

SYMPOSIUM

MORAL AND POLITICAL PHILOSOPHY FOR A BROKEN WORLD?



## HUMAN RIGHTS AND THE BROKEN WORLD

BY

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# Human Rights and the Broken World

Jesse Tomalty

## I

In *Ethics for a Broken World*,<sup>1</sup> Tim Mulgan invites us to partake in a series of lectures delivered in a fictional future on some of the political philosophies that dominate our current tradition. The future he asks us to imagine is one in which the world is ‘broken’. In the broken world, climate change has led to intermittent and unpredictable periods of radical scarcity in which there are insufficient resources to guarantee the survival of all existing persons (8-12). We are also to imagine, rather plausibly in light of recent scientific discoveries, that we bear causal responsibility for this situation (9). Mulgan suggests that the device of the broken world ‘serves to highlight the contingency of our moral and political ideals, asking us to see our society and its ideals from the outside’ (ix). In this paper, I employ the device of the broken world to reflect on one of the most prominent ideals in contemporary affluent societies, namely that of human rights. In particular, I am interested in what sense the device of the broken world shows our ideal of human rights to be contingent,

<sup>1</sup> T. Mulgan, *Ethics for a Broken World: Imagining Philosophy After Catastrophe* (Montreal & Kingston-Itacha: McGill-Queen’s University Press, 2011). All page references in the text refer to this volume.

and what implications this might have for how we should understand and evaluate this ideal.

My focus will be on human rights as a political ideal.<sup>2</sup> According to this ideal, all political institutions should be structured so as to respect and promote a set of particularly important rights, namely human rights, and it is incumbent on all moral agents to ensure that political institutions fulfill this requirement. There is substantial disagreement over how the content of human rights is determined,<sup>3</sup> and yet there is significant convergence on at least a core set of human rights, which finds expression notably in the United Nations' Universal Declaration of Human Rights (UDHR).<sup>4</sup> These rights include

<sup>2</sup> The fulfillment of human rights is widely accepted to be a political ideal, although it is also taken by many to be a moral ideal. Some theorists reject this view in favour of the view that human rights are essentially political. See, for example, Andrea Sangiovanni, 'Justice and the Priority of Politics to Morality', *Journal of Political Philosophy*, 16 (2008), 137-164; and Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009). I hope to avoid this debate here by focusing on human rights as a political ideal.

<sup>3</sup> We can identify two main factions: On the one hand are those who think that the content of the rights of international human rights doctrine should be derived from a more abstract set of universal moral rights. See, for example, James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008); and John Tasioulas, 'The Moral Reality of Human Rights', in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?*, ed. by Thomas Pogge (Oxford: Oxford University Press, UNESCO, 2007), pp. 75-100. On the other hand are those who think that the content of human rights is justified with reference to the point and purpose of the practices governed by human rights norms, and the role these norms play within these practices. See, for example, Sangiovanni and Beitz. These two factions fragment further in light of disagreements respectively over the grounding values of universal moral rights, and how to interpret human rights practice.

<sup>4</sup> The complete text of the UDHR can be accessed at <http://www.un.org/en/documents/udhr/>. I focus on the UDHR because it is the centrepiece of international human rights doctrine, which now constitutes

rights to life, liberty, and security of person, rights against slavery, torture, and inhumane punishment, rights to due process and equality before the law, rights to nationality and freedom of movement, rights to freedom of conscience, religion, association, and expression, the right to own property, the right to marry and found a family, rights to political participation, rights to work and to decent working conditions, and rights to basic resources, education, and healthcare. In what follows, when I refer to human rights, I mean the set of rights articulated in the UDHR and other official human rights documents unless otherwise specified.

Human rights have come to dominate the discourse on global political morality. They are used to criticize the actions and policies of states and their officials, and they are appealed to as grounds for undermining the sovereignty of states through various forms of intervention. The rhetoric of human rights is used to characterize serious injustices and constitutes a call to action on the part of those who are in a position to agitate for change. The ideal of human rights finds widespread support in our world. But what does it look like from the perspective of the broken world?

## II

The claim of Mulgan’s fictional lecturer that ‘[a]ffluent people were obsessed with rights’ (18) suggests that people in the broken world are not. This highlights one sense in which the ideal of human rights is contingent, namely in that we have come to hold

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an extensive body of mainly legal documents that seek, in general, to specify and in some cases extend the rights of the UDHR.

it as an ideal as a result of the social circumstances in which we find ourselves and the history that has led to them. The fact that we hold the ideals we do, including the ideal of human rights, is surely contingent in this way. We know that people have not always recognized human rights as an ideal, and we have reason to think that we might never have come to recognize this ideal, had history taken a different course. And although we do not know what the future will bring, there is no reason to rule out the possibility that it will take a course that leads to human rights no longer being recognized as an ideal, as is the case in the broken world Mulgan envisions.

