Rights by Design: Mainstreaming Human Rights Information, Education and Culture

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"Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

Eleanor Roosevelt, Chair of the Commission of the United Nations which drafted the UDHR, in a speech marking the 10th anniversary of the UDHR in 1958

Abstract

'Rights by Design: Mainstreaming Human Rights Information, Education and Culture' explores the numinosity of human rights; that is, the intrinsic relationship between an individual and their rights. It is a timely reminder, in the post-Covid era of fragility, reflection, reckoning, and reawakening, that human beings are at the heart of human rights. The state-centricity of human rights discourse is increasingly giving way to and making room for authentic, post-colonial, localised voices in civil society and at grassroots, 'glocal' community levels, empowering the individual with the unprecedented but thus far largely unrealised power to shape a human rights future. In this future, human rights can – consciously and by design – be protected, respected, and rigorously defended from the creeping digital, ideological and political authoritarianism that is destabilising democracy and the international rules-based order on every continent in the world. To realise this power, we as individuals must be empowered with the information, knowledge, and advocacy skills to respect, protect, defend, and consciously *live* by human rights values in our everyday lives. In an 'Age of Alternative Facts', we must be equipped to counter human rights misinformation in our infospheres and reverse the global 'information deficit' on what human rights are and who they were designed to protect. This thesis is a call to action and a framework for empowering the individual so that we may more meaningfully integrate human rights knowledge, principles and values in our everyday social, economic and cultural lives – at home, in our family lives, and our local communities; through every stage of education, from early years, primary and secondary to tertiary, postgraduate, vocational and lifelong learning; in our digital worlds and social information environments; and in our worlds of work. It is an ambitious and original imagining of what Eleanor Roosevelt meant when she said, in 1958 on the 10th anniversary of the proclamation of the Universal Declaration of Human Rights, that human rights begin in "small places, close to home ... [in] the world of the individual person".

Dedication

For my wonderful husband Steven, our beautiful children Jasmine, Bodhi, Lila, Eden and Jonah, and our precious baby daughter born sleeping at 20 weeks on 23 January 2019, in the early months of this writing. I love you all very much.

Acknowledgements

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Acronyms & Abbreviations

Artificial intelligence (AI)

Bar Standards Board (BSB)

Court of Justice of the European Union (CJEU)

European Convention on Human Rights (ECHR)

European Court of Human Rights (ECtHR)

European Union (EU)

Human rights education and training (HRET)

International Covenant on Civil and Political Rights (ICCPR)

International Covenant on Economic, Social and Cultural Rights (ICESCR)

International Labour Organization (ILO)

Office of the High Commissioner for Human Rights (OHCHR)

Qualifying Law Degree (QLD)

Rights by Design (R*b*D)

Solicitors Regulatory Authority (SRA)

Solicitors Qualifying Examination (SQE)

Sustainable Development Goals (SDGs)

Transitional Justice (TJ)

Universal Declaration of Human Rights (UDHR)

United Nations (UN)

United Nations Convention on the Rights of the Child (UNCRC)

United Nations Educational, Scientific and Cultural Organization (UNESCO)

United Nations Human Rights Council (UNHRC)

United Nations Institute for Training and Research (UNITAR)

United Nations Office on Drugs and Crime (UNODC)

Chapter One
Why Now is the Time for Rights by Design: From state-centric legalism to a new state of 'glocal' rights consciousness

1.1 Chapter Introduction

The central argument of this thesis is that without the awareness, commitment and action of individuals around human rights, the future of human rights becomes untenable in what has become a febrile global climate for rights realisation, consciousness, and culture. Recognising that deeply entrenched state-centric legalism has limited meaningful inclusion of individuals in the development of international human rights frameworks and discourse over the decades, this thesis clarifies the need for a more human-centred approach to creating human rights culture, by embedding human rights values into all those "small places, close to home" where human beings live their everyday lives, and correcting the dissonance between human beings and human rights[1].

This dissonance rests to some degree with the state-centricity of the Universal Declaration of Human Rights (UDHR) and the international human rights system that arose from its 1948 proclamation in what was a watershed moment in human rights history because it firmly established human rights as representations of human dignity[2]. In this thesis, I argue that human rights were never intended to be solely the 'business of state', but because of the state-centricity of the international human rights system since 1948 with its growth rooted firmly in multilateralism[3], human rights have very successfully embedded into the business of the state. As a consequence, human rights have been beset by a failure to embed within the social institutions that are inherent to the human experience: specifically, within families, schools and universities, corporations, culture, languages and legal systems, or – as Giddens puts it – all of "the more enduring features of social life"[4].

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[1] Eleanor Roosevelt in her 'Where do human rights begin?' speech delivered at the United Nations in New York on 27 March 1958 on the 10th anniversary of the UDHR
[2] See 1.2 Key concepts underpinning this research for definition and discussion on human dignity
[3] Desmond McNeill and Morten Bøås, Multilateral Institutions: A Critical Introduction, Pluto Press 2003, p 1-14
[4] Anthony Giddens, The Constitution of Society: Outline of the Theory of Structuration, Polity Press 1984, p 24

1.1.1 Challenging the state-centricity of human rights

In the United Nations (UN) Charter of 1945, the UDHR in 1948, and the numerous international human rights treaties, declarations and covenants that have followed, it is well-established that the state has primary responsibility to respect, protect, and fulfil the rights and interests of its citizens and to remedy violations and abuses of human rights by giving effect to international human rights law within its domestic constitutions, basic laws, and legislation[5]. As Beitz writes in *The Idea of Human Rights*, "the central idea of international human rights is that states are responsible for satisfying certain conditions in their treatment of their own people and that failures or prospective failures to do so may justify some form of remedial or preventive action by the world community or those acting as its agents"[6]. A wide margin of appreciation is conferred upon the state on implementation, as international human rights law "articulates … standards to be achieved" but does not generally "prescribe … methods by which states are to do so"[7]. Where a state cannot or will not protect and fulfil human rights, then it is the 'secondary' duty of other states to step in and enforce that protection[8] as a guiding principle of the international community that has evolved from Montesquieu's *The Spirit of the Laws*[9].

The dominant view of human rights is based on widespread endorsement in the decades since 1948 of the state-centric model "according to which states and only

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[5] According to the Office of the High Commissioner for Human Rights (OHCHR): "By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights." – see OHCHR, International Human Rights Law, Accessed at https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx

[6] Charles Beitz, The Idea of Human Rights, Oxford University Press 2009, p 13

[7] Julie Fraser, Challenging State-centricity and legalism: promoting the role of social institutions in the domestic implementation of international human rights law, The International Journal of Human Rights 2019, Vol 23 No 6, pp 974-992

[8] Cristina Lafont, Challenging the state-centric conception of human rights, Ethics & Global Politics, Volume 3, 2010, pp 193-215, p 198; The responsibility of states in relation to international co-operation in solving problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all" – see Article 1(2) UN Charter 1945. 'International community' as used in this thesis borrows Ellis' definition of a "unified society of states adhering to generally the same norms, rules, identities, and views of moral conduct. Without a common conception of the way society should be ordered and the goals to be achieved, there is no community as such; rather, there merely exists a society of states" - David C Ellis, On the Possibility of "International Community", International Studies Review, Vol 11 No 1 (March 2009), pp 1-26, p 4

[9] This duty, in An-Naim's analysis, has influenced the Western-centric 'self-understanding' of "being authorised to impose a state-centric, coercive and bureaucratic model of formalistic legality on a global scale" – see Abdullahi Ahmed An-Na'Im, The Spirit of Laws is Not Universal: Alternatives to the Enforcement Paradigm for Human Rights, Tilburg Law Review 21 (2016), pp 255-274, p 257

states bear primary responsibility for the protection of their citizens' rights" per Lafont[10]. Fraser identifies an "observable preference in international law for state-centric and legalistic approaches to implementation", in the Global North more so than the Global South where alternative "ordering systems" rooted in cultural norms are more prevalent, or in states that "lack capacity to implement rights where other more entrenched actors and norms have influence"[11]. Here, Fraser specifically notes that "cultural traditions, social institutions, and customary law systems can be more potent than legislation – and have a long history of involvement in human rights issues", with human rights legislation widely viewed with disdain as "counterproductive, particularly where it conflicts with local cultural norms"[12].

In my view, state-centric legalism in the context of human rights has failed to empower actors at the local level to engage with the content of human rights, and this has delegitimised human rights values, awareness, and culture at the local level. A strong explication of how the "current legalistic approach has totally failed in providing any protection of human rights for the vast majority of humanity around the world"[13] is offered by An-Na'Im, who has questioned the "efficacy of state-centric legality in the enforcement of human rights"[14]. For An-Na'Im:

> *"… this state-centric emphasis on formalistic legality is counter-productive for the fulfilment of the universality of human rights as a concept, the realisation of inclusive global consensus on the content of these rights and their practical achievements in every context around the world"[15].*

An-Na'Im has called for a "people-centred alternative" to the state-centric model for human rights protection and enforcement based on "cultural transformation and political mobilization"[16], one in which "all human beings everywhere must contribute to determining the *content* of the concept of human rights for themselves, and apply

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[10] Cristina Lafont, Challenging the state-centric conception of human rights, Ethics & Global Politics, Volume 3, 2010, pp 193 – 215, p 193
[11] Julie Fraser, Challenging State-centricity and legalism: promoting the role of social institutions in the domestic implementation of international human rights law, The International Journal of Human Rights 2019, Vol 23 No 6, pp 974-992
[12] *Ibid*
[13] Abdullahi Ahmed An-Na'Im, The Spirit of Laws is Not Universal: Alternatives to the Enforcement Paradigm for Human Rights, Tilburg Law Review 21 (2016), pp 255-274, p 255
[14] *Ibid*
[15] *Ibid*
[16] Abdullahi Ahmed An-Na'Im, The Spirit of Laws is Not Universal: Alternatives to the Enforcement Paradigm for Human Rights, Tilburg Law Review 21 (2016), pp 255-274, p 255

them in their own *context*" ('content' referring to the rights themselves), which he sees as "essential for the individual and collective self-determination of the human", who are after all "the subjects of human rights"[17]. Fundamentally, as An-Na'Im has elaborated, "the human rights paradigm cannot exist at all except in terms of the dynamics of globally inclusive concept and content, as realised in the local context"[18].

Following Lafont, I agree that the state-centric model of global governance, a "monastic ascription of human rights obligations" to states alone, is "no longer plausible"[19] because whilst state-centricity of human rights is "widely accepted … it has some problematic consequences" – one of them being the "remarkable silence regarding the obligations of non-state actors" (such as individuals, transnational corporations, and the international financial institutions such as the World Bank, IMF and WTO)[20], and the other being the exclusion of the individual from human rights discourse at the international level and from any form of responsibility to protect, defend or respect human rights.

In this way, state-centrism has entrenched harmful and exclusionary norms into the human rights framework and has ultimately divorced human rights from the political, economic, social, and cultural constructs under which the individual lives their everyday lives. State-centrism, even in jurisdictions that are not subjected to the challenges of conflict or post-conflict reconstruction, has effectively transmuted human rights into an abstractive, politico-legalist, treaty-based paradigm that has profoundly excluded the individual from engaging with and embedding human rights effectively into their lived, everyday realities, within their communities and the social institutions that exist at the cultural, local, national and regional – rather than international – levels.

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[17] *Ibid*, p 256
[18] *Ibid*
[19] Cristina Lafont, Accountability and global governance: challenging the state-centric conception of human rights, Ethics & Global Politics, Vol 3, 2010, Issue 3, pp 193-215, p 193
[20] Cristina Lafont, Challenging the state-centric conception of human rights, Ethics & Global Politics, Volume 3, 2010, pp 193 – 215, p 199

1.1.2 Towards a new state of individual-led, 'glocal' rights consciousness

In this thesis, I will argue that the separation between human rights in theory and human rights in practice (in 'real life', or the lived reality on the ground[21]) has made human rights inoperable and even untenable in many localised social and cultural contexts. It could also have been counter-productive, if one is to go by McEvoy's assessment that the reason state-centric "grand schemes often fail spectacularly is that they oversimplify [and] may fail to take sufficient account of local customs and practical knowledge and to engage properly with community and civil society structures"[22]. This is especially the case in non-Western cultures that reject the premise of universal human rights as 'Western-centric' and 'top-down' in focus[23]; or even in Western societies where human rights have become so polarised that they are cynically viewed as a lucrative gravy train for lawyers, mainly advantageous to criminals and terrorists who can invoke human rights to circumvent justice[24].

At the individual level, responsibility in international human rights law is, *prima facie*, limited to respecting and promoting human rights. In its Preamble, the UDHR states: "Every individual and every organ of society … shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance"[25]. On the surface, our social institutions ('organs of society') and individuals who are themselves the subject of human rights are obliged only to respect, recognise, and observe human rights, to participate in human rights education and take measures to secure their recognition through advocacy in the civic space[26]. In the UDHR, Article 29 states that "everyone has duties to the community in which the free and full development of his personality is possible"[27], and subsequently, declarations and treaties have set out to augment the UDHR by

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[21] See Chapter 3 on *Human Rights at Home and in the Community: Love, Law and Family* for analysis of 'everyday' and family life in the context of human rights realisation and culture
[22] Kieran McEvoy, Beyond Legalism: Towards a Thicker Understanding of Transitional Justice, Journal of Law and Society, Vol 34, No 4 (Dec 2007), pp 411-440, p 424
[23] *Ibid*, p 421
[24] Adam Wagner, The Monstering of Human Rights, 19 September 2014 (lecture given to University of Liverpool), p 2, Accessed at https://adam1cor.files.wordpress.com/2014/09/the-monstering-of-human-rights-adam-wagner-2014.pdf
[25] Preamble, Universal Declaration of Human Rights 1948
[26] Cristina Lafont, Challenging the state-centric conception of human rights, Ethics & Global Politics, Volume 3, 2010, pp 193 – 215, p 199
[27] Article 29, Universal Declaration of Human Rights 1948

contextualising rights within various cultural and religious traditions[28]. The UN Declaration on Human Rights Defenders has recognised "the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels" and has called for "a duty on all relevant authorities and individuals to enforce [human] rights"[29]. However, no formalised framework exists at international level that clarifies the essential role that individuals play in the realisation of human rights at local and community level or guides the individual on their responsibility to consciously respect, promote and defend human rights, leaving a clear gap between the human rights system and the human being as rights bearer and the ultimate beneficiary of human rights overall.

This thesis sets out to narrow that gap by articulating a human-centred vision for a future of human rights that are realised close to home, and in all the small places and spaces that are instrumental to the protection of human rights and human dignity. As Foucault said in 1981, "[t]here exists an international citizenship which as such has its rights and duties, and which is obliged to stand up against all forms of abuse of power, no matter who commits them, no matter who are their victims. After all, we are all governed, and, by that fact, joined in solidarity"[30]. In that solidarity, this thesis asserts, we are compelled as international citizens by a responsibility to respect, defend and promote human rights. This call is nothing new; as Hannum points out, "academics have called for the extension of human rights obligations not only to international organizations, but also to corporations, other non-state actors and even individuals"[31]. In my view, the human rights system has long, and wrongly, been mischaracterised as a state-only concern, and this state-centric legalism has effectively absolved the individual from any positivised duty or responsibility towards

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[28] For one example, see the Cairo Declaration on Human Rights in Islam 1990, Accessed at http://hrlibrary.umn.edu/instree/cairodeclaration.html

[29] Preamble of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 09 December 1998, also known as the Valencia Declaration, Accessed at https://www.ohchr.org/en/professionalinterest/pages/rightandresponsibility.aspx; also see Dumitrita Bologan, Some Alternative and/or Complementary Declarations to The Universal Declaration of Human Rights, Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol no 62/63, pp 35-47, p 47

[30] Michel Foucault, "Face aux gouvernements, les droits de l'homme" (Confronting governments, human rights), Liberation no 967, 30 June /1 July 1984, p 22, Accessed at https://www.opendemocracy.net/en/can-europe-make-it/rights-and-duties-of-international-citizenship/

[31] Hurst Hannum, Reinvigorating Human Rights for the 21st Century, Human Rights Law Review 2016, Vol 16, pp 409–451, p 413

human rights, fracturing human rights culture in the process. It has limited mainstream awareness of human rights, stifled activism and action on human rights, suppressed creativity and innovation over human rights, and turned rightsholders into mere bystanders and passive observers of their own rights (McEvoy calls this the "tendency to see human rights as quintessentially the business of state or 'state-like' institutions"[32]).

