

Introduction

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This volume began to take shape during a conference organized by the Human Rights Initiative at the Georgia Institute of Technology in the spring of 2005. At that time, the reports of human rights abuses by American soldiers and interrogators in Abu-Ghraib prison and the Guantanamo detention facility sparked deep concern among human rights advocates. We conceived of “human rights in crisis” in relationship to the defense and advancement of human rights in the context of the US-led War on Terror. The crisis, in its original conception, recognized the possible loss of human rights both in the United States and among detainees in US-governed detention facilities. It also contained an element of hope derived from a conviction that the pursuit of human rights happens on many fronts and in many ways around the globe; that a retreat from human rights in the United States did not necessarily signal a global retreat. The need to defend human rights and the possibility of advances in human rights and emerging means of pursuing human rights inspired this project from its inception.

Hence, this volume is dedicated to expanding our understanding of the pursuit of human rights in the era of the Global War on Terror, but in identifying robust defense of human rights in this era it looks beyond the boundaries of this war. This is a necessary step not only to obtain a more comprehensive outlook, but also to allow a more nuanced understanding of the multiple means by which human rights are pursued. Law and legal studies are often recognized as the discipline most closely associated with the study and advancement of Human Rights, but here we broaden our methodologies to include anthropology, sociology, and history as well as legal studies. If law enshrines human rights and structures a means of pursuing them, nonetheless broader forces create the possibility of sustaining a culture of human rights.

The innate dignity of human life and the imperative to preserve and sustain this dignity is the broadest philosophical foundation for human rights. Compassion couples with the abstract concept of dignity, providing the emotional impetus to engagement in the struggle for human rights. Rooted in the loving care of oneself, compassion extends such love to all humanity, recognizing fellowship in life’s struggles and triumphs. We can look to philosophers – for example, Immanuel Kant, philosopher of human dignity, and Jean-Jacques Rousseau, philosopher of compassion – to provide depth to this formulation, but building and sustaining a culture of human rights goes far beyond paying homage to long deceased philosophers and erecting legal scaffolding as monuments to their ideas. Compassion, moreover, can entail paternalistic relationships – those who have much deigning to dispense small kindnesses to those in need. The assertive demand for human rights by the

marginalized or disenfranchised easily disrupts such pious sentimentalism, thereby exposing those seeking their rights to counter-attacks and criticism. Compassion as well is a fickle emotion, not always reliable or sustainable, susceptible to wax or wane in the wake of personal circumstances, cultural trends, and media campaigns. Paradoxically, the “crisis” that threatens human rights can also be the “crisis” that floods hearts with compassion; in this way, the culture of crisis is bound up with the culture of human rights. “Human rights in crisis” can mean both human rights threatened and human rights defended.

The terrain is fertile for human rights when individuals are impassioned by the power of human dignity and by assaults upon this dignity. Compassion is the emotion that drives individuals to reach out and defend the human rights of themselves and of others, but these processes are caught in broader networks that enable, constrain, direct, and sometimes impede efforts. Political goals and allegiances, media campaigns, donor preferences and perceptions, volunteer organizations and the politics of their organizers, the culture of victimhood in contemporary America, the limited political tolerance for compassion – these are just some of the forces that form and limit human rights culture.

In times of crisis the rule of law is often challenged, with preference given to concerns of sovereignty and security. Crisis thus can precipitate an assault on human rights. Wars and times of trouble create vulnerable individuals; in flight from armed conflict or economic ruin, those seeking to preserve their dignity run the risk of entering the enclosures – encampments, detention centers, or prisons – of refugees and asylum seekers (Arendt 1976, 277–280). These enclosures, counterparts to the prisons and detention facilities for enemy combatants, are liminal spaces from which it is difficult to emerge via the successful claim to legal protection, the guarantee of which is grounded in human rights law. Crisis can provoke broad waves of compassion in the citizenry, but the lability of emotion is such that fear and loathing are also likely responses. Individuals caught up in the crisis risk running afoul of public sentiment; they can be portrayed in the media and in the courts as opportunistic or threatening rather than dignified, as too eager for profit and self-enrichment. The mobilization of fear and hatred can extend as well to scapegoating – the modern enactment of the ancient ritual of sacrifice to cleanse the social body (Freud 1918, 171–189). Callous indifference (sometimes called compassion fatigue) is the banal reality in a world pulled by a seemingly endless variety of demands. Envisioning new means of committing to human rights and bringing them to more and more of the globe’s peoples is the provenance of social visionaries. Reconfiguring the boundaries of the acceptable, raising the standard of human dignity for women, the poor, the socially marginalized and politically exploited, is deep cultural work dependent on multiple reinforcing transformations.