We should not find this ‘historical’ contingency either surprising or troubling for our ideal of human rights. The fact that we might not have come to hold this ideal or that people in the future might come to reject it does not suggest that we lack reason to hold it now. Ideals can be justified non-contingently even if we only came to recognize them as result of contingent circumstances and histories. We find a parallel in the way we think about scientific principles: We may have discovered them because of contingent circumstances (some were even discovered by accident), but this does not make their truth contingent on the circumstances that lead to their discovery. Something similar might be the case for at least some of our moral and political ideals. We might think, for example, that slavery was wrong even when it was considered socially acceptable because slavery is always and non-contingently wrong. The fact that slavery was considered socially acceptable might serve to partially excuse those who engaged in the practice, but it does not do away with the wrongness of it.

Historical contingency can be distinguished from a second sense in which an ideal might be contingent. In this second sense, an ideal is contingent if the *justification* for holding it as an ideal

depends on particular circumstances obtaining. We can refer to this kind of contingency as ‘justificatory’ contingency. An important insight gained from Mulgan’s discussions of our contemporary ideals from the perspective of the broken world is that many of our ideals are contingent in this way, from the libertarian ideal of minimal government and the nationalist ideal of territorial rights to the more moderate liberal ideals endorsed by rule utilitarians and Rawlsians. These and other ideals are undermined by the conditions of radical scarcity characteristic of the broken world.

This looks to be true of many of the human rights whose fulfillment we take to be a political ideal. Perhaps most obviously problematic are the socio-economic rights expressed in the UDHR and repeated (and sometimes expanded) in other human rights documents. How, for example, could political institutions be structured in such a way as to ensure that everyone enjoys ‘a standard of living adequate for the health and well-being of himself and of his family’ (Article 25.1) when resources are insufficient to ensure that everyone has enough to survive? How could guarantees of free education (Article 26.1), free choice of employment (Article 23.1), and ‘periodic holidays with pay’ (Article 24) be possible in conditions of radical scarcity? And how could inhabitants of the broken world justify a right to found a family (Article 16.1) when this would only mean more mouths to feed that cannot ultimately be fed? We should note that the conditions of radical scarcity would also make a number of other rights difficult to justify and secure. For example, the legal institutions necessary for the fulfillment of due process rights (Articles 10 and 11) are extremely costly to operate. Whereas in affluent conditions, the fulfillment of all human rights is possible, in conditions of radical scarcity, we would be faced with the question of whether to forego due process rights in favour of devoting more resources to food production or medicine.

Our ideal of human rights, then, looks to be contingent on conditions of affluence. But contingency poses a special challenge for human rights, which are meant to be universal. The universality of human rights is expressed in the very title of the *Universal Declaration of Human Rights*, but we also find in it the assertion contained therein, that ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind’ (Article 2). Reflecting on human rights from the perspective of the broken world encourages us to clarify the sense in which human rights are universal. How can the alleged universality of human rights be squared with their apparent contingency?

### III

One possibility is to deny that the infeasibility of the realization of human rights for all persons in the broken world makes human rights a contingent ideal. On this view, each inhabitant of the broken world has the same set of human rights as we do, but these rights simply cannot be fulfilled, at least not all at once and for everyone. On this kind of view, human rights might be thought to provide guidance for institutions to approximate the minimal conditions for justice, despite the fact that institutions in the broken world could never fully meet these conditions.

It might be objected that there is little value in pursuing strictly unattainable ideals. But ideals are meant to orient our actions, and there is no reason to think that unattainable ideals are always ineffective in this respect. I can know that I will never be able to play the piano as well as Glenn Gould, but I can look to his performances as exemplars and use them to orient my training.

Why, then, not think that the inhabitants of the broken world could model their institutions on our ideal of human rights despite knowing that they will never succeed in attaining it?

The problem with this idea, I argue, is that it is not clear how inhabitants of a broken world should orient themselves towards our ideal of human rights. Recall that according to our ideal of human rights, political institutions must be structured in such a way as to ensure the fulfillment of human rights for all their members. In the broken world, there are insufficient resources to achieve this. A natural thought is that political institutions in the broken world should approximate our ideal of human rights by seeking to maximize the fulfillment of human rights of their members. But what would the maximization of human rights entail? Suppose that resources in the broken world are adequate to fulfill *some* human rights for *everyone*. Would this be the closest approximation of our ideal? Why not instead use the available resources to fulfill *all* human rights for *some* people, and none for others? Or why not fulfill all human rights for a very few, a very limited number of human rights for some, and none for the rest? Each of these options would involve maximizing the fulfillment of human rights in some sense, but it is not clear which one best approximates our ideal of human rights in the broken world.

Indeed there is reason to doubt that maximizing the fulfillment of human rights in any sense is the right way to avoid injustice in the broken world at all. In the affluent world, our ideal of human rights is a kind of sufficientarian principle that limits just political institutions to those under which everyone's human rights are fulfilled. Not only does this leave an enormous amount of variation in the possible institutional arrangements and the distributions that they allow, it also allows for individuals to attain standards of living far higher than the mere fulfillment of human rights. But this is not the case in the broken world. Maximizing

the fulfillment of human rights would leave no resources for the pursuit of other ends. Maximizing human rights in the broken world would mean that the mere fulfillment of human rights would be the highest standard of living anyone could hope to attain.