The good news is that the transition to a human-centred model for human rights is already underway, with international human rights law "gradually evolving towards a more complex, multifarious landscape than that of the established, one-dimensional state-centred paradigm" which, as Jägers has pointed out, is not an easy proposition because the human rights system is "a much more complex interplay of transnational legal processes than portrayed"[33]. However, a shift from a state-centred to a people-centred paradigm for human rights is now "inevitable … [to] reaffirm the present global reality of inclusive individual and collective self-liberation"[34]. The 'human-centred approach', as a strategy for achieving a vision of sustainable development that is based on human dignity, is rapidly gaining traction in the discourse of international development especially around the Sustainable Development Goals (SDGs) 2030 targets[35], many of which are plainly rooted in the realisation of human rights (and social and economic rights in particular). It is fitting, and seems obvious, that a reformed, resilient, and relevant human rights system of the future should adopt a human-centred approach, shaking off the confines of formalistic legalism to empower individual rightsholders through the civic space *and* in all our social institutions, to embed rights and dignity into the human community, and into what Durkheim called our "collective consciousness"[36], in far more natural, meaningful, empathetic, localised, creative, and culturally sustainable ways than any nation state would be capable of doing.

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[32] Kieran McEvoy, Beyond Legalism: Towards a Thicker Understanding of Transitional Justice, Journal of Law and Society, Vol 34, No 4 (Dec 2007), pp 411-440, p 424

[33] Nicola Jägers, Human Rights Enforcement Towards a People-Centered Alternative? A Reaction to Professor Abdullahi An-Na'im, Tilburg Law Review, Volume 21 Issue 2, pp 275-283

[34] Abdullahi Ahmed An-Na'Im, The Spirit of Laws is Not Universal: Alternatives to the Enforcement Paradigm for Human Rights, Tilburg Law Review 21 2016, pp 255-274, p 258

[35] The 17 Sustainable Development Goals or 'Global Goals' are available at https://sdgs.un.org/goals

[36] Émile Durkheim defined 'collective consciousness' as "the body of beliefs and sentiments common to the average of members of a society" – Dénes Némedi, Collective Consciousness, Morphology, and Collective Representations: Durkheim's Sociology of Knowledge 1894-1900, Sociological Perspectives, Vol 38, No 1, Celebrating the 100th Anniversary of Émile Durkheim's "The Rules of Sociological Method" (Spring 1995), pp 41-56, p 42

This thesis is an exploration of how we might augment human rights responsibility, expanding it beyond that of the state to reframe human rights as a self-fulfilling prophecy[37] and a set of objective values[38] which have real meaning at the local and cultural levels[39]. Such meaning can be acquired through more inclusive, impactful human rights discourse (which Posner defines as the "frequent invocation of human rights in public discussion, scholarly commentary, and government statements"[40]). It is achievable via mainstream communication and teaching of human rights values[41] which helps to embed rights consciousness as part of formal and non-formal education paradigms, and later, progresses naturally into our working lives. Transposing or mainstreaming rights consciousness into all the dimensions of our everyday lives will require[42]: i) individuals to be empowered with at least a foundational knowledge[43] of human rights law, history, and fundamental principles[44], ii) basic understanding[45] of human rights values and how they relate to the human

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[37] "The self-fulfilling prophecy is, in the beginning, a false definition of the situation evoking a new behaviour which makes the originally false conception come true" – see Robert K Merton, The Antioch Review, Vol 8 No 2 (Summer 1948), pp 193-210, p 195

[38] These are "convictions that are not dependent on the individual's belief structure or on the "here and now" to have effect" - see Julia Annas, Plato's Ethics, in The Oxford Handbook of Plato (August 2008), p 9

[39] For Donati, "human meaning is generated in a global society through relationships" - see Pierpaolo Donati, Relational Sociology: A New Paradigm for the Social Sciences, Routledge 2011, cited in Walter LaMendola and Judy Krysik, Ethic and Value Considerations in the Design of Interactional Agency, Information, Communication & Society, Vol 16 Issue 7 2013, pp 1061-1071, p 1063

[40] Eric Posner, The Twilight of Human Rights Law, Oxford University Press 2014, p 6

[41] The Council of Europe lists foundational human rights values as: human dignity, equality, freedom, respect for others, non-discrimination, tolerance, justice, and responsibility – see Council of Europe, What are human rights?, Accessed at https://www.coe.int/en/web/compass/what-are-human-rights-#Key%20values

[42] This thesis borrows from Yeshanew's excellent definition for mainstreaming, which is that it is "concerned with the conscious, systematic and concrete integration of certain values and standards into policies, plans, programmes, priorities, processes and results of the work of an organisation. Human rights mainstreaming refers to the deliberate infusion of human rights standards into the work of organisations in areas such as development, emergencies and peace and security. It is a result of a general endeavour to develop approaches that promote the integrated application of interdependent values". See Sisay Alemahu Yeshanew, Mainstreaming Human Rights in Development Programmes and Projects: Experience from the Work of a United Nations Agency, Nordic Journal of Human Rights, Vol 32 2014 - Issue 4: Human rights-based change and the institutionalisation of economic and social rights, pp 372-386, p 372

[43] "Knowledge," Floridi wrote, "is not a matter of either (a) discovering and describing, or (b) inventing and constructing, but of (c) designing and modeling reality, its features and behaviours into a meaningful world as we experience it (semanticization)". – Luciano Floridi, The Philosophy of Information, Oxford University Press 2011, p 37

[44] International human rights law is a massive, dense and complex area of legislation, instruments and literature – one of the recommendations of this thesis is that human rights law – international instruments, regional conventions, and domestic legislation – should be compiled on one digital platform that is user-friendly, feature-rich and interactive, to make human rights information more accessible and digestible to mainstream key publics. This recommendation, together with an assessment of how copyright held in valuable commentary and other secondary sources might hinder the development of such a platform, is explored further in Chapter 4.

[45] Understanding of human rights law, systems and values can be demonstrated in Kvanvig's three types of understanding, applying these to an Article 3 ECHR human rights scenario: propositional understanding ("I understand that torture is unlawful"; understanding why ("I understand why torture is unlawful"); and objectual or holistic understanding of body of information, as in "I understand human rights" – see Jonathan Kvanvig, The Value of Knowledge and the Pursuit of Understanding, Cambridge University Press 2003; Internet Encyclopaedia of Philosophy, Understanding in Epistemology, Accessed at https://iep.utm.edu/understa/

experience, in philosophy and in practice; and iii) for there to be a pre-existing degree of rights realisation in the societal situation of the individual or community of individuals[46], however minimal, that empowers the individual or the collective with sufficient autonomy to be able to exercise leverage[47] and influence. In so doing, we can inspire meaningful action in our social, political, cultural, and economic interactions, within our homes and family lives, our information environments, in education and lifelong learning, and at work.

1.1.3 Rights by Design

Rights by Design (hereafter, R*b*D) explores how human rights can be effectively realised in all the "small places, close to home" where rights can acquire worldly meaning, just as Roosevelt imagined. In its study of why human rights matter, how they are impeded and how they can be reclaimed – at home where socialisation begins, in our digital worlds and in the 'infosphere'[48], in lifelong education and in our worlds of work – R*b*D is situated at the intersection of law, society and culture, fusing human rights *law and culture*[49] together to reimagine human rights *law as culture*[50],

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[46] Autonomy (and the right to self-determination), as outlined earlier in this chapter, is deemed to be only truly available if the following rights are realisable: freedom of expression, the right of peaceful assembly, freedom of association, the right to vote, to participate in politics and public affairs "directly or through freely chosen representatives", the right to "authentic self-government", and to be "free from totalitarian repressive regimes" – see R Vashum, Self-Determination: Principles, Meanings and Practices, Indian Anthropologist, June 1996, Vol 26, No 1 (June 1996), pp 63-76, p 67, citing Antonio Cassese, The Self-Determination of Peoples, In Louis Henkin (ed) The International Bill of Rights: The Covenant on Civil and Political Rights, Columbia University 1981, p 94 & 97. However, as Quintavalla and Heine point out, "the indivisibility principle leads to the consideration of the human rights system holistically: the protection and respect of all human rights is a pre-requisite for the full enjoyment of human dignity. Any human rights violation would lead to a denial of the dignity that is inherent in every human being." – see Alberto Quintavalla and Klaus Heine, Priorities and human rights, The International Journal of Human Rights 2019, Vol 23, No 4, pp 679-697, p 681
[47] 'Leverage' is used to refer to the ability to influence or encourage others to act (see UN Guiding Principles Reporting Framework, Leverage, Accessed at https://www.ungpreporting.org/glossary/leverage/); and Stepan Wood, The Case for Leverage-Based Corporate Human Rights Responsibility, Business Ethics Quarterly, Vol 22, No 1, Human Rights and Business, January 2012, pp 63-98, p 63. Individuals arguably also have leverage in the form of their own spheres of influence and relationships that they can exercise within communities and cultural traditions.
[48] For Floridi, infosphere "denotes the whole information environment constituted by all informational entities, their properties, interactions, processes, and mutual relations" – see Luciano Floridi, The Fourth Revolution: How the Infosphere is Reshaping Human Reality, Oxford University Press 2014, p 41
[49] Culture is the "set of distinctive spiritual, material, intellectual and emotional features of society or a social group … that encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs" - UNESCO 2002; per Jäger and Wiskind, it is "perceived as a process of the social integration of society through the internalization of vitally necessary tradition"; yet for Mezey, "culture can mean so many things: collective identity, nation, race, corporate policy, civilization, arts and letters, lifestyle, mass-produced popular artifacts, ritual" - see Friedrich Jäger and Ora Wiskind, Culture or Society? The Significance of Max Weber's Thought for Modern Cultural History, History and Memory, Fall-Winter 1991, Vol 3 No 2, pp 115-140, p 117; also see Naomi Mezey, Law as Culture, The Yale Journal of Law & the Humanities (2001), Vol 13, pp 35 - 67, p 35
[50] Nash sees human rights culture as "emerging", and "concerned above all with creating and maintaining civic relationships rather than with the assertion of individual liberty, and as inviting political compromise rather than a

as a new, equitable, more sustainable 'lifeworld' (or the world as we experience it, to paraphrase the term as used in the Husserlian tradition and later, by Habermas as an assimilation of perspectives that are experienced and collectively synthesised as local culture[51]).

The concept of *law as culture*, of infusing our social and cultural institutions with human rights law and values, builds upon Rosen's concept of law as *already* being entwined with culture, "so deeply embedded in the particularities of each culture that carving it out as a separate domain and only later making note of its cultural connections distorts the nature of both law and culture"[52]. With this, Rosen was calling for law to be implemented with consideration given to protecting its cultural heritage *from the outset*, rather than as an afterthought; cultural heritage being, as Matthes writes, fundamentally about the past yet also "just as much about the present and the future: about how culture is embroiled in contemporary moral controversies, and about what our cultural legacy will be"[53]. Like cultural heritage, human rights are as much if not more so about the present and the future as they are the past; human rights are embroiled in numerous contemporary 'moral controversies', and it is unclear, in this uncertain and transitory zeitgeist after a tumultuous start to this century[54], just what the legacy or the future of human rights will be.

R*b*D asks us to recommit to our responsibilities as individuals to promote, respect and defend human rights in our digital, family, learning and working lives, and aims to inspire approaches to human rights grounded in individual agency, community interaction, disruptive innovation, and creativity towards the ideation of new

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principled stance on universal human rights" - see Kate Nash, Human Rights Culture: Solidarity, Diversity and the Right to be Different, Citizenship Studies, Vol 9 Issue 4 2005, pp 335-348

[51] Husserl conceptualises the 'lifeworld', a common consciousness among human inhabitants of the world who all experience the world as a shared and subjective event, as follows: "In whatever way we may be conscious of the world as universal horizon, as coherent universe of existing objects, we, each "I-the-man" and all of us together, belong to the world as living with one another in the world; and the world is our world, valid for our consciousness as existing precisely through this 'living together'." See Edmund Husserl, The Crisis of European Sciences and Transcendental Phenomenology (1936), pp 108-109; also see Jurgen Habermas, The Theory of Communicative Action, Vol 2 (1987), p 355

[52] Lawrence Rosen, Law as Culture: An Invitation, Princeton University Press 2006, p xii

[53] Erich Hatala Matthes, The Ethics of Cultural Heritage, Stanford Encyclopaedia of Philosophy 2018, Accessed at https://plato.stanford.edu/entries/ethics-cultural-heritage/

[54] Krause defines 'zeitgeist', a late 18th century German term that literally means 'spirit of the times' or 'spirit of the age', as "period-specific cultural patterns" which "do not necessarily define their period" but can "overlap in complex ways" – see Monika Krause, What is Zeitgeist? Examining period-specific cultural patterns, Poetics, Volume 76, October 2019, pp 1-10, p 2-4

platforms, campaigns, initiatives, projects, pedagogies, and advocacy methods which support the realisation of a purposive, inclusive human rights culture which can stand up to the deeply rooted and politically complex challenges of the current global environment for human rights. R*b*D not only reimagines human rights law *as* human rights culture that is fit for these extraordinary times in which we find ourselves; it also aims to narrow deep-rooted structural and relational gaps between human rights values, knowledge, action, and impact.

R*b*D aims to inspire a shift in narrative and emphasis from the state-centricity of human rights to a more human-centred approach to rights consciousness, compelling us as individuals to embed, respect, promote, and defend human rights norms, values, and principles, by design and by default, within lived, socially constructed realities and as the ultimate form of "rights consciousness"[55]. The research culminates in a series of recommendations designed to help human rights defenders – educators, legal practitioners and other professionals, community activists and communicators (journalists or other programme-makers) alike – to bring human rights values to life across the social, economic, and cultural spheres of influence that shape and govern our everyday lives. In this way, R*b*D is positioned to support the development of a more inclusive, purposive, and pragmatic human rights culture and the mainstreaming of human rights knowledge, understanding, awareness, empathy, and action to achieve the core objective of this research, which is essentially to offer a blueprint for 'future proofing' human rights.

1.2 Key concepts underpinning the research

As Eleanor Roosevelt famously said in 1958 in her *Where do human rights begin?* speech on the 10th anniversary of the UDHR, human rights begin "in small places, close to home", in "the world of the individual person", and "unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world"[56]. This thesis explores the theatres of individual action in the context of

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[55] Lawrence M Friedman, The Idea of Right as a Social and Legal Concept, Journal of Social Issues, Vol 27, No 2 1971, pp 189-198, p 189
[56] Eleanor Roosevelt, *Where do human rights begin?*, 1958

human rights, and the gap that exists between individuals' understanding and awareness of human rights and their confidence and capacity to act on behalf of human rights when their own rights or the rights of others are violated.

