career as people looked for and found ways of responding to changing social and environmental conditions. Some ethical theories—since the professionalization of philosophy, especially in Germany in the eighteenth century—have arisen as single-authored theories in rivalry with colleagues in the moral philosophy of a given generation. At times such a theory gains temporary prominence among colleagues and then are forgotten except by historians of moral philosophy.

A very few single-authored ethical theories escaped confinement among moral philosophers to influence the educated public and leaders of society for more than a single generation. One most prominent ethical theory that originated in moral philosophy that went beyond rivalry with contemporaries of a single generation was single-authored by Immanuel Kant (1724-1804). He responded not just to living contemporaries but to the whole history of modern philosophy that began in the previous century. Responding to the division in modern philosophy between Continental rationalism and British empiricism, he sought to overcome the divide by distinguishing between one's *empirical* self and one's *rational* self in an encompassing view of individual human nature. His ethical theory is subject to alternative interpretations, but is not a naturally arising moral theory in the general public. Yet it has offered material for the careers to professional philosophers validating or critiquing it.

This is not a book to persuade human rights professionals to become Kant scholars or close students of any other historical moral philosopher. Its aim is to save normative ethical theory from disarray by developing it from the Universal Declaration. The

implication is that, since the Universal Declaration did not exist a century ago, normative ethics could not then have existed as an established academic discipline based on a global consensus of educators. The unprecedented appeal of Universal Declaration was due to unparalleled compassion upon discovering so many millions of persons of various descents who suffered and died under Axis dictatorships fixated on a racist attempt to reduce the diversity of human beings to those of Aryan or Japanese descent, accompanied by the subservience if not liquidation of other racial groups.

Yet compassion is a feeling that ebbs and flows. People exposed to too much suffering develop compassion fatigue. The 1994 Rwanda genocide, with between a half million and a million dead, was met with no effective compassionate response by any of the key bystander powers, including the United States, France, and the United Nations itself.

Conscience is not a norm of right and wrong, but is the consciousness of an alleged final norm. It presupposes a norm, but proves nothing about its validity. It is the task of normative ethical theory to provide convincing reasons to adopt a final ethical norm. The Preamble of the Universal Declaration interpreted “conscience” as the consciousness of human rights in contrast to the radical evil of the Holocaust in supposedly civilized modern Europe. Had it not been for Hitler the Universal Declaration would never have come into existence.

Less abstractly, the human rights norm, in light of the anti-discrimination clause in Article Two in the Universal Declaration, insisted on the equal moral rights of all human beings regardless

of differences of any sort between them, in contrast to the norm to which Hitler Youth remained attached in the waning months of the World War Two. In the second century BC Roman playwright Terence, a freed slave of North African origin and with a darker complexion, is remembered for his dictum that nothing human was alien to him. One rationale behind the dictum is that human beings can learn more about their own humanity from the diversity of other cultures. Humanity is heterogeneous. UNESCO is dedicated to recovering by cultural anthropology this diversity backwards in time as well as outward in space through respect for indigenous peoples.

The German philosopher Johann Gottfried von Herder (1744–1803) anticipated UNESCO's concept of human diversity in his belief that a complete idea of one's own humanity would include all cultural forms of humanity beside one's own. The Age of Reason in the seventeenth century, illustrated by the genius of a Leibniz or Newton, was popularized in the rising middle class in the eighteenth century Age of Enlightenment which inspired the French Revolution's 1789 Universal Declaration of the Rights of Man and Citizen. Yet since the lack of universal public education contributed to the Reign of Terror followed by Napoleonic authoritarianism, the immediate legacy of the Age of Enlightenment was not human rights.

European Court of Human Rights

The two global UN human covenants were preceded by regional human conventions beginning in the early 1950s. The most influential earlier regional convention was drawn up by the Council of Europe, founded the year after the Universal

Declaration. The European Convention on Human Rights took effect in 1953 to legally protect civil, political, and due process rights found in the Universal Declaration. The European Convention created the European Court of Human Rights in 1959 to enforce civil, political, and due process rights with the aim of improving positive law in European nations.

Europe witnessed the most active protection of human rights due to a vow that World War Two atrocities in Europe should never recur. The Preamble of the European Convention went beyond the UN Universal Declaration by resolving “to take the first steps for the collective *enforcement* of certain of the rights stated in the Universal Declaration” (emphasis added). The Universal Declaration had only stated ambiguously that “member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and *observance* of human rights (emphasis added).” The rights enforced by the European Court excluded developing economic, social and cultural rights in the Universal Declaration, which were addressed by the European Social Charter which took effect only in 1965.