This present exploration of human rights in crisis begins with an examination of United States policies in the Global War on Terror, moves to further considerations of the historical and legal underpinnings of human rights culture, and finally turns to the pursuit of human rights in three detailed case studies.

Part I

The hallmarks of the current era in human rights – the era of crisis – are the controversial policies of torture, rendition, and of holding so-called enemy combatants without recourse to legal representation and without guarantee of just treatment as outlined by the Geneva Conventions. Lisa Hajjar assesses the policies and practices of the Bush administration as it attempts to refute allegations of torture and simultaneously seeks to secure legal standing for its unprecedented methods and immunity for its agents in the field. Hajjar weighs the evidence and allegations that torture has been routinely employed against so-called enemy combatants at the Guantanamo military base on the island of Cuba, and discusses how such abuses spread from “Gitmo” to the Abu-Ghraib prison in Iraq.

These are troubling assaults on human rights by the United States, but the crisis of human rights is deeper and more complicated than these examples might lead us to believe. Human rights activist Ashley Barr argues that the radical departure of George W. Bush’s administration from the culture of human rights carries with it global consequences; from standard-bearer and chief defender of human rights, the United States has changed into a seemingly cynical actor that denies torture, kidnapping, and arbitrary imprisonment, are assaults on human dignity, and advocates Executive privilege unbounded by legal constraint. Barr describes with sensitivity and a wealth of detail how the war on terror has become a pretext around the globe for states to prosecute human rights defenders. Allegations of terrorism leveled against those seeking to defend and further human rights is the cynical outcome of a policy climate that values military might and perceived state interests above the rights of the individual.

Part II

The uneasy juxtaposition of the ideals of human rights, the realities of state sovereignty, and the cultural contingency of politics, are explored in Part II. The ideals of human rights flow from the conviction that human life is sacred and that compassion for living humanity should guide and inform our actions. It is perhaps too easy to claim adherence to this creed, to claim to be a defender of human rights. In truth, a more limited scope of loyalties and compassion usually prevails over an encompassing universalism. Sovereigns exercise prerogatives that infringe on rights. Sentiments localized in communities and the nation short-circuit the dedication to universal rights. Promises of rights in treaties, constitutions, and statutes are neglected or left unrealized. Some individuals remain vested with more significance than others. Women, in particular, persistently seek elusive equality within the so-called universal rubric of human rights. The chapters in this section impress upon us that human rights law and culture occupies a variegated terrain, unevenly hospitable and productive, yet nonetheless subject to the demands of those seeking tangible human rights.

Amy Ross takes us into the world of “collateral damage” and the morally murky terrain in which questionable calculations lead us to classify deaths as legitimate wartime occurrences, or as homicides, or even war crimes. Drawing on skillful

historical analysis and intimate knowledge of contemporary war crimes tribunals, Ross guides us through the world of aerial bombing and mass killings that accompany contemporary warfare. What body counts as a legitimate wartime death? What counts merely as “collateral damage”? And how is that reconcilable with destroyed relations in a community, in a family, torn apart by senseless wartime losses? The status of any individual and the meaning of that individual’s death appears deeply conditioned by one’s relation to the state and to the military power exercised. In Ross’ account we see how the individual lives lost are not each counted in the same manner; the naked individual is shrouded in various layers of identity that give valance to death. Murder, execution, accident, vanquished foe: accounting for the transmutation of human life lost into culturally coded indices of warfare emerges as central to the pursuit of human rights. As demonstrated by the political controversy subsequent to the findings of Gilbert Burnham and his research team, that 654,965 civilians have perished since the US invasion of Iraq, bodies do count and must be counted (Burnham, Lafta, Doucy, and Roberts 2006).

Richard Burchill explores the political grounding of human rights institutions in a way that makes clear that the divide between state’s rights and individual rights is written into the history of human rights. The very institutions charged with defending human rights enshrine the rights of states, and engender difficulties for the pursuit of individual rights *vis-à-vis* these states. Burchill weighs the power of rhetoric, however, combined with the existence of international human rights laws, and demonstrates that the interests of the sovereign states can be overcome via a concerted effort to assert human rights claims. If, as he finds, states’ actions in the fight against international terror have overridden international human rights law, nonetheless, he claims the established language of human rights offers a powerful recourse for on-going redress.