Human rights, following Donnelly's enduring definition, are those rights we qualify for solely on the basis of our humanity, or "the rights that one has because one is human"[57]. For Sugden, human rights are "rooted in a vision, a concept and a notion of what it is to be human"[58]. For Rawls, human rights "restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy"[59]. Famously, for Arendt, human rights were "the right to have rights … to live in a framework where one is judged by one's actions and opinions", and to "belong to some kind of organised community" in the world[60]. In Brysk's *Future of Human Rights*, human rights are a "set of principles, values, and institutions seeking to assure the life, dignity, freedom and equality of all people"[61], whereas for Moyn, human rights imply "an agenda for improving the world and bringing about a new one in which the dignity of the individual will enjoy secure international protection"[62]. In Selebi's rather more romantic definition, human rights are neither "abstract ideas or unreachable objectives for people far from us" but are instead "to be found in the hearts and minds of all human beings, indeed, they are the essence of human life. Human nature *itself* spurns fundamental human rights"[63].

The disconnect between individuals' understanding and awareness of human rights and their confidence and capacity to act on behalf of human rights, as the thesis argues, arises because the state-centric human rights system has never accounted for the fundamental and irrepressible instincts of the human beings at the heart of human rights: individual agency and "the paramount human drive to self-

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[57] Jack Donnelly, Chapter 1: The Concept of Human Rights, Universal Human Rights in Theory and Practice, Cornell University Press 2013, p 7

[58] Christopher Sugden, The right to be human in the Old Testament: a study in Isaiah 5, Transformation (Oxford Centre for Mission Studies), Vol 12, No 2, Refugees Ethnicity and Revivals (April 1995), pp 30-33, p 30

[59] John Rawls, *The Law of Peoples*, Critical Inquiry, Vol 20, No 1 (Autumn 1993), pp 36–68

[60] Hannah Arendt, The Origins of Totalitarianism, Penguin 1951 (1968), p 177; also see Seyla Benhabib, Chapter 2: "The right to have rights": Hannah Arendt on the contradictions of the nation-state, The Rights of others: Aliens, Residents and Citizens, Cambridge University Press 2012, p 50

[61] Alison Brysk, The Future of Human Rights, Polity Press 2018, p 3

[62] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 1

[63] Jacob Selebi, Towards the End of the Universality Debate: How Universal are Human Rights?, IPG 4/98, Debatte / Debate, p 429 (Own emphasis)

determination"[64]. The roots of self-determination, a core concept within this thesis that is inextricably linked with the doctrine of human dignity, can be traced back to the Greek philosophers Plato and Aristotle as "the idea of self-mastery"[65], and also to Kant who developed the concept of moral autonomy as "our capacity for self-legislation"[66]. Rousseau defined such autonomy as "moral liberty" in *The Social Contract*, as "every man being master of himself"[67], and it was Fichte who expounded on autonomy as "self-activity", or "the summons to *engage* in free self-activity", whereby "every individual in society ought to act on the basis of free choice and on the basis of a conviction which he himself has judged adequate"[68]. Fichte has been called the "crucial link between Kant and Hegel"[69], who expanded autonomy in his "pluralistic philosophy of action", encompassing family, community, and ethical agency[70].

Cassese separates self-determination into two categories: *external* self-determination, which refers to the right of state parties to "freely decide their international status, whether to form a new state or to associate themselves with an existing state"[71]; and *internal* self-determination (the right of the people to "choose their form of government and to determine the social, economic and cultural policies of the state"[72]. Importantly, whilst the right to self-determination is fundamentally a *collective* right, it is also a "prerequisite to the enjoyment of all other human rights"[73],

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[64] Abdullahi Ahmed An-Na'Im, The Spirit of Laws is Not Universal: Alternatives to the Enforcement Paradigm for Human Rights, Tilburg Law Review 21 (2016), pp 255-274, p 256-258

[65] The anthropologist Vashum traces the concept back in scholarship to the Greek city-state, the American Declaration of Independence 1776, and the French Declaration of the Rights of Man and Citizen 1789, when "the idea is said to have been successfully used for the first time as a weapon for liberation by the French Revolutionaries" – see R Vashum, Self-Determination: Principles, Meanings and Practices, Indian Anthropologist, June 1996, Vol 26, No 1 (June 1996), pp 63-76, p 63-64

[66] Internet Encyclopaedia of Philosophy, Autonomy, Accessed at https://iep.utm.edu/autonomy/

[67] Jean-Jacques Rousseau, The Social Contract, Wordworth Editions 1998

[68] Johann Gottlieb Fichte, The System of Ethics According to the Principles of Wissenschaftslehre, (Trans & Ed by) Daniel Breazeale and Gunter Zoller, Cambridge University Press 2005, vii

[69] *Ibid*, ix

[70] Liz Disley, Hegel, Autonomy, and Community (Chapter 12), Hegel's Political Philosophy: On the Normative Significance of Method and System (eds Thom Brooks and Sebastian Stein), Oxford University Press 2017; see further discussion on Hegel's system for an ethical life in Chapter 3 of this thesis on *Human Rights at Home and in the Community: Love, Law and Family*.

[71] External self-determination is "applied most frequently to colonial situations", per McCorquodale, "as it concerns directly the territory of a State … and the State's consequent international ('external') relations with other States" – see Robert McCorquodale, Self-Determination: A Human Rights Approach, The International and Comparative Law Quarterly, Oct 1994, Vol 43, No 4 (Oct 1994), pp 857-885, p 863

[72] R Vashum, Self-Determination: Principles, Meanings and Practices, Indian Anthropologist, June 1996, Vol 26, No 1 (June 1996), pp 63-76, p 67, citing Antonio Cassese, The Self-Determination of Peoples, In Louis Henkin (ed) The International Bill of Rights: The Covenant on Civil and Political Rights, Columbia University 1981, p 94 & 97

[73] Kenneth Uzar Eze & GN Okeke, The right of people to self-determination and the principle of non-interference in the domestic affairs of states, NALSAR Law Review, Vol 7 No 1, 2013, pp 145-164, p 162

especially freedom of expression, the right of peaceful assembly, freedom of association, the right to vote, to participate in politics and public affairs "directly or through freely chosen representatives", the right to "authentic self-government", and to be "free from totalitarian repressive regimes"[74], and so as Weitz has observed, "untangling the diverse meanings of self-determination goes to the heart of the complexities and dilemmas intrinsic to the history and politics of human rights"[75].

Prior to the Second World War, self-determination as a legal right was absent from the covenant of the UN's predecessor the League of Nations[76], though endorsed during and following the First World War as a *right of nations*[77], only becoming a legal *right of the people* as a very recent UN innovation through its prominent inclusion in UN instruments and documents of the international human rights system post-1948[78]. After this time, self-determination became a guiding principle in the post-war reconstruction efforts between nations and a "key element of the post-war human rights regime"[79] in which, as Vashum points out, "promotion of self-determination among subject peoples became one of the chief goals of the UN"[80]. As a result, self-determination is considered a legal right recognised in international

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[74] R Vashum, Self-Determination: Principles, Meanings and Practices, Indian Anthropologist, June 1996, Vol 26, No 1 (June 1996), pp 63-76, p 67, citing Antonio Cassese, The Self-Determination of Peoples, In Louis Henkin (ed) The International Bill of Rights: The Covenant on Civil and Political Rights, Columbia University 1981, p 94 & 97

[75] Eric D Weitz, Self-Determination: How a German Enlightenment Idea Became the Slogan of National Liberation and a Human Right, The American Historical Review, Volume 120, Issue 2, April 2015, pp 462–496, p 463

[76] *Ibid*, p 463 and 464; also, Hannum notes there was no mention of self-determination made in the covenant of the League of Nations – see Hurst Hunnam, Autonomy, Self-Determination (Chapter 3), Sovereignty and Self-Determination: The Accommodation of Conflicting Rights, University of Pennsylvania Press 1996, p 28-29

[77] Vashum warns against confusing 'self-determination' with state sovereignty, or "the right of a state to maintain its territorial integrity", given that "nowhere in the Charter or in subsequent UN declarations is self-determinate posed as the right of state"; rather, "it has always been considered in connection with a people" - R Vashum, Self-Determination: Principles, Meanings and Practices, Indian Anthropologist, June 1996, Vol 26, No 1 (June 1996), pp 63-76, p 66

[78] See Article 1, Universal Declaration of Human Rights 1948; Article 2, UN Declaration on the Colonial Countries and Peoples 1960 reads: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development"; this is repeated verbatim in Article 1, International Covenant on Economic, Social, and Cultural Rights 1966 and the International Covenant on Civil and Political Rights 1966; the UN Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States adopted by the UN General Assembly in 1970; Article 20, African Charter of Human and Peoples' Rights of 1981; the Vienna Declaration and Programme of Action of 1993; and Articles 3, 4 and 5 of the UN Declaration on the Rights of Indigenous Peoples 2007, *inter alia*.

[79] Eric D Weitz, Self-Determination: How a German Enlightenment Idea Became the Slogan of National Liberation and a Human Right, The American Historical Review, Volume 120, Issue 2, April 2015, pp 462–496, p 463

[80] Vashum links the concept with the struggle of "minorities, the colonised or non-self-governing peoples ... as a means of liberation from any form of colonialism and subjugation" – see R Vashum, Self-Determination: Principles, Meanings and Practices, Indian Anthropologist, June 1996, Vol 26, No 1 (June 1996), pp 63-76, p 67

customary law as a peremptory norm from which no derogation can be permitted[81], it is the "favoured slogan of all sorts of movements around the globe"[82], and it is a central concept within this thesis because it is intrinsically linked with the realisation of human rights culture and the recognition of the right to live in dignity[83]. As Wolfgang Danspeckgruber has said: "No other concept is as powerful, visceral, emotional, unruly, as steep in creating aspirations and hopes as self-determination"[84].

Within this thesis, 'self-determination' is used in the *internal* sense of Kantian moral autonomy in which the individual enjoys "authority over one's own actions"[85]. Self-determination, which forms "part of the empowering process of human rights"[86], recurs throughout this thesis as 'autonomy' or 'agency' and refers to the freedom of the individual to participate in the political, economic, social, and cultural life of the State, to engage in matters concerning social justice and human rights relating to their own communities (their 'internal and local affairs'), and to live in dignity. Self-determination is a highly charged concept, as is any concept with the realisation of human dignity at its core. Human dignity, as Gilabert, Rosen and many others have noted, is generally recognised (with some notable opposition) as "the central substantive ethical idea in human rights discourse"[87], and the most foundational principle within the UDHR, which in Article 1 states: "All human beings are born free and equal in dignity and rights"[88], essentially framing dignity as the birth right of all

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[81] Self-determination is considered to be jus cogens or 'compelling law' – see Robert McCorquodale, Self-Determination: A Human Rights Approach, The International and Comparative Law Quarterly, Oct 1994, Vol 43, No 4 (Oct 1994), pp 857-885, p 858

[82] Eric D Weitz, Self-Determination: How a German Enlightenment Idea Became the Slogan of National Liberation and a Human Right, The American Historical Review, Volume 120, Issue 2, April 2015, pp 462–496, p 462

[83] Jordan Paust, Self-Determination: A Definitional Focus, In Yonah Alexander and Robert A Friedlander Self-Determination: National, Regional and Global Dimensions, Westview Press 1980, p 8; Lung-Chu Chen, Self-determination as a human right, in M Reismann and B Weston, Toward World Order and Human Dignity, New York Free Press 1976, p 242

[84] Wolfgang Danspeckgruber, Founding Director of the Liechtenstein Institute on Self-Determination at Princeton University, quoted by UNPO at https://www.unpo.org/section/5/3

[85] Internet Encyclopaedia of Philosophy, Autonomy, Accessed at https://iep.utm.edu/autonomy/

[86] As McCorquodale writes: "The right of self-determination is a right which reflects the importance given to communities, collectives and families in many societies and the general inherent communal quality of humans. The purpose of the protection of this right is to enable these communities as communities to prosper and transmit their culture as well as to participate fully in the political, economic and social process, thus allowing the distinct character of a community "to have this character reflected in the institutions of government under which it lives"." It also forms part of the empowering process of human rights." – see Robert McCorquodale, Self-Determination: A Human Rights Approach, The International and Comparative Law Quarterly, Oct 1994, Vol 43, No 4 (Oct 1994), pp 857-885, p 859

[87] Pablo Gilabert, Labor human rights and human dignity, Philosophy and Social Criticism 2016, Vol 42(2), pp 171–199, p 180; also see Michael Rosen, Dignity - its history and meaning, Harvard University Press 2012, p 1

[88] Article 1, Universal Declaration of Human Rights 1948

human beings. Article 22 UDHR explicitly confirms that the right to social security, and economic, social, and cultural rights more broadly, are "indispensable" for the realisation of human dignity and the full and free development of the person[89]. In the International Covenants, human rights are said to "derive from the inherent dignity of the human person"[90], and the Preamble of the UN Convention on the Rights of the Child equally recognises "the inherent dignity and of the equal and inalienable rights of all members of the human family [a]s the foundation of freedom, justice and peace in the world"[91]. There is also recognition of the importance of human dignity in the UN Convention against Torture, the UN Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Elimination of All Forms of Discrimination against Women, among others[92].

Clearly, dignity is a focal concept in the philosophy of law as well in other ethics-bound disciplines such as the sciences[93]. The conceptual origins of dignity can be traced back to Panaetius of Rhodes and credited to Cicero's *De Officiis* (*dignitas*)[94], but it was, of course, Kant who in his famous dictum that people should be treated as ends and never as means to an end, most clearly linked human dignity with the idea that all human beings have "unconditional, intrinsic value"[95]. In Habermas' view, the "appeal to human rights feeds off the outrage of the humiliated at the violation of their human dignity"[96]. Linville's definition of dignity is simply "the belief that humans enjoy a special worth and moral standings that is unequaled by the rest of the natural order"[97]. Dupré describes dignity as a key issue in international discourse around human rights and constitutionalism in Europe, the "birthplace of dignity as a philosophical and constitutional concept"[98]. O'Mahony concedes that whilst the term

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[89] Article 22, Universal Declaration of Human Rights 1948

[90] Preambles, International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

[91] Preamble, UN Convention on the Rights of the Child 1990

[92] See UN Convention against Torture, the UN Convention on the Elimination of All Forms of Racial Discrimination and the UN Convention on the Elimination of All Forms of Discrimination against Women

[93] Rüdiger Hahn, Inclusive business, human rights and the dignity of the poor: a glance beyond economic impacts of adapted business models, Business Ethics: A European Review, Vol 21, No 1, January 2012, p 47-63, p 47

[94] Scott Cutler Shershow, Human Dignity from Cicero to Kant, in Deconstructing Dignity, University of Chicago Press 2013, p 53

[95] Michael Rosen, Dignity: Its history and meaning, Harvard University Press 2012, p 10

[96] Jurgen Habermas, The Concept of Human Dignity and the Realistic Utopia of Human Rights, Metaphilosophy 41/4, July 2010, p 464-479

[97] Mark D Linville, A Defense of Human Dignity, Faith and Philosophy: Journal of the Society of Christian Philosophers, Vol 17, Issue 3, pp 320-332, p 321

[98] Catherine Dupré, Human Dignity in Europe: A Foundational Constitutional Principle, European Public Law, Volume 19, Issue 2 (2013), pp 319 – 339, p 319

'dignity' does not appear in the European Convention on Human Rights (ECHR) or in the European Union (EU) treaties, it has recurred as a guiding concept in the jurisprudence of both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), which has described dignity as "the very essence" of the ECHR[99].