The fulfillment of human rights as a minimal standard for the justice of political institutions loses its appeal under these conditions of radical scarcity. Some people might reasonably prefer to have a lower chance of survival in exchange for a higher standard of living should they survive.<sup>5</sup> Some might, in other words, reasonably prefer a smaller chance at a standard of living higher than that of the mere fulfillment of human rights than they would have if as many people as possible were guaranteed human rights fulfillment. It seems that a reasonable standard of justice for political institutions in the broken world should accommodate this kind of preference. This would mean that the maximization of human rights could actually end up undermining justice in the broken world. Our ideal of human rights thus looks to be contingent after all.

#### IV

But what, then, of the supposed universality of human rights? When we say that human rights are universal, we cannot mean that they are held by all humans and that their fulfillment is a requirement of political institutions in all times and places. The universality of human rights must be bounded. The idea of bounded universality is not unfamiliar. For example, when a state

<sup>5</sup> This point draws on Mulgan's discussions of libertarian and Rawlsian survival lotteries, pp. 62-64 and pp. 189-192.

offers *universal* health care, this just means that health care is provided to all those who qualify as members of that state in the relevant sense (of example, as citizens or residents). The universality of human rights, however, is often thought to imply that the relevant boundaries are those of humanity: What makes human rights *human* rights is that they are held universally by all humans, and not confined only to those living in particular societies. I have shown that the infeasibility of fulfilling human rights in the broken world challenges this view, and suggests that the universality of human rights must be bounded by conditions of affluence.<sup>6</sup>

I argue, however, that this need not make human rights obsolete in the broken world for at least two reasons. One is that inhabitants of the broken world could articulate the injustice of their situation in terms of human rights. Assuming that their plight would be at least partly the foreseeable result of the avoidable actions of current and past generations, inhabitants of the broken world could argue that the failure of our political institutions to prevent these harmful actions constituted a violation of their human rights. This is because where feasibility is the only allowable constraint on human rights, as long as it is feasible to ensure the fulfillment of human rights of future generations, the failure to do contravenes our ideal of human rights.<sup>7</sup> This is true even if it turns out that inhabitants of the

<sup>6</sup> John Tasioulas outlines a similar version of the bounded universality of human rights in 'Human Rights, Universality, and the Values of Personhood: Retracing Griffin's Steps', *European Journal of Philosophy*, 10 (2002), pp. 79-100.

<sup>7</sup> For a detailed discussion of how our failure to mitigate dangerous climate change might constitute a violation of the human rights of future people, see Simon Caney, 'Climate Change, Human Rights, and Moral Thresholds', in *Climate Ethics: Essential Reading*, ed. by Stephen M. Gardiner, Simon Caney, Dale Jamieson, and Henry Shue (Oxford: Oxford University Press, 2002), pp. 163-177.

broken world cannot reasonably pursue our ideal of human rights for themselves.

A second way in which human rights could be relevant for people in the broken world is in a more abstracted form. I have so far been using ‘human rights’ to refer to the specific set of rights included in international human rights doctrine. We can distinguish this substantive sense of ‘human rights’ from a more formal sense that focuses instead on the normative role that human rights play. In this sense, we might refer to human rights as the set of rights that all political institutions must fulfill in order to be minimally just, and that ensuring they do so is in some sense everyone’s business. Although I have provided reasons for thinking that the particular set of human rights that form our ideal of human rights cannot fulfill this role in the broken world, there is reason to think that some other set of rights will.

Furthermore, there is reason to think that the justification of this set of rights will be similar to the justification for the human rights of our ideal. The human rights of our ideal are justified by the idea that failing to respect them constitutes a failure to appropriately respect the moral status of persons.<sup>8</sup> What counts as a failure to respect a person’s moral status will depend in part of the circumstances. For example, to deny someone access to the means for subsistence might be construed as a failure to respect her moral status under affluent conditions, but this could not plausibly constitute such a failure of respect in the broken world. Nevertheless, there will be other ways in which people’s moral status can fail to be respected in the broken world. Denying someone access to the means for subsistence might not

<sup>8</sup> I take it that this is a unifying thought that is compatible with the disagreements, which I mentioned in section 1, over the specific values that ultimately ground human rights.

constitute a failure to respect a person's moral status in the broken world, but denying him access to the means for subsistence simply because of his ethnicity plausibly would count as such a failure of respect.

## V

Reflecting on our ideal of human rights from the perspective of the broken world shows it to be contingent on conditions of affluence. I have argued that we can, nevertheless, make sense of the universality of human rights in at least two ways. One involves the idea that our ideal of human rights is only bounded by feasibility constraints. This, I have argued, has important implications for how we think about our obligations to future generations. Second, we find that a formal sense of 'human rights' is not burdened by the same contingency as the substantive sense. This leaves room for an ideal of human rights for the broken world that is, in some ways, continuous with ours.

There is a great deal more that can be said about human rights in the broken world, and how we should think about our obligations towards future people with respect to their human rights. My purpose in this brief paper has been to point to some of the ways in which the device of the broken world can help to orient our thinking about human rights as a political ideal both now and in the future.

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