Today any citizen of a Council of Europe member state can appeal without expense for legal redress to the European Court. If the Court decides favorably on behalf of the applicant, it often requests the member state losing the case to change its domestic positive law to avoid the burden of repeat cases and at the same time to take steps to legally enforce a range of human rights. The Court’s case law clarifies the meaning not only of the European Convention but indirectly of the Universal Declaration itself from which the Convention directly draws.

Article Three of the European Convention follows verbatim Article Twelve of the Universal Declaration in prohibiting “degrading treatment or punishment,” which the Court applies to all Council of Europe citizens and hence to children as well. The first 1978 Court verdict against corporal punishment as degrading involved a fifteen-year-old British school boy. Since then there have been similar verdicts across Europe, involving parental behavior as well as school disciplinary action. Several European nations have responded by outlawing the tradition of corporal punishment. Today the Czech Republic remains as the only European nation to allow the corporal punishment of children at home, though by 2024 it was amending its civil code to outlaw such punishment in schools.

The Court has also used the non-discrimination clause in Article Two of the Universal Declaration to promote new understandings of civil rights on social issues such as abortion, assisted suicide, body searches, domestic slavery, adoption by same sex couples, the rights of transexuals, domestic slavery, the protection of journalists’ sources, and the right to privacy. At one time a Greek military junta in the 1970s stood out as the sole major case of European non-compliance with the Court. The corporal punishment of school children was outlawed in private as well as public schools by the end of the twentieth century with the exception of the Czech Republic largely in response to European Court verdicts.

Yet prisoners in the United Kingdom continued to lack the right to vote until 2020, despite a 2005 European Court verdict against the UK judging that prisoners retain the voting rights of their country of citizenship. Russia, a member of the Council of Europe since

1996, accumulated a record of prolonged non-implementation of Court decisions before its 2022 invasion of Ukraine. In February 2022, in reaction to the Russian invasion of Ukraine, the Council of Europe suspended Russia from the Council after twenty-six years of Russian membership following the fall of the Soviet Union.

Yet this book on UN human rights ethics does not ultimately advocate legal means of implementing human rights ethics. Legal coercion can be used to train people to respect human rights. But human rights ethics goes beyond courtroom training by inculcating spontaneous respect for human rights. Human rights law is a means. The end is the internalization of respect for human rights in one's personality as the means of eventually promoting individual personality development across humankind.

The Ambiguity of "Morality"

This book seeks to save normative ethical theory from its historical division into incompatible moral theories by leaning on the UN Universal Declaration and the European Court's enforcement of all but economic, social and cultural rights. Psychology is also divided into conflicting schools of thought, but that does not have the same potential detrimental effect on individual as well as national conduct. Beyond the enforcement of due process and democratic political rights, the Court has revealed the benefit of the Universal Declaration in promoting diversity in the pursuit of personal civil rights goals. Yet the Court has recognized the limits of its power to protect diverse civil liberty rights not recognized as acceptable in certain localities. It is noteworthy that "moral" is used in two senses. In one sense the Universal Declaration is a potentially

universal “moral” document. But “moral” is used in a different sense in Article 29 of the Universal Declaration:

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

Insofar as the Universal Declaration provides the norm of morality in a human rights-based ethical theory, it cannot be limited by “morality.” Yet instead of referring to the norm of a valid ethical theory, “morality” in Article 29 means local “morals.” The European Court recognizes that accommodation to local morals takes precedence over a right as fundamental as freedom of expression if the exercise of such freedom contradicts a local consensus that a particular exercise of freedom of expression offends local morals and will cause public disorder. The Court has practiced deference to local morals except in the case of nonderogable rights like the right to life or not to be tortured. Since the Court recognizes no pan-European consensus on morals, what is a legally unacceptable obscenity in one locality may be an acceptable exercise of freedom of expression in another. Freedom of expression can be both the most encompassing civil and political right and yet be subject to limitation in the name of public order. Yet local morals can evolve. There was a time when Ireland was so strictly Catholic that a television program giving an unorthodox view of Jesus would cause such general offense to defeat the purpose of freedom of expression. It is generally recognized that that time is past in a now liberalized Ireland.

Part One:
Grassroots Moral Philosophies