Human dignity is the subject of a dynamic and sometimes controversial discourse (over whether the concept constitutes a fundamental right, a constitutional principle, or both)[100]; for example, Ziebertz contends that criticisms of dignity mainly centre upon whether there is a "direct line from dignity to rights", and acknowledges that "[t]he precision, explicitness, and unambiguity of the concept of dignity is strongly questioned"[101]. Dignity has been memorably criticised by Schopenhauer as "the shibboleth of all the perplexed and empty-headed moralists who ... cunningly counted on the fact that their readers would be glad to see themselves invested with such a *dignity* and would accordingly be quite satisfied with it"[102]. In Schopenhauer's view, dignity was little other than a cynical appeasement of the masses, a dishonest appeal to their moral superiority over other species in the natural order. Rachels memorably denounced the doctrine of human dignity as "the moral effluvium of a discredited metaphysics"[103], whereas Vincent has advanced the "moral imperialist" argument that it is a mistake to assume that humans, on the sole basis of their humanity, "are in some way morally considerable in themselves, regardless of social or political context"[104]. These viewpoints contrast the normative position of the UN on human dignity, which is simply that it at once "legitimises and justifies individual rights"[105]. In my view, human rights are representations of human dignity, which as a

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[99] Conor O'Mahony, There is no such thing as a right to dignity, International Journal of Constitutional Law, Volume 10, Issue 2, 30 March 2012, pp 551–574, p 553; also see Pretty v United Kingdom, 35 EHRR 1 (2002), at 65. O'Mahony does acknowledge that the concept of dignity has been profoundly influential in the drafting of at least 15 constitutional documents worldwide, including those in Germany, Ireland, Canada, Israel, and South Africa (at 552-553).

[100] *Ibid*

[101] Hans-Georg Ziebertz and Carla M Ziebertz, Labour Rights and the Impact of Human Dignity, Religious Belief and Perception of Society: An Empirical Study among Youth in Germany, Journal of Empirical Theology 29, 2016, pp 45-77, p 48

[102] Schopenhauer has been endearingly called "the Ebenezer Scrooge of nineteenth century philosophy" by Rosen – see Michael Rosen, Dignity - its history and meaning, Harvard University Press 2012, p 1

[103] James Rachels, Created from Animals: The Moral Implications of Darwinism, Oxford University Press 1990, p 5

[104] Andrew Vincent, The Politics of Human Rights, Oxford University Press 2010, p 1

[105] Hans-Georg Ziebertz and Carla M Ziebertz, Labour Rights and the Impact of Human Dignity, Religious Belief and Perception of Society: An Empirical Study among Youth in Germany, Journal of Empirical Theology 29, 2016, pp 45-77, p 48

doctrine recognises that human life is fragile and precious, and that trauma demolishes the human spirit and has long-term, intergenerational impact. Fundamentally, the concept of dignity affirms the numinous value of human life. I acknowledge that morality is complex and subjective, in that what may be a moral indignity to some is justifiable to others depending upon the economic, social, or cultural situation at play, but I see the dignity doctrine as giving us a 'default position'[106], a moral compass and a minimum standard for how human beings should treat other human beings[107]. It is therefore frequently invoked throughout this work because of its legal significance as a "foundational principle" which encompasses "a right to dignity, or to be treated with dignity, or to lead a dignified life"[108].

Human flourishing also emerges as a central theme of this thesis because the conditions under which a person's life can flourish are generally found in 'good', well-functioning states which have an efficient, effective government and society that recognises and respects for human dignity, the Rule of Law and human rights. These conditions are integral to the ability of individuals to exercise, model and promote prosocial, pro-rights behaviours within their local communities. This is important because it is at the local level that the individual has the proximity to engage with, shape and challenge human rights culture, bringing international human rights law closer to ground in accordance with subsidiarity, a core principle of international human rights law which, as defined by Carozza, is "the principle that each social and political group should help smaller or more local ones accomplish their respective ends without, however, arrogating those tasks to itself"[109]. The subsidiarity principle has what Carozza calls "deep affinities ... with many of the implicit premises of international human rights norms, including presuppositions

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[106] 'Default position', of course, is a delicate matter of epistemic justification and is complex enough to warrant its own chapter, but here it is sufficient to clarify that it is used in the sense of Cartesian 'indubitability', as a foundational position of certainty upon which one's behaviour towards others and oneself can be based, a set of assumptions that are fundamentally true enough to serve as a starting point for one's own sceptical inquiry. See Internet Encyclopaedia of Philosophy, Epistemic Justification, Accessed at https://iep.utm.edu/epi-just/
[107] An important area for future dignity rights research is environmental rights and the right to nature intersect with human dignity and human rights, in that "people who are already vulnerable to human rights abuses are made more so by environmental degradation: those who are less likely to be politically protected and who have fewer resources to protect themselves – including women, poor people, ethnic minorities and children – are most likely to be subject to this panoply of environmentally-generated human rights abuses" – see Erin Daly and James R May, Chapter 6 - Environmental Dignity Rights, in The Effectiveness of Environmental Law, Intersentia 2018, pp 125-148, p 139
[108] Conor O'Mahony, There is no such thing as a right to dignity, International Journal of Constitutional Law, Volume 10, Issue 2, 30 March 2012, pp 551–574, p 559
[109] Paola G Carozza, Subsidiarity as a Structural Principle of International Human Rights Law, 97 American Journal of International Law (2003) 38, p 38

about the dignity and freedom of human persons, the importance of their association with others, and the role of the state with respect to smaller social groups as well as individuals"[110]. Subsidiarity, essentially, calls for human rights culture to be shaped by the human beings who are the bearers of those rights. The closer we as human beings can get to human rights problems in our immediate proximities, such as food poverty, LGBTQ rights, religious discrimination, gender inequality, climate, health and social care, education, or the rights of children, the disabled, and the elderly, the greater the chance that communities will be able to effectively mobilise and address those challenges head on in "the world of the individual person", as Eleanor Roosevelt put it when she called for "concerted citizen action" to uphold human rights informally and close to home – without which, she said in 1958, we would continue to "look in vain for progress in the larger world"[111].

1.3 Research Design

The overarching research question that has informed, inspired, and guided this doctoral thesis is: **How can we create a human rights culture that empowers individual responsibility to respect, promote and defend human rights, and bridges the gap between human rights knowledge, values, and action in our social, educational, economic, and cultural interactions?**

Using an interdisciplinary literature review methodology, this research delivers a work-in-progress framework for mainstreaming a human rights culture "without borders"[112] that is fit for purpose in the aftermath of the world's first "post-truth pandemic"[113]. The 'golden thread' of this thesis is its emphasis on the responsibility that all of us carry, as individuals and collectively, to respect, promote and defend human rights in our public and private lives, in our social institutions, and in our everyday realities[114], nurturing green shoots of narrative and normative change all

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[110] *Ibid*, p 39
[111] Eleanor Roosevelt, 1958
[112] Noam Schimmel, The Modes of Human Rights Literature: Towards a Culture without Borders by Michael Galchinsky, Human Rights Review, Volume 19 2018, pp 509–511
[113] Wendy E Parmet, JD and Jeremy Paul, JD, COVID-19: The First Post-Truth Pandemic, American Journal of Public Health, 110(7) July 2020, p 945-946
[114] Peter L Berger and Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge, Penguin 1966

around us in "the world of the individual person"[115]. The framework meaningfully contributes to the realisation of human rights as a precious, inherently fragile, but dynamic part of our "intangible cultural heritage"[116], and it aims to enrich our human rights legacy so that we may repair, strengthen, and fortify a beautiful tradition that for too long has been politicised and dehumanised, so that we may preserve and protect it for the next generation.

1.3.1 Interdisciplinary Literature Review as a Methodology: Justification and Limitations

As this thesis argues, human rights values and principles transcend political, geographic, economic, social, theological, and cultural boundaries, following Morsink who has observed that there is "not a single nation, culture or people that is not in one way or another enmeshed in human rights regimes"[117]. Human rights also transcend academic and professional disciplinary boundaries, in that human rights laws and policies are implemented at local and community levels by persons who may not necessarily be members of the political or legal spheres; hence, human rights law is *not* (and has never been) of exclusive concern to politicians, legal practitioners, judges, academics and activists within the Geneva human rights 'bubble', but also to social workers, teachers, journalists, police officers, medical staff, and frontline public service workers, or 'street level bureaucrats'[118]. Legislative developments and decisions of the law courts often set important precedents that may substantially alter the status quo and force cultural change within a particular industry or discipline, impacting marginalised groups of individuals or society at

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[115] Eleanor Roosevelt, 1958

[116] Bortolotto interprets 'intangible cultural expression' as that which evolves over time, representing a "focus away from its founding, Western, museological principles in favour of a more anthropological and global vision of (tangible) cultural properties" based on the "dynamic nature of culture" and the "continuous recreation of cultural expressions" – see Chiara Bortolotto, From Objects to Processes: UNESCO's Intangible Cultural Heritage, Journal of Museum Ethnography, No 19, 'Feeling the Vibes: Dealing with Intangible Heritage': Papers from the Annual Conference of the Museum Ethnographers Group Held at Birmingham Museum & Art Gallery, 18–19 May 2006 (March 2007), pp 21-33, p 21

[117] Johannes Morsink, The Universal Declaration of Human Rights, University of Pennsylvania Press 1999, p x, also cited by Michael Freeman, Human Rights: An Interdisciplinary Approach, Polity 2011, p 5

[118] Michael Lipsky defines 'street level bureaucrats' as "public service workers who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work" – as such, they are the public, front-line face of government policy with significant discretion and power to make decisions that can profoundly impact people's lives and the enjoyment of their human rights. See Michael Lipsky, Street-level bureaucracy: dilemmas of the individual in public services, Russell Sage Foundation 2010, p 3-4

large[119]. Human rights law *already* informs and interacts so extensively with other disciplines where there is natural interplay, such as politics, international relations, medicine, media, social care, employment and welfare, education, healthcare, and business, that it seems obvious that human rights law should be treated as an interdisciplinary concern, rather than an exclusively politico-legal subject. McEvoy has called this "an alternative perspective on rights discourses which offers a more fruitful pathway to embedding rights discourses"[120], one that involves "letting go of legalism" and "contemplates a greater willingness to give space to actors other than the state or 'state-like' institutions … it means being open to the insights of disciplines and forms of knowledge other than law"[121].

In recent years, as Freeman notes, there has been a clear rise in the use of interdisciplinary approaches in human rights research, and promisingly, a surge in interdisciplinary 'law-and-' courses designed and delivered at Master's and degree levels[122]. The "dominance of legal analyses towards human rights" is being challenged, he writes, and "the long sleep of the social science of human rights [coming] to an end"[123]. Clearly, human rights must be embedded into a legal system to have legal effect, but overall, questions about the real-world impact of human rights law on the individual and on whole communities are, in Freeman's analysis, better suited to philosophy or the social sciences rather than legal analysis[124].

It was decided early on in the research design process that the research scope would be very deliberately interdisciplinary and largely socio-legal in nature, on the basis that a 'law-*and*-X' approach would enrich R*b*D as a model for mainstreaming human rights culture, communication and education, literacy and action, and circumvent barriers to disciplinary appeal, relevance and applicability. This is not a novel approach in legal academia, in which interdisciplinary work is now more highly valued in an extremely competitive research climate[125] and an 'interdisciplinary by

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[119] Irma J Kroeze, Legal research methodology and the dream of interdisciplinarity, PER 2013 Vol 16 No 3, http://dx.doi.org/10.4314/pelj.v16i3.3

[120] Kieran McEvoy, Beyond Legalism: Towards a Thicker Understanding of Transitional Justice, Journal of Law and Society, Vol 34, No 4 (Dec 2007), pp 411-440, p 429

[121] *Ibid*, p 440

[122] Michael Freeman, Human Rights: An Interdisciplinary Approach, Polity 2011, p viii

[123] *Ibid*

[124] *Ibid*

[125] Nigel Duncan and Terry Hutchinson, Defining and describing what we do: Doctrinal legal research, Deakin Law Review 2012, Vol 17 Issue 1, pp 83-119, p 83

default' approach is becoming as common in law as it is in most other disciplines[126]. Hutchinson notes that "academic lawyers are becoming eclectic in their use of research methods", and "legal scholars are increasingly infusing evidence (and methods) from other disciplines into their reasoning to bolster their reform recommendations"[127]. Kalman has called interdisciplinary legal research the "space of encounter" for law and "the disciplines"[128], whereas Vick has identified an ongoing tension between interdisciplinary legal research, entrenched perceptions about the "purposes" of legal scholarship and traditions, and concentric relationships between academic lawyers and the legal profession, as well as the "collective identity of the legal discipline"[129].

In an increasingly multipolar world[130], in which the distinction between disciplines, borders, and cultures is not as linear as it has been in the past, this work set out to prove that legal research can be greatly enriched by the other knowledge domains (and vice versa) – moving beyond the social sciences[131] (which encompass economics and development, social policy, sociology, psychology, human geography, communication and media studies, political science, and international relations) to also include philosophy, history, the humanities, theology, media and communications, information, and the arts, among many other fields of study. For Nagel, empirical data produced by social science methodology is particularly valuable to legal practitioners not only because it provides evidence that might

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[126] Irma J Kroeze, Legal research methodology and the dream of interdisciplinarity, PER 2013 Vol 16 No 3, http://dx.doi.org/10.4314/pelj.v16i3.3

[127] Terry Hutchinson, The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law, Erasmus Law Review Issue 3 2015, p130-138, p 130

[128] Laura Kalman, The Strange Career of Legal Liberalism, Yale University Press 1996, p 239; also see Christopher Tomlins, Framing the Field of Law's Disciplinary Encounters: A Historical Narrative, Law & Society Review, Vol 34, No 4 (2000), pp 911-972, p 964

[129] Douglas W Vick, Interdisciplinarity and the Discipline of Law, Journal of Law and Society, Vol 31, No 2 (June 2004), pp 163-193, p 164

[130] A multipolar world is one where more than two states exercise "substantial power in the International system" (contrasting with the bipolar system where there are only two substantive powers of "roughly equal size and capability"). Dee writes: "There is little doubt that the world is a very different place today than it was 30, 20 or even 10 years ago ... Multilateralism has become increasingly difficult, yet never more important. Diplomacy has a renewed significance. This is an emerging multipolar world." Megan Dee, The Emergence of a Multipolar World, In: The European Union in a Multipolar World: World Trade, Global Governance and the Case of the WTO, Palgrave Macmillan 2015, pp 1-20, p 5

[131] The Campaign for Social Science, on its website, offers two compelling definitions for the social sciences, the short one being "the scholarly study of human society and social relationships"; and the longer one, citing the European Science Foundation, as the examination of "what it means to be a social being, ranging from the minutiae of human behaviour and brain functions to large scale social movements, demographics, economics and politics". See Campaign for Social Science, https://campaignforsocialscience.org.uk/about-us/social-sciences/

support a legal argument[132], but because the social sciences infuse legal analysis with valuable social context. For example, psychiatry, psychology and neuroscience research is intrinsically linked with legal applications of insanity as a defence at criminal law; climate change science is instrumental to the development of legal arguments around environmental law and sustainable development; and philosophy and the study of modern political traditions are essential primers on the history of legal jurisprudence[133].

Similarly, McCrudden has observed that "without attention to legal research, social scientists who are not lawyers are perhaps less likely to recognise when law is playing an important role in the social and economic phenomena they are attempting to analyse"[134]. Ewick reiterates the meaningful role of the social sciences in making laws that are "socially workable as well as legally valid"[135], whereas the humanities, as Nussbaum has written, teach "the ability to think critically; the ability to transcend local loyalties and to approach problems as a citizen of the world; and, finally, the ability to imagine sympathetically the predicament of another person"[136]. These also happen to be, of course, essential qualities in human rights defenders, learners and leaders which cannot necessarily be learned in law statutes, journals, or judgments.

Even in the earliest stages of research design, I understood that interdisciplinary work would not be without its challenges. As Vick wrote, "interdisciplinary experimentation has proliferated since the 1970s and occasionally has met resistance from within the legal discipline itself", this resistance stemming from "a feeling that law's disciplinary identity is under threat from ideas imported from without"[137]; a resistance which, Vick notes, is entirely unfounded given law's secure "disciplinary identity" which is derived from the legitimacy and "resilience" of the legal institutions[138]. Furthermore, interdisciplinary research, which Kroeze identifies as

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[132] Stuart S Nagel, Law and the Social Sciences: What Can Social Science Contribute?, American Bar Association Journal, Vol 51, No 4 (April 1965), pp 356-358, p 356

[133] *Ibid*

[134] Maksymilian Del Mar and Michael Giudice (eds), Legal Research and the Social Sciences Volume II (Christopher McCrudden), Legal Theory and the Social Sciences, Routledge 2017, p xx

[135] Patricia Ewick, Robert A Kagan, Austin Sarat (eds), Social Science, Social Policy, and the Law, May 1999

[136] Martha Nussbaum, Not For Profit: Why Democracy Needs the Humanities, Princeton University Press 2010, p 7, also cited by Irma J Kroeze, Legal research methodology and the dream of interdisciplinarity, PER 2013 Vol 16 No 3, http://dx.doi.org/10.4314/pelj.v16i3.3

[137] Douglas W Vick, Interdisciplinarity and the Discipline of Law, Journal of Law and Society, Vol 31, No 2 (June 2004), pp 163-193, p 165

[138] *Ibid*, p 166

"unusual and very, very hard to do … happens when a single researcher is a disciplinary expert in more than one discipline, and he/she uses the methodology of both to address a problem"[139]. Kroeze makes the interesting observation that whilst interdisciplinary research is "by definition … an individual enterprise, it is the only case where innovative work and results can be expected"[140]. Whilst it has certainly been "hard to do", this thesis has set out to present a rich, cohesive argument that taps into a wealth of research from disciplines that might not traditionally have been considered in a legal thesis, and for that I believe that the thesis overall has been deeply enriched and is far more valuable to a much broader audience given the broad interdisciplinary appeal of the outcomes. The research journey and the thesis as research outcome have also been greatly strengthened by the interdisciplinary supervision of my primary supervisor at the University of Exeter Law School and my second supervisor at the University of Exeter Graduate School of Education, which reflects the importance of education in this research (and to which three of the nine substantive chapters are devoted).

Significantly, as Kroeze has explained: "True interdisciplinary research requires a thorough grounding in more than one discipline. Having a postgraduate qualification in both law and economics; both medicine and law; both computer science and law; or both sociology and law qualifies one to do interdisciplinary work"[141]. This approach therefore required me to reflect on my suitability as a researcher to undertake a complex interdisciplinary approach, which I understood would often be intense and challenging. I believe that my eight years of legal training as a mature, change of career student and my work as an academic lawyer and lecturer at the University of Exeter, following a 16-year career in corporate and NGO communications, strategic projects, programming, and stakeholder engagement, has to a great extent qualified me with expertise in a complementary discipline (law *and* communications). On reflection, I am cognizant of the many ways in which my professional and personal experiences have charged this thesis with diverse perspectives from both within and beyond the legal sphere. As a British-Lebanese "third culture kid" who had the great

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[139] Irma J Kroeze, Legal research methodology and the dream of interdisciplinarity, PER 2013 Vol 16 No 3, http://dx.doi.org/10.4314/pelj.v16i3.3
[140] *Ibid*
[141] Irma J Kroeze, Legal research methodology and the dream of interdisciplinarity, PER 2013 Vol 16 No 3, http://dx.doi.org/10.4314/pelj.v16i3.3

privilege of growing up, living, and working on four continents by the age of 30[142], it was especially important to me in this writing that the perspectives infused into my work gave equal voice to Global South voices as to those emanating from the Global North.

On this basis, I decided early in the research design process that a qualitative literature review methodology would be most appropriate for this work over other qualitative methods (including case studies, focus groups and interviews[143]), as this approach would allow me to fully incorporate both mainstream and marginalised perspectives and more articulately reflect the interplay between interrelated disciplines both peripheral to and beyond the legal sphere. It would also allow me to bring in the invaluable social, economic, and cultural dimensions that are so often overlooked in legal analysis, using targeted keywords to source diverse and sometimes highly localised perspectives through digital archives, databases, websites and the repositories of journals (legal and non-legal) available online[144]. The 'literature review as methodology' approach would also be integrative, as the integrative literature review, as Toracco has defined it, is "a form of research that reviews, critiques, and synthesises representative literature on a topic in an integrated way such that new frameworks and perspectives on the topic are generated"[145]. As integrative literature reviews can be used to address both well-established and emerging topics[146], the approach especially appealed to me because it can help researchers to deliver "fresh, new understandings and ... significant reconceptualization" when used to review mature topics[147] - especially relevant in my view to this work, which is fundamentally a "significant reconceptualisation" of a mature topic (human rights).

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[142] Ndéla Faye, Am I rootless, or am I free? 'Third culture kids' like me make it up as we go along, The Guardian, 09 March 2016, Accessed at https://www.theguardian.com/commentisfree/2016/mar/09/third-culture-kid-identity-different-cultures

[143] Irma J Kroeze, Legal research methodology and the dream of interdisciplinarity, PER 2013 Vol 16 No 3, http://dx.doi.org/10.4314/pelj.v16i3.3

[144] Keywords used in the integrative literature review methodology included (non-exhaustively): 'human rights culture', 'human rights information', 'human rights communication', 'human rights education', 'human rights labour', 'human rights training', 'human rights law school', 'human rights business school', 'human rights advocacy', *inter alia*. Please see 'References' for a full list of legal and non-legal journals consulted as part of the integrative literature review, spanning medicine, the sciences, child development, neuroscience, psychology, psychotherapy, business, economics, entrepreneurship, education, sustainability, and many other disciplines.

[145] Richard J Torraco, Writing Integrative Literature Reviews: Guidelines and Examples, Human Resource Development Review, Vol 4, No 3, September 2005, pp 356-367, p 356

[146] *Ibid*, p 357

[147] *Ibid*

Torraco's guidelines also clarified the process of critical analysis which requires the researcher to "deconstruct a topic into its basic elements" in order to look holistically at history, origins, and main concepts of the topic, as well as the "key relationships through which the concepts interact"[148]. Torraco helped me to understand that *critique*, as the "product of critical analysis"[149], involves identifying how the literature has meaningfully contributed to the state of the art around a topic and also pinpointing "deficiencies, omissions, inaccuracies, and other problematic aspects" in order to identify gaps and inconsistencies in the literature[150], a process which, as Snyder notes, is a "critical component of creating theoretical frameworks and building conceptual models"[151].

Toracco outlined how ideas to emerge from an integrative literature review can be synthesised in the form of a research agenda, which "flows logically from the critical analysis of the literature [and] should pose provocative questions (or propositions) that give direction for future research"[152] because at the end of it all, the "provocativeness or fruitfulness of an integrative literature review is [in] its capacity to generate new ideas and directions for the field"[153]. Accordingly, each of the chapters within this thesis are intended to be "catalysts for future research"[154], following Toracco's advice that the 'research agenda' (as a form of synthesis in an integrative literature review) should be "made explicit by formulating questions for further research or a research agenda", and conclude with "provocative research questions that stimulate interest among other researchers"[155].

1.3.2 Three models that inspired the scope and design of RbD: Contract for the Web, Privacy by Design, and Hope-Based Human Rights Communication

Sir Tim Berners-Lee's Contract for the Web provided valuable inspiration in framework design; the Contract, as a "global plan of action … created by experts and

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[148] *Ibid*, p 361
[149] *Ibid*, p 362
[150] *Ibid*
[151] Hannah Snyder, Literature review as a research methodology: An overview and guidelines, Journal of Business Research, Vol 104, Nov 2019, pp 333-339, p 333
[152] Richard J Torraco, Writing Integrative Literature Reviews: Guidelines and Examples, Human Resource Development Review, Vol 4, No 3, September 2005, pp 356-367, p 363
[153] *Ibid*, p 364
[154] *Ibid*
[155] *Ibid*

citizens from across the world to make sure our online world is safe, empowering and genuinely for everyone", produced recommended and highly targeted actions for three key stakeholder groups – Governments, Companies and Citizens (Civil Society and Individuals)[156]. Deeper analysis into the structure of the Contract prompted greater consideration in the research design phase over who the ultimate end users of the R*b*D Recommendations would be, and more importantly who they would *not* be so as to keep within the human-centred scope of this thesis. As a result, the analysis and recommendations are focused almost exclusively on civil society and individuals as educators, communicators, and defenders of human rights, and does *not* present any recommendations or actions targeted at the state.

In the early stages of research design, I also considered Cavoukian's 'Privacy by Design' data protection model[157], a perfect illustration of how a principle-based approach can powerfully inform policy and legislative development and influence individual, institutional, and professional norms and practices to actualise human rights in policy and industry practice. Privacy by Design is a set of seven foundational principles first developed in the 1990s and later expanded to proactively incorporate privacy by default and integrate privacy and data protection compliance in the earliest planning stages of projects, platforms, research, business processes and operations, to avoid privacy and data violations later in the lifecycle of the product, process, or platform in question. Like Privacy by Design, the R*b*D framework is intended to be 'Proactive not Reactive; Preventative not Remedial'[158]. Initially a 'recommended' practice for data protection practitioners and technology developers, Privacy by Design has had profound influence on the evolution of data protection standards and digital privacy laws and in 2018, became enshrined in EU data protection law through the GDPR[159]. Largely thanks to Dr Cavoukian's model together with the extraordinary growth of digital technology and the privacy concerns that have lagged behind innovation in this area, data privacy itself is now recognised

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[156] Contract for the Web, an initiative by the World Wide Web Foundation, accessed at https://contractfortheweb.org

[157] Ann Cavoukian, Privacy by Design: The 7 Foundational Principles Implementation and Mapping of Fair Information Practices, Accessed at https://iab.org/wp-content/IAB-uploads/2011/03/fred_carter.pdf

[158] *Ibid*

[159] Article 25(1) and 25(2), Data protection by design and by default, EU General Data Protection Regulation 2018; Section 57, Data Protection Act 2018; Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

as a cornerstone of human rights in the digital era of hyper-consumption and creation of information. In this research, I have referred to the following definitions of 'information' to guide the work: Floridi's definition of information as "well-formed, meaningful and truthful data"[160]; Dunn's definition that information is "what is left of knowledge when one takes away belief, justification and truth"[161]; Meijer's concept of information as being "closely related to notions of news, constraint, communication, control of data, form, instruction, knowledge, meaning, mental stimulus, repeating patterns, perception of experience, as well as representation of observations and pattern recognition"[162]; and Capurro's vision of information being "a constitutive force in society" because of how essential it is to communication[163].

Lastly, in its emphasis on proactive and positive individual action to benefit rights consciousness and realisation, R*b*D also drew inspiration from Coombes' transformative 'hope-based' human rights communications model which encourages more emphatic articulation of what one stands *for* rather than *against*[164], the idea being that positive, proactive pragmatism is the best overall strategy for achieving what Nussbaum called 'practical hope', or "a vision of the good world that might ensue" if there is willingness to undertake the work involved or the "actions related to getting there" so that we might create "a world of listening, of quiet voices, and of mutual respect for reason"[165].

1.4 Structure of Chapters

This thesis is an ambitious, interdisciplinary, and highly experiential doctoral research project that articulates a unique, original, and innovative response to the research question, which is saliently addressed throughout the chapters of this work.

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[160] Luciano Floridi, The Philosophy of Information, Oxford University Press 2011, xiii
[161] Jon Michael Dunn, The Concept of Information and the Development of Modern Logic, in Zwischen traditioneller und moderner Logik: Nichtklassiche Ansatze (Non-classical Approaches in the Transition from Traditional to Modern Logic), Werner Stelzner and Manfred Stöckler (eds), Paderborn, Mentis 2001, pp 423–447, p 423, as cited by Pieter Adriaans, Information, Stanford Encyclopedia of Philosophy, Accessed at https://plato.stanford.edu/entries/information/
[162] DKF Meijer, 2012, The Information Universe. On the Missing Link in Concepts on the Architecture of Reality, Syntropy Journal, 1, pp 1-64, p 7
[163] Capurro and Hjørland, Chapter 8: The Concept of Information, Annual Review of Information Science and Technology 2003, p 343-411, p 345
[164] Thomas Coombes, Hope-based comms: a strategy for change, Hope-based.com, Accessed at https://www.hope-based.com/about
[165] Martha Nussbaum, The Monarchy of Fear, Oxford University Press 2018, p 197-243

Following this introductory chapter which has elaborated on key concepts that have inspired and informed the writing of this thesis, the following chapter, titled ***Human Rights as Representations of Dignity: Why human rights matter to every human being (and how they are woven into human history, culture and civilisation)***, addresses why we should care about human rights culture and advances the argument that whilst the *system* of international human rights protection is under threat, the *spirit* of human rights culture transcends geographic, cultural, political and social boundaries because human rights are inherently representations of dignity. This part of the research identifies a transcendent resilience to human rights in that whilst the human rights *system* may be flawed and may have been unequivocally – but not irrevocably – damaged, politicised and distorted in the decades since the UDHR in 1948, the *spirit* of human rights has survived many disruptive global events over the centuries and has mostly been strengthened with each major revolutionary event because of the struggle, passion and determination of the individuals at the heart of human rights culture. Today's human rights crisis has played out many times before in the history of human civilisation, and so the disruption of the last few decades and especially in the last couple of years around Covid-19 should be seen not as the 'end times' of human rights[166] but rather, as a cyclical reset, a disruptive catalyst for action, and an opportunity to recalibrate the human rights system with fundamental human values, cultural embeddedness, and individual-led localised action, remembering that human rights are essentially rooted in human dignity which exists innately and independently of international law[167]. This chapter has informed the development of the first of the five principles in the R*b*D Framework (Principle 1: Individuals should be empowered with knowledge of human rights history and access to human rights information)[168].

The thesis then moves on to a pivotal chapter, ***Human Rights at Home and in the Community: Love, Law and Family***, which – following Roosevelt's *Where do*

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[166] Stephen Hopgood, The Endtimes of Human Rights, Cornell University Press 2013
[167] Human dignity is a fundamental human value that is enshrined in the Preamble of the 1948 UDHR: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."
[168] Please see the concluding chapter for the R*b*D Framework of five principles that support the mainstreaming of human rights information, communication, and education towards the creation and revival of human rights culture and consciousness.

human rights begin? – articulates the importance of embedding human rights values into our family lives, within the homes we live in and the children we bring up in the world. Activism is intergenerational or inherited for the most part[169], and it is known that children with high levels of empathy (which is both natured and nurtured) are generally more "socially sensitive", with higher levels of understanding of how their behaviour impacts those around them[170]. Rousseau wrote that "the earliest of all societies, and the only natural one, is the family", and so it would be remiss in a thesis on embedding human rights into the vital social institutions not to focus on human rights at home, and within the family, where we receive our first instruction into what it means to be in the world, as our own beings and as part of a unit "kept together", says Rousseau, "by convention"[171]. Recognising, of course, that not all homes in the world are ideal, rights-respecting environments where prosocial, pro-rights behaviours can be effectively modelled and nurtured, this chapter also discusses strategies for engaging with and supporting children and families in crisis with rights education programmes, which have the potential to transform the lives, behaviours, experiences and futures of those whose rights are most adversely impacted by social and economic inequality, those who are most marginalised in our societies, but who ultimately, may benefit profoundly from rights literacy. Ultimately, the chapter makes a clear case for embedding human rights and the children's rights agenda specifically into family law and into social care institutions, culture, and practice. The research in this chapter shaped much of the development of Principle 2 in the R*b*D Framework (that individuals should be supported in their creation of rights-respecting homes and their contributions to rights-championing communities, and that professionals engaging and intervening with families in crisis should take a rights-based approach in doing so)[172].

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[169] There are a handful of studies on 'inherited' or 'intergenerational activism', primarily focused on climate action, feminism, and racial inequality. For analysis in the context of family-led and community-driven human rights activism, please see Chapter 3 of this thesis.

[170] Leanne C Findlay, Alberta Girardi, Robert J Coplan, Links between empathy, social behavior, and social understanding in early childhood, Early Childhood Research Quarterly, Vol 21, Issue 3, 3rd Quarter 2006, pp 347-359

[171] Jean-Jacques Rousseau, The Social Contract, Wordworth Editions 1998, p 6

[172] Please see the concluding chapter for the R*b*D Framework of five principles that support the mainstreaming of human rights information, communication, and education towards the creation and revival of human rights culture and consciousness.

From here, the research moves on to explore how we might bridge the human rights values / action gap[173] by mainstreaming human rights knowledge and normalising positive, pro-rights attitudes[174]. Addressing the widespread apathy, indifference, and negative attitudes that exist towards human rights is a critical step towards the realisation of the R*b*D vision and mainstreaming enjoyment of and respect for human rights culture. Normalising and mainstreaming a positive, pragmatic, and purpose-filled approach to human rights culture and communication, moving audiences beyond sympathy and toward empathy, will move them away from apathy towards action. As Castells has written: "The way people think determines the fate of the institutions, norms and values on which societies are organised"[175]. A shift in attitudes would influence a shift in discourse and would create an environment where the individual is informed, hopeful, and sufficiently equipped and empowered to apply knowledge *about* human rights into action *for* human rights in their everyday, socially constructed realities, and in their social, educational, economic, and cultural interactions. However, persistently low levels of human rights knowledge among the general public might indicate that there is a human rights 'information deficit'[176] which requires a divergent rethink on: i) the accessibility of human rights information in the wider infosphere (especially online, where polarisation in the digital world has been greatly exacerbated post-pandemic[177]); ii) the format, simplicity of language and the dialogic potential of the media through which human rights information is disseminated; iii) the threats that hate speech, censorship and attacks on press freedom present to human rights in many parts of the world. These issues are addressed in the fourth chapter of this thesis, titled ***Human Rights and the***

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[173] Keyword searches for 'knowledge-action gap' and 'values-action gap' indicate that the term is most commonly used in the areas of environmental and sustainability studies, but it is used in this thesis in the context of human rights to convey the gap between what people know and think about human rights, and the action they take to protect or defend human rights.

[174] Shareen Hertel, Lyle Scruggs and C Patrick Heidkamp, Human Rights and Public Opinion: From Attitudes to Action, Political Science Quarterly, Vol 124, No 3 (Fall 2009), pp 443-459

[175] Manuel Castells, Networks of outrage and hope: Social movements in the Internet age, Polity 2015, p 6

[176] 'Information deficit' is another term that derives from the scientific disciplines and specifically, from science communication ("essential dialogue between science and society"), used to convey the low level of understanding of the general public on complex issues related to science, which is related to the low level of information. If there is insufficient information on a subject, or the information is difficult to access or digest (ie. it is written in overtly scientific language that might be confusing to a non-scientist), then there is an information deficit on the subject that results in a low level of mainstream understanding around it. See SciDevNet, The case for a 'deficit model' of science communication, 24 June 2005 (based on a presentation made on 22 June to the Public Communication of Science and Technology Working Symposium on 'Strategic Issues in Science and Technology Communication', held in Beijing, China, Accessed at https://www.scidev.net/global/editorials/the-case-for-a-deficit-model-of-science-communic/

[177] UN Secretary General Statements, Digital Divide 'a Matter of Life and Death' amid COVID-19 Crisis, Secretary-General Warns Virtual Meeting, Stressing Universal Connectivity Key for Health, Development, 11 June 2020, Accessed at https://www.un.org/press/en/2020/sgsm20118.doc.htm

Infosphere I – Information as a Human Right and Human Rights as Information,
the research for which was pivotal to the development of Principle 1 in the R*b*D
Framework on empowering individuals with access to human rights information[178].

However, in order to understand the deep-rooted challenges that human rights
culture has long been up against, before and after Covid-19, I felt it necessary to
establish how myths, misconceptions and misinformation have "monstered"[179]
human rights to the extent that they are, in some governments, to some factions of
the media, to some politicians, and to many rightsholders themselves, considered to
be too controversial to be taught in schools, too politically partisan, too aligned with
left-wing liberalism, and too skewed in favour of refugees, criminals, the elite, the
'Other', to be anything other than a "metaphysical abstraction"[180]. Accordingly, the
fifth chapter, titled *Human Rights and the Infosphere II – Correcting
Misinformation and the 'Monstering' of Human Rights towards a new era of
Human Rights Thoughtfulness,* recognises the need to 'humanise' rights
discourse, as in order to promote and defend human rights, one must be able to
authoritatively correct misinformation about human rights and coherently counter
common, deep-rooted misperceptions and false narratives around human rights. The
chapter examines how information disorders (including misinformation,
disinformation and malinformation) have negatively impacted human rights culture
and establishes a link with the wider global media freedom crisis. The chapter further
explores how the weaponisation of human rights information might be addressed at
state level but also, importantly, corrected in local level discourse and digital / social
media information and interactions.

The sixth, seventh and eighth chapters on *Human Rights Education and Training
(I: Learning About, Through and For Human Rights; II: Reimagining Rights
Education in Primary, Secondary and Higher Education; and III: Human Rights
in Postgraduate, Vocational and Lifelong Learning*) position the importance of

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[178] Please see the concluding chapter for the R*b*D Framework of five principles that support the mainstreaming of
human rights information, communication, and education towards the creation and revival of human rights culture
and consciousness.
[179] Adam Wagner, The Monstering of Human Rights, 19 September 2014, Accessed at
https://adam1cor.files.wordpress.com/2014/09/the-monstering-of-human-rights-adam-wagner-2014.pdf
[180] David George Ritchie, Natural Rights: A Criticism of Some Political and Ethical Conceptions, Routledge 2013
(1894)

human rights education and training (hereafter, "HRET") to this research and explain both why we need to and how we can: i) more effectively integrate human rights education into formal primary to secondary schooling, and ii) embed human rights into university teaching, vocational training and lifelong learning. These chapters critically consider how HRET can be realistically implemented in practice, for early years / primary, secondary and higher education learners, and then for vocational and lifelong learners, and with special consideration to education settings within conflict zones and authoritarian states where teaching human rights outside of state-sanctioned, 'rights-washed' curricula can amount to imprisonment, torture and even the death penalty[181]. The chapter also considers the growing role of technology in HRET now and in the 'metaverse' of the future where human rights challenges around information, privacy and property rights are yet to be fully understood or appreciated[182]. The three HRET chapters informed the development of Principle 3 in the R*b*D Framework, which is that individuals should be empowered with human rights education in formal and informal education as part of lifelong 'learning about, through and for' human rights education[183].

The ninth chapter, titled ***Human Rights at Work: Why Dignity in Labour Matters***, explores how human rights, and specifically labour rights, intersect with human dignity in the world of work (where the majority of learners will end up after leaving formal education), examining philosophies of work and labour in order to better understand why our work, and what happens to us in our places of work, has such a profound impact on our wellbeing and our ability to flourish in the world. When our rights are violated in our worlds of work, the impact ripples through to so many other parts of our being, strengthening or decimating our ability to flourish and impacting

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[181] Amnesty International, Sudan: Religious teacher faces death penalty for defending human rights, 11 July 2018, Accessed at https://www.amnesty.org/en/latest/news/2018/07/sudan-religious-teacher-faces-death-penalty-for-defending-human-rights/; 'rights-washing', as I use it here, refers to the state practice of making superficial displays to the international community of respecting and complying with international human rights standards and norms whilst continuing in practice to deny citizens their fundamental rights – for a view on rights-washing through the gender lens, see Le Amélie Renard, "Women's Rights Washing": The selective circulation of "Saudi women's rights" between diplomacy, media and activism, in The Globalisation of Gender: Knowledge, Mobilizations, Frameworks of Action (eds Ioana Cîrstocea, Delphine Lacombe, Elisabeth Marteu), Routledge 2019, pp 226-242

[182] Katitza Rodriguez, Kurt Opsahl, Rory Mir and Daniel Leafier, Virtual Worlds, Real People: Human Rights in the Metaverse, Electronic Frontier Foundation, 09 December 2021, Accessed at https://www.eff.org/deeplinks/2021/12/virtual-worlds-real-people-human-rights-metaverse

[183] Please see the concluding chapter for the R*b*D Framework of five principles that support the mainstreaming of human rights information, communication, and education towards the creation and revival of human rights culture and consciousness.

our pursuit of a 'meaningful life', in the Kantian sense. The chapter links the erosion of human dignity through the violation of labour rights with the failure of states to recognise social, cultural, and economic rights as human rights, and argues that post-pandemic, it is time for business and human rights advocates to double down on emphasising 'people over profit', which is key to safeguarding human dignity and human rights in the future world of work and a core principle in the R*b*D framework, Principle 4: Individuals should be empowered to promote and defend human rights in the world of work and the economy[184].

The final chapter, ***Rights by Design: Conclusion, Principles & Projects / Initiatives Emerging From This Research***, summarises the main findings of the work as a whole and presents the R*b*D Framework, which delivers a work-in-progress blueprint for humanising human rights; infusing human rights with hope; countering human rights myths and misconceptions; creating rights-respecting family homes and raising rights-aware children; engaging with human rights as a lifelong learning commitment; and seeking out the dignity in doing what we love (and in so doing, bringing human rights values into our worlds of work). The R*b*D Framework satisfies the criteria for a doctoral thesis in law for an original and meaningful contribution to legal scholarship, and it is my sincere hope that the vast and decisively interdisciplinary groundwork that has been covered in this research might inspire practitioners, academics, and programme-makers from all disciplines, sectors and spheres to build on the key findings and R*b*D recommendations in future research and projects.

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[184] Please see the concluding chapter for the R*b*D Framework of five principles that support the mainstreaming of human rights information, communication, and education towards the creation and revival of human rights culture and consciousness.

Chapter Two
Human Rights as Representations of Dignity: Why human rights matter to every human being (and how they are woven into human history, culture and civilisation)

2.1 Chapter Introduction

As outlined in the previous introductory chapter, the overarching research question that has informed, inspired, and guided this doctoral research is: **How can we create a human rights culture that empowers individual responsibility to respect, promote and defend human rights, and bridges the gap between human rights knowledge, values, and action in our social, educational, economic, and cultural interactions?** Accordingly, this chapter aims to articulate *why* human rights matter, *why* it is important that we establish and mainstream human rights culture, and *why* a more nuanced understanding of human rights history might lend rights bearers a clearer appreciation for the position that human rights holds as a cornerstone of our civilisation. The chapter (which emphasises the importance of understanding, engaging with, and critiquing human rights history and therefore underpins Principle 1 in the R*b*D Framework) further explores *why* human rights truly are for every human being, irrespective of religion, ethnicity or economic privilege, directly refuting relativist claims that human rights are a Western imperialist construct or only for those who are citizens of states who can afford them, and in the process, firmly establishing the R*b*D Framework as one with universal appeal that transcends human circumstance.

I approach this part of the research ever mindful of a lingering global despondence, apathy, and sense of burnout towards human rights (which I link with Figley's 'compassion fatigue'[185]). A philosophical pessimism has taken root within the global human rights community over the current state and potential future of human rights[186]. Hopgood has argued, for example, that the international community is "on

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[185] Compassion fatigue is a term coined by psychologist Charles Figley who defined it as "natural consequent behaviours and emotions resulting from knowing about a traumatizing event experienced by a significant other – the stress resulting from helping, or wanting to help, a traumatized or suffering person" – see Charles Figley, Compassion fatigue: Coping with secondary traumatic stress disorder in those who treat the traumatized, Routledge 1995, p 7

[186] Howard defined 'community' in the context of human rights and social democracy as "a group of citizens all of whom feel a sense of mutual responsibility for each other's welfare and is not limited to people sharing

the verge of the imminent decay of the Global Human Rights Regime"[187] and that human rights are "past their sell-by date"[188]. The international human rights 'movement' is "merely an illusion" where priorities are set not through co-operation and dialogue but by "executive decision" of economically wealthy states[189]. Posner has provocatively argued that international human rights law, as the defining project of the last half-century, is in its "twilight"[190], having "failed to accomplish its objectives"[191] (a position that Hannum has criticised as being based on "fundamental misunderstandings of the human rights project"[192]). Posner cites "little evidence that countries that ratify human rights treaties improve their human rights performance"[193] or that the existence and mechanisms of the UN Human Rights Council (UNHRC) have successfully "changed any target country's behaviour"[194]. Mutua sees the 'golden age of human rights' as having effectively ended at the close of the last century, when enthusiasm for and confidence in the international human rights framework waned in the light of its failure to "deliver a utopian world"[195] as human rights became irrelevant, unregistered, and ignored, having lost their ability to inspire enough outrage to galvanise action:

> *"Human rights no longer have the power to provoke deep-seated moral and legal outrage. The consequence is that untold human catastrophes barely register global action, let alone condemnation. While human rights have been a phenomenal success – perhaps more than any other moral language of our time – they have lost the ability to coalesce action. Unfortunately, no new discourses have emerged to take the place of human rights"*[196].

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characteristics such as race or ancestral language or religion. Citizenship overrides Self-Other distinctions. Human rights are protected by citizens' responsibilities to others, enhancing rather than supplanting human rights, and providing a social identity of inclusiveness." – see Rhoda E Howard, Human Rights and the Search for Community, Journal of Peace Research, Vol 32 No 1 (Feb 1995), pp 1-8, p 5

[187] Stephen Hopgood, The Endtimes of Human Rights, Cornell University Press 2013, p ix

[188] Stephen Hopgood, Human rights: past their sell-by date, OpenGlobalRights, 18 June 2013, Accessed at https://www.openglobalrights.org/human-rights-past-their-sell-by-date/

[189] Stephen Hopgood, The Endtimes of Human Rights, Cornell University Press 2013, p 96

[190] Eric Posner, The Twilight of Human Rights Law, Open Democracy, Accessed at https://www.openglobalrights.org/twilight-of-human-rights-law/

[191] Eric Posner, The Twilight of Human Rights Law, Oxford University Press 2014, p 7

[192] Hurst Hannum, The Twilight of Human Rights Law by Eric A Posner (Review), Human Rights Quarterly, January 2015, pp 1105–1109, p 1105

[193] Eric Posner, The Twilight of Human Rights Law, Open Democracy, Accessed at https://www.openglobalrights.org/twilight-of-human-rights-law/

[194] Eric Posner, The Twilight of Human Rights Law, Oxford University Press 2014, p 44

[195] Makau W Mutua, Is the Age of Human Rights Over? In Routledge Companion to Literature and Human Rights, eds Sophia A McClennen and Alexandra Schultheis Moore, Routledge 2016, pp 450-458, p 451. This is a clear reference to Rawls' 'realistic utopia' of a just world – see John Rawls, The Law of Peoples, Critical Inquiry, Vol 20, No 1 (Autumn 1993), pp 36-68

[196] Makau W Mutua, Is the Age of Human Rights Over? In Routledge Companion to Literature and Human Rights, eds Sophia A McClennen and Alexandra Schultheis Moore, Routledge 2016, pp 450-458, p 450

In the post-9/11 age, the human rights system is arguably undergoing its most serious existential challenge in living memory, which Dunne has called "a crisis of legitimacy in relation to fundamental human rights commitments"[197]. The reality is that in the decades since the UDHR was adopted, human rights have been in *perpetual* crisis, with many of the most grievous abuses of human rights in history occurring in the latter part of the 20th century and the early 21st century, in the eight decades *after* the adoption of the UDHR. The 20th century has been called the 'Century of Genocide' because this period coincided with some of history's most brutal genocides and its most "unspeakable" human rights crimes[198], the industrial transformation and economic tumult of the modern era providing the backdrop for the colonisation and exploitation of the world's most vulnerable human beings at the hands of the world's most powerful. Among the most significant human rights events in this period: the Holocaust; the ongoing Israel / Palestine conflict; South African apartheid (1948-1990s); the brutal Yugoslav Wars fought in Bosnia, Croatia and Serbia between 1991-2001 which "reintroduced concentration camps, ethnic cleansing and attempted genocide to Europe" and resulted in the deaths of more than 140,000[199]; the Rwandan genocide in 1994 which Chowdhury notes was one of the most "significant moments of the expansion of rights language" of the era[200]; the terrorist attacks in New York on 9/11 (the defining postmodern moment and "*the* traumatic event of this century"[201]) and the use of torture, extraordinary rendition and detention without due process at the Guantanamo Bay prison camp in its aftermath; the Arab Spring uprisings in 2011; global citizen surveillance and other flagrant violations of privacy and data rights; the ongoing crisis of climate change; cyber interference in democratic processes; and the anti-rights populism that permeated the second decade of this century in what has been termed a "recipe for dystopia"[202].

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[197] Tim Dunne, 'The Rules of the Game are Changing': Fundamental Human Rights in Crisis After 9/11, International Politics, Volume 44 (2007), pp 269–286, p 269

[198] Mutua specifically refers to the genocides committed in Cambodia, Yugoslavia, Iraq, China, Rwanda, and Uganda - see Makau W Mutua, Is the Age of Human Rights Over? Routledge Companion to Literature and Human Rights, (eds) Sophia A McClennen and Alexandra Schultheis Moore, Routledge 2016, pp 450-458, p 450-451, citing Samuel Totten and William Parsons, Centuries of Genocide: Essays and Witness Accounts, Routledge 2012

[199] Anne-Marie Slaughter, A Regional Responsibility to Protect, In Lessons from Intervention in the 21st Century: Legality, Feasibility and Legitimacy, eds David Held and Kyle McNally, Global Policy (e-book) 2014, p 64

[200] Kanishka Chowdhury, Human Rights Discourse in the Post-9/11 Age, Palgrave Macmillan 2019, p 3

[201] Michael J Martin, Beyond Books of Wonder: The Hope Without Promise Narrative of 9/11, London School of Economics Peer English, pp 93-111, p 94, Accessed at: https://www2.le.ac.uk/offices/english-association/publications/peer-english/8/7%20Michael%20Martin%20-%20Hope%20Without%20Promise.pdf

[202] Ethan H MacAdam, Utopia/Dystopia and the Law, Fall 2010, Amherst (Course Syllabus), Accessed at https://www.amherst.edu/academiclife/departments/courses/1011F/LJST/LJST-09-1011F

Clearly, there are multiple and systemic failings with the international human rights regime, and it is absolutely right that these failures should be constructively critiqued so that it may be improved for future generations. Rather, this chapter pushes past the *system* and seeks to instead engage with the *spirit* of human rights in order to understand just why human rights have endured the tumult of the last few centuries and why they are worth fighting for. In this chapter, and throughout this work, I distinguish between the *system* of human rights, which I use to refer to the international framework established by and after the UDHR in 1948, and the *spirit* of human rights, by which I refer to my own imagining of human rights as manifestations or representations of human dignity. I advance the argument that when the *system* of international human rights protection is under threat, the *spirit* of human rights remains intact because it is inherent to the rights bearer and therefore transcends geographic, cultural, political, social, and normative boundaries. Whilst the human rights *system* may be flawed and may have been unequivocally – but not irrevocably – damaged, politicised and distorted in the decades since the UDHR in 1948, the *spirit* of human rights has survived many disruptive global events over the centuries and has mostly been strengthened with each major revolutionary event because of the struggle, passion, and determination of the individuals at the heart of human rights culture.

It is generally accepted that the international *system* of human rights only came into existence in the 1940s after the Second World War in what has been called the 'Century of Genocide'[203], and that human rights "only become meaningful when they gain political content"[204] as they did in 1948 and through the numerous treaties, instruments and covenants which emerged in the decades that followed. Although there is some – but by no means universal – acceptance of what human rights *are*[205], I concede that there is little ready consensus on where human rights come from (see Dworkin's "lively dispute in moral philosophy about the nature and

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[203] Weitz specifically cites four "major eruptions of genocide" in the 20th century: in the Soviet Union under Stalin, Nazi Germany and the Holocaust, Cambodia under the Khmer Rouge, and in the former Yugoslavia - see Eric D Weitz, A Century of Genocide: Utopias of Race and Nation, Princeton University Press 2015; see also Mark Levene, Why Is the Twentieth Century the Century of Genocide?, Journal of World History, Vol 11, No 2 (Fall 2000), pp 305-336; and Century of Genocide: Critical Essays and Eyewitness Accounts, eds Samuel Totten, William S Parsons, Routledge 2008

[204] Lynn Hunt, Inventing Human Rights: A History, Norton 2007, p 21

[205] See 1.2 Key concepts underpinning this research for definitions of 'human rights'

standing of moral rights, and considerable disagreement about what they are, if they are anything at all"[206]; Freeden's insistence that "it is impossible to prove conclusively that human beings have rights in the existential or moral senses"[207]; Masters' observation that "although everyone proclaims the sanctity of 'freedom' and 'human rights', the foundations of these principles are unclear"[208]; and Lamb's assertion that "despite the ubiquity of human rights in political discourse and the significant amount of scholarly analysis devoted to what it means conceptually, there remains no consensus whatsoever about its history"[209]). Indeed, any suggestion that the existence of human rights precedes the birth of the United Nations in 1945 or the UDHR in 1948 attracts significant criticism from contemporary human rights thinkers such as Robert Lamb, Eric Posner, and Samuel Moyn[210], who has argued that human rights did not really enter mainstream consciousness until the first UN International Conference on Human Rights held in Tehran in 1968, and even then only generated enough momentum and support in the fledgling international community to become a 'global human rights movement' during the Carter administration in the 1970s when, for Moyn, human rights "emerged … on the ruins of prior dreams"[211], not really coming into its own until they became conflated with American foreign policy efforts to export democracy through the latter part of the 20th century.

The trouble with this thoroughly legalistic view of the foundations of human rights is that it focuses too intently on the *system* of international human rights, the post-war modern framework of human rights laws, instruments and institutions rooted in the international rules-based order, and utterly neglects the *spirit* of human rights – derived from human dignity, grounded in natural law, and deeply interwoven into our civilisation and the rich collective history of every culture and religion known in the

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[206] Ronald Dworkin, Taking Rights Seriously, Duckworth 1977, p 81
[207] Michael Freeden, Rights, Open University Press 1991, p 28
[208] Roger Masters, The Problem of Justice in Contemporary Legal Thought, in Roger Masters and Margaret Gruter (eds), The Sense of Justice: Biological Foundations of Law, Sage Publications 1992, p 5
[209] Robert Lamb rejects the claim that the idea of human rights can be traced back to the ancient world – see Robert Lamb, Historicising the Idea of Human Rights, Political Studies 2019, Vol 67(1) pp 100–115, p 100
[210] *Ibid*; also see Samuel Moyn, The Last Utopia: Human Rights in History, Harvard University Press 2010 and Eric Posner, The Twilight of Human Rights Law, Oxford University Press 2014
[211] Samuel Moyn, Not Enough: Human Rights in an Unequal World, Harvard University Press 2018; Samuel Moyn, Human Rights in History, The Nation, 11 August 2010, Accessed at https://www.thenation.com/article/archive/human-rights-history/; Peter Ridder, Tehran, 1968: International Conference on Human Rights, Online Atlas on the History of Humanitarianism and Human Rights, Accessed at https://hhr-atlas.ieg-mainz.de/articles/ridder-tehran

world. Although the *system* of international human rights law might only have emerged after the Second World War, this chapter will demonstrate that the *spirit* of human rights and the earliest known iterations of human rights values are clearly enshrined in many of the most influential ancient, theological, and medieval texts and philosophical ideas emanating from the transformational Enlightenment era. I argue that human rights, far from being a contemporary, 20th century post-war construct, have existed as representations of human dignity and a set of normative moral values for millennia, and by many other names – 'natural law', 'natural rights', 'natural justice', 'the law of nations', 'the rights of man', 'the law of peoples', 'the rights of mankind', 'the laws of justice', 'humanity's laws', 'moral laws', and 'the rights of humanity' (although it is appreciated that none of these concepts could be held to represent complete doctrines or "carefully crafted" international law[212]). To illustrate this argument, this chapter considers a rich historiography of human rights that spans centuries, cultures, and civilisations, and uncovers evidence that human rights values have long been embedded into civilisation, from the ancient world through to modernity and the UDHR, which 'legalised' human rights and became a bridge between the *spirit* of human rights and the *system*.

Fundamentally, human rights – as representations of human dignity – transcend the modern politico-legal milieu and are therefore protected from grand disruptions to the international rules-based order. As Feinberg puts it, human rights are "held to exist prior to, or independently of, any legal or institutional rules" and as such, their "validity and importance is neither dependent nor based on their codification into positive law"[213]. As such, this chapter argues, the spirit of human rights supersedes and transcends the limitations and manipulations of state-centricity[214]; in other words, the state cannot solely legitimise human rights, as they belong to every human as an inextricable part of our human dignity. Human rights have their roots in revolution, and have been threatened by conflicting political, social, and economic forces many times in history. Yet human rights, in their beautiful design,

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[212] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 190
[213] Florian Wettstein, CSR and the Debate on Business and Human Rights: Bridging the Great Divide, Business Ethics Quarterly, Vol 22 No 4 (October 2012), pp 739-770, p 740
[214] See earlier discussion on state centricity in Chapter One of this thesis, *Why Now is the Time for Rights by Design*

transcendence and resilience, continue to endure in ways that other political and social ideologies through history have not[215], demonstrating a tremendous capacity for self-renewal and self-preservation[216]. After each of these significant human rights events in history, the *spirit* of human rights remains sacrosanct because it is inherent, untouchable, innate in our human dignity. In times of hostility towards human rights, it is only the *system* of international human rights that is under threat.

2.2 The *spirit* of human rights

This section aims to articulate *why* human rights matter by delving into human rights history for a clearer appreciation of the position that human rights hold in the evolution of our civilisation, and importantly, to establish that human rights truly are for every human being, irrespective of religion, ethnicity or economic privilege (and in this way, countering relativist claims that human rights are only really relevant in the states that choose to or can afford to honour them). This is important because it is necessary at the outset of this thesis to establish the R*b*D framework as one with universal applicability.

'Human rights' are about more than just rights; they entail responsibilities and obligations, and they "evoke hope and provoke action" per Moyn[217], with States – as a condition of membership into the UN Human Rights Council and an unwritten prerequisite to acceptance within the international community – assigned duties under international law "to respect, protect and to fulfil human rights"[218]. Petersmann identifies human rights as one of eight "major political inventions of Constitutionalism", and even distinguishes human rights from the other seven inventions as being "the most important … for protecting equal liberties against abuses of power"[219]. Human rights are inherently linked with the rule of law, a

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[215] Samuel Moyn has written that "human rights emerged historically as the last utopia – one that became powerful and prominent because other visions imploded." See Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 4

[216] This links back to the first argument that human rights are rooted in human dignity and therefore do not existentially depend upon declarations and charters and covenants, nor on international co-operation, the rules-based order, nor on geopolitics or the willingness of governments to protect rights.

[217] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 1

[218] OHCHR, What are human rights?, Accessed at https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx

[219] Ernst-Ulrich Petersmann, Human Rights and International Economic Law in the 21st Century — The Need to Clarify their Interrelationships, Journal of International Economic Law, Vol 4 Issue 1 (2001), 3 at 11

foundational pillar of the liberal democratic tradition which has shaped the social, political, and economic systems that govern most of the modern world[220]. As Lauren, who has been described by the United Nations as "the world's leading authority on the history of international human rights", has found: "Concepts about justice and rights, and laws that seek to transform them into practice, have always been tied to political, economic, social, scientific, religious, and intellectual developments throughout history"[221]. In Brysk's analysis, human rights originate in:

> *"… simple humanitarian perquisites often rooted in religious traditions, such as resistance to slavery, and developed further with the rise of citizenship and the ethos of the French Revolution as limitations on sovereign power: liberty, equality, and solidarity. Human rights gained additional scope and traction through Enlightenment-era social contract theorists of freedom and democracy, Marxian ideals of justice and solidarity, and Kantian notions of reciprocity and a cosmopolitan world order."[222]*

Human rights have been inspired over the ages by those who were violent with "outrage over ... injustice or the pain of violent abuse, brutal atrocities, or war and revolution"[223], and those who were visionaries, preoccupied with "how human dignity might be protected"[224]. Human rights are, for Shelton, "the product of millennia of struggle by individuals concerned with human justice and wellbeing"[225]. In Lauren's seminal analysis of natural rights prescient in ancient, religious, and medieval philosophies, human rights are shown to have evolved over millennia, and not as the invention of any particular culture, race, country, or society[226]. He writes:

> *"Ideas of justice and human rights possess a long and rich history. They did not originate exclusively in any single geographical region of the world, any single country, any single century, any single manner, or even any single*

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[220] The principle of the rule of law is "that all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts." See Tom Bingham, Rule of Law, Penguin 2010

[221] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 178

[222] Alison Brysk, The Future of Human Rights, Chapter 1: Now More Than Ever, Polity Press (2018), p 3

[223] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 163

[224] *Ibid*

[225] Dinah Shelton, An Introduction to the History of International Human Rights Law (2007), GW Law Faculty Publications & Other Works, 1052, p 1

[226] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 163

political form of government or legal system. They emerged instead in many ways from many places, societies, religious and secular traditions, cultures, and different means of expression, over thousands of years. Indeed, they took millennia to evolve, since they always depended upon their specific historical context and what was possible in the fact of established tradition and often determined resistance, at the time."[227]

As Moyn rightly notes, "there have been many attempts to lay out the deep sources of human rights"[228]. Lauren's authoritative historical analysis of human rights, which identifies a "long-standing and widespread interest in justice … evident from the very beginnings of civilisation itself"[229], has shaped my view that human rights have always existed, and independently of the formalistic, legalistic, state-centric human rights system that grew around the 1948 proclamation. Human rights values can be traced back to the beginnings of recorded history, and are enshrined in thousands of years of human civilisation and thought, with the earliest iterations of natural law / natural rights theory affirming that human beings have rights which are inherent to their humanity and their spirituality. This makes human rights independent of positive law (those laws enacted by the state), conferred not by legislation but in the gift of "God, nature or reason"[230].

Perhaps the earliest evidence of recorded rights protection is to be found in the preamble of the ancient Code of Hammurabi (1754 BC)[231], the Babylonian code of law etched onto a well-preserved black stone, known as "the oldest set of complete laws known to exist in the world"[232]. The Code defined the fundamental role of a ruling power as being "to bring about the rule of righteousness in the land, to destroy the wicked and the evil-doers, so that the strong should not harm the weak … and enlighten the land, to further the wellbeing of mankind."[233] Philosophy, etymologically rooted in the Ancient Greek for loving (*philo*) and wisdom (*sophia*) and literally

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[227] *Ibid*

[228] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 11

[229] *Ibid*, p 164

[230] Hans Kelsen, General Theory of Law and State, Lawbook Exchange 2007, p 392

[231] Micheline R Ishay, The History of Human Rights: From Ancient Times to the Globalization Era, University of California Press 2008, p 19

[232] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 165

[233] LW King (Translation), The Code of Hammurabi, The Avalon Project (Documents in Law, History and Diplomacy), Yale Law School, https://avalon.law.yale.edu/ancient/hamframe.asp

translated as a love of wisdom[234], has also been deeply influential in the development of natural rights theory because of the long tradition of natural law in ethics, which has coloured the course of cultural and civilisational development over centuries. The ancient philosophers of China, India, Rome and Greece were instrumental in conceptualising the innate responsibility of human beings to each other in the earliest iterations of natural law[235]; according to Taber, Plato and Aristotle both "appealed to natural law and to the nature of humanity to ground ideas about a number of human rights"[236], including – per Shelton – "equal respect for all citizens, equality before the law, equality in political power and suffrage, and equality of civil rights"[237]. The idea that humans inherently have rights on the basis of being human is traditionally traced back to Aristotle who believed in a "natural moral order, which should provide the basis for all truly rational systems of justice"[238] and, by distinguishing between 'natural justice' and 'legal justice', wrote that the 'natural' was that "which has the same validity everywhere, and does not depend on our accepting or rejecting it"[239], which brings to life this chapter's most central argument – that human rights do not depend upon the 'acceptance' of the state but on the endorsement of rights bearers themselves.

In *The Laws*, Plato (who has been described as the "father of natural law theory"[240]) asserted that "nature establishes normative standards for human behaviour" and that the "purpose of all law is to make it possible for people to act with reason, virtue and justice towards others"[241]; in other words, law exists to rationally compel human beings to respect the dignity of others by acting justly and virtuously. As humans are not "divinely gifted" and therefore cannot "apprehend the truth", standards are

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234 Matthew Beard, How philosophy shapes your world, World Economic Forum, 20 November 2014, Accessed at https://www.weforum.org/agenda/2014/11/how-philosophy-shapes-your-world/
235 Charles R Taber, In the Image of God: The Gospel and Human Rights, International Bulletin of Missionary Research, Vol 26 Issue 3, pp 98-102, p 98
236 *Ibid*, p 98
237 Dinah Shelton, An Introduction to the History of International Human Rights Law (Lecture given at the International Institute of Huma Rights), Strasbourg, France, July 2003, p 2
238 Karina Weller, Questions of Life: How Philosophers Dreamt Up Human Rights Centuries Ago, Each Other, 17 November 2017, Accessed at https://rightsinfo.org/philosophies-behind-human-rights/
239 Aristotle, The Nicomachean Ethics, Online Library of Liberty, Accessed at https://oll.libertyfund.org/title/peters-the-nicomachean-ethics; Gregory Claeys, Encyclopedia of Modern Political Thought, CQ Press 2013, p 706; Zhihe Wang, Toward a postmodern notion of human rights, Educational Philosophy and Theory 2002, Vol 34 Issue 2, p 171–183
240 Hans Kelsen, Plato and the Doctrine of Natural Law, 14 Vanderbilt Law Review 23 1960-1961, p 24
241 Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 172-173

established in law to compel human beings to do what is 'right' towards others, as without such divine gifts human nature holds that human beings are innately unable to exercise all-knowing consciousness and consistently perfect, just virtue (or 'truth')[242]. Moyn identifies that human rights are "only a particular modern version of the ancient commitment by Plato … to the cause of justice"[243], and although Plato is by no means traditionally considered a champion of equality[244], Piechowiak argues that many of the Platonic Dialogues which have previously been interpreted as justification for totalitarianism and total submission of the individual to the state (mostly in *The Republic*) have been "deeply misunderstood"[245]. Piechowiak pinpoints clear references to the inherent dignity of the human soul in Plato's *Timaeus*, and identifies human dignity as "the foundation of Plato's ethics and political philosophy", at the root of "contemporary political thought – namely, justice, freedom, and equality, as well as human dignity"[246].

In Kelsen's summation, the "main thesis of all doctrines of natural law is based on this foundation: all good is in accordance with nature, all evil is contrary to nature"[247]. Natural law is thus linked with human nature, sitting firmly at the nexus of law, philosophy and theology, having fundamentally informed the emergence centuries ago of ethics as an enduring normative standard and contributing greatly to an alternative, more secular theoretical basis underpinning human dignity. However, the question of whether early prototypes of 'rights' exist in ancient and medieval texts is subject to controversy in human rights literature, most famously enunciated by MacIntyre, who wrote:

> *"There is no expression in any ancient, or medieval language correctly translated by our expression 'a right' until near the close of the Middle Ages: the concept lacks any means of expression in Hebrew, Greek, Latin or Arabic, classical or medieval, before about 1400, let alone in Old English, or in Japanese even as late as the mid-nineteenth century. From this it does not of course follow that there are no natural or human rights; it only follows that no*

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[242] See Micheline R Ishay, The History of Human Rights: From Ancient Times to the Globalization Era, University of California Press 2008, p 23-24 for more analysis on the influence of Socrates, Plato and Aristotle on natural rights and the "constitutive elements" of the human soul.
[243] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 5
[244] Christopher J Rowe, Plato on Equality and Democracy, in Democracy, Justice, and Equality in Ancient Greece, eds Georgios Anagnostopoulos and Gerasimos Santas, Philosophical Studies Series 2018, p 63–82
[245] Szymon Mazurkiewicz, Review of Marek Piechowiak, Plato's Conception of Justice and the Question of Human Dignity, Sophia 2020, pp 177–179, p 177
[246] *Ibid*, p 178-179
[247] Hans Kelsen, Plato and the Doctrine of Natural Law, 14 Vanderbilt Law Review 23 1960-1961, p 24

one could have known that there were. And this at least raises certain questions. But we do not need to be distracted into answering them, for the truth is plain: there are no such rights, and belief in them is one with belief in witches and in unicorns"[248].

Although MacIntyre is of course correct in saying that there are no explicit references to 'rights' in ancient, religious, medieval or classical texts, there is a wealth of evidence that natural rights are the underpinning concept of human rights as we understand them today, and clear consensus that many of the most influential texts in the world – among them, religious texts – contain the earliest known representations of 'rights' as basic human values and duties that emphasise duty and responsibility towards others[249]. René Cassin, one of the drafters of the UDHR, was one of the most prominent human rights theorists to link human rights with religion and natural law, finding that "the concept of human rights comes from the Bible, from the Old Testament, from the Ten Commandments", and these were framed in terms of "duties, which now presume rights"[250]. Lauren has found that "all of the major religions of the world seek in one way or another to speak to the issue of human responsibility to others"[251], whereas Shelton has pointed out that whilst religious texts do not explicitly refer to human rights, they "address moral duties and responsibilities towards others"[252], the common rationale underpinning these values and duties being "equality, human dignity, and the sacredness of life", which ultimately compose a "foundation for the concept of human rights"[253]. And according to Flowers, "[a]lthough human rights were principally defined and codified in the twentieth century, human rights values are rooted in the wisdom literature, traditional values, and religious teachings of almost every culture", which "all address questions

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[248] Alasdair MacIntyre, After Virtue, University of Notre Dame Press 1984, p 69; Richard A Freund, Universal Rights in Biblical and Classical Judaism, Shofar (Purdue University Press), Vol 12 No 2 (Winter 1994), pp 50-66, p 53

[249] Elster identifies 'religious texts' as texts which serve two important functions: they "regulate liturgical ritual and systems of law" and at individual level, "they (seek to) regulate ethical conduct and direct spiritual aspirations" – see Charles A Elster, Authority, Performance, and Interpretation in Religious Reading: Critical Issues of Intercultural Communication and Multiple Literacies, Journal of Literacy Research, Vol 35, No 1 2003, p 663-692, p 668

[250] René Cassin, as quoted in Micheline R Ishay, The History of Human Rights: From Ancient Times to the Globalization Era, University of California Press 2008, p 19

[251] Paul Gordon Lauren, The Evolution of Human Rights, University of Pennsylvania Press 1998, p 5

[252] Dinah Shelton, An Introduction to the History of International Human Rights Law (2007), GW Law Faculty Publications & Other Works, 1052, p 2

[253] Dinah Shelton, An Introduction to the History of International Human Rights Law (2007), GW Law Faculty Publications & Other Works, 1052, p 2

of peoples' duties, rights, and responsibilities"[254]. The existence of human rights values in seminal religious texts and traditions is, in my view, a clear counterargument to the cultural relativist position that human rights are a Western construct, and speaks clearly to the central argument of this chapter which is that human rights are for *everyone* and always have been.

The following analysis illustrates this very point. In the Old Testament, Sugden distinguishes the law of Moses from other legal codes of the time because of the emphasis it placed on the intrinsic value of human beings[255]. He describes nomadic principles of the time as being rooted in 'classless' equality and generosity[256], and cites the belief of the Israelites that "justice and humanity in the responsible use of distribution of the land came before techniques to maximise profit"[257]. The Old Testament railed against a ruling class "only concerned with its own profit and pleasure"[258], the subversion of "good and evil"[259], and the corruption of judges who "frame[d] mischief by statute" and made laws to suit their own purposes"[260]. However, as Wermuth notes, "the Bible records that the murder of any human being shall be punishable by death, for God has created humanity in God's own image"[261] and "due process is not", as Hiers points out, generally "a term found in biblical texts"[262].

Taber further notes that: "... the Mosaic law goes on to make three distinctions: between the people of Israel and foreigners, between men and women, and between slaves and free persons. Though all had some rights and were thus better off than in many neighbouring societies, they did not have equal rights"[263]. Although Konvitz in 1972's *Judaism and Human Rights* asserted that there was "no word or phrase for

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[254] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 3

[255] Christopher Sugden, The right to be human in the Old Testament: a study in Isaiah 5, Transformation (Oxford Centre for Mission Studies), Vol 12, No 2, Refugees Ethnicity and Revivals (April 1995), pp 30-33, p 30

[256] *Ibid*

[257] *Ibid*, p 31

[258] *Ibid*

[259] *Ibid*

[260] *Ibid*

[261] David Wermuth, Human Rights in Jewish Law: Contemporary Juristic and Rabbinic Conceptions, University of Pennsylvania Journal of International Law 2011, Vol 32 Issue 4, pp 1101-1132, p 1105

[262] Richard H Hiers, The Death Penalty and Due Process in Biblical Law, 81 University of Detroit Mercy Law Review 751 (2004), available at http://scholarship.law.ufl.edu/facultypub/741, pp 751-843, p 752

[263] Charles R Taber, In the Image of God: The Gospel and Human Rights, International Bulletin of Missionary Research, Vol 26 Issue 3, pp 98-102, p 98

'human rights' in the Hebrew Scriptures or in other ancient Jewish texts"[264], and Henkin (in the same year) wrote that the concept of human rights as political rights "was not central to the original Judaism"[265], Jewish religious texts are richly interspersed with edicts about responsibility to others and the consequences of apathy; to give one example, one prayer in the Babylonian Talmud states: "Anyone who is able to protest against the transgressions of the entire world and does not is punished for the transgressions of the entire world"[266]. Although human rights are not expressly mentioned in any of their iterations in Hebrew scriptures, as Borowitz notes: "Judaism teaches that no one can ever take away from a human being an elemental value which God has bestowed upon everyone and which God never alienates"[267], that 'elemental value' of a human being referring to the dignity of the human being.

Christians have long declared human rights as being a creation of, and intrinsically inspired by, the Gospel of Jesus Christ, one often cited example being the Apostle Paul's commandment to "love thy neighbour as yourself[268]. The scriptures, in both the Old and New Testaments, deliver numerous edicts on respect for others, justice, and personal autonomy[269], and the Bible contains countless references to what Punt calls a "favourable disposition towards notions such as human rights, human dignity, and the value of human life", noting however that linking human dignity and human rights to the Commandments "may in the end be too simplistic"[270]. Again, the

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[264] Milton R Konvitz, Judaism and Human Rights, WW Norton 1972, p 13; Richard A Freund, Universal Rights in Biblical and Classical Judaism, Shofar, Vol 12, No 2 (Winter 1994), pp 50-66, p 52

[265] Louis Henkin, Judaism and Human Rights, Judaism, Vol 25, No 4 (Fall 1976), pp 133; Richard A Freund, Universal Rights in Biblical and Classical Judaism, Shofar (Purdue University Press), Vol 12, No 2 (Winter 1994), pp 50-66, p 51

[266] Shabbat 54b-55a in the Babylonian Talmud. In the medieval codification of Jewish law in the Shulhan Arukh ("Set Table") written by Sephardic rabbi Joseph Caro in 1563, one of the four volumes, *Yoreh Deah*, contained the laws governing charity (*tzedakah*, derived from the Hebrew word 'tzedek', meaning justice or righteousness), and according to the Jewish Virtual Library: "From Judaism's perspective … one who gives *tzedaka* is acting justly; one who doesn't, unjustly". The Shulhan Arukh is still, according to the same source, the "standard legal code of Judaism".

[267] Charles R Taber, In the Image of God: The Gospel and Human Rights, International Bulletin of Missionary Research, Vol 26 Issue 3, pp 98-102, p 98

[268] "For you were called to freedom, brothers. Only do not use your freedom as an opportunity for the flesh, but through love serve one another. For the whole law is fulfilled in one word: "You shall love your neighbour as yourself." – see Galatians 5:13-14; see also The Carter Center, Scripturally Annotated Universal Declaration of Human Rights: Biblical Texts Promoting Human Rights, pg 2 (Accessed at https://www.cartercenter.org/resources/pdfs/peace/human_rights/universal-declaration-human-rights-scriptually-annotated.pdf)

[269] "For God gave us a spirit not of fear but of power and love and self-control" - 2 Timothy 1:7. For further analysis on human rights and early Christianity, please see Micheline R