The jockeying for position and power that pits states against each other in the international arena, and that sometimes pits states against their own citizens: these are the conditions that drag the ideals of human rights into the real world of politics. When the individuals in question are women, however, the normal equations often cease to be relevant. In her chapter, Marsha Freeman is eloquent on the history of women’s human rights as she shows us the hard fought gains of the 1980s and 1990s. Her analysis of interest groups, political trends and philanthropic fashions, moreover, leads us to realize that the gains of an earlier generation are far from guaranteed to prevail in the current era of retrenchment. Personal beliefs and cultural trends among big donors prove crucial to creating and sustaining momentum in the pursuit of women’s human rights.

Part III

We conclude this investigation into human rights in crisis with three investigations into the contemporary pursuit of human rights. These case-studies demonstrate the complicated terrain of human rights, terrain that demands far more than legal argumentation for adequate understanding, advocacy, or enforcement.

Matt Eisenbrandt explores the world of torture and international accountability as victims confront their persecutors in American courts of law. Eisenbrandt addresses the advances made by the Center for Justice & Accountability (CJA) in establishing important legal precedents in its cases against death squad leaders and top military officers from Chile, Honduras, El Salvador and Haiti who have settled in the United States. CJA has won key decisions in the areas of statute of limitations, command responsibility, conspiracy, and crimes against humanity. Each of these issues is critical to the success of lawsuits in US courts under the Alien Tort Claims Act and Torture Victim Protection Act. Eisenbrandt concludes his chapter with reflections on how these cases have reinvigorated the search for justice for past abuses in the defendants' home countries. The apparent contradiction between the successful claims against torturers in American courts and the US Executive branch insistence that extreme interrogation tactics are not in fact torture reminds us that successfully claiming or upholding human rights can be a fundamentally political process; the clash of law and sovereignty sometimes produce irrational inconsistencies.

Dina Haynes provides a vivid analysis of a gendered struggle for human rights, and in so doing provides flesh and blood examples for Freeman's earlier chapter. Haynes portrays the indignities suffered by trafficked persons – largely women – as they petition for immigration relief in order to avoid deportation to the country of abuse. The US government ostensibly recognized the gravity of trafficking in enacting a special law in 2000 to protect victims and to provide them with a special visa status. This legislation, however, has not led to sizable numbers of women acquiring protection or legal status; focusing on trafficking as a crime has had the perverse result of impeding the assertion of the human rights of those trafficked. The life stories of those trafficked are seldom simple stories of victimization; rather individuals seeking to better their lives, to escape societies torn by war or economic devastation, fall victim to traffickers precisely because they are looking for a way to escape dire situations. Haynes' chapter seems to be haunted by Hannah Arendt's famous lament that human rights are most impossible to assert precisely when they are most needed (Arendt 1973, 298–301).

Those caught beyond the boundaries of state sovereignty, those with no recourse to a state-based legal identity, are most vulnerable and thus need their “human rights” the most. Yet those in flight, in transit, or in forced migration, are simultaneously easy prey for traffickers and without recourse to legal protections. Haynes, however, gives no ground to the human rights skepticism that flavors Arendt, arguing instead that states must respond with respect to those who aggressively pursue their human rights, including their economic rights. Strong recommendations for approaching those trafficked in terms of human rights rather than in terms of the crime of trafficking, accompany a lament by Haynes that those served by trafficked women are rarely if ever prosecuted.

Peter Redfield explores the effort on the part of Doctors without Borders/Médecins Sans Frontières (MSF) to reorient humanitarian intervention from acute to chronic situations and the problems entailed in such an endeavor. His ethnography of recent MSF work in Uganda addresses human rights in crisis, exploring the fact that human rights are both deeply threatened and highly defended in moments of crisis, and that much human rights work depends on a culture of crisis to maintain

interest and funding. Founded three decades ago as an alternative to the International Red Cross, MSF has since grown into a complex and transnational fixture of global crises. Along the way it has also expanded its operation to include a wider range of medical problems, addressing “neglected diseases” as well as emergencies in an effort to confront human suffering. Redfield examines how MSF’s efforts to distance itself from recent military actions conducted in the name of humanitarianism and the establishment of any international “right to intervention” parallel its increased engagement in struggles to advance the right to medical treatment – including the right to pharmaceuticals – on a global scale. Redfield’s investigation reveals how MSF’s work has revised the human rights equation, shifting away from state-sponsored interventions and toward a “right to health” conceived at the level of medical reach and development. Undermining the media sustained culture of crisis is part of MSF’s attempt to change the moral economy of suffering and humanitarian values. If the humanitarian sensibilities driving MSF have only limited impact in effecting systematic change, nonetheless their actions render visible the global economy of health care, suffering, and human life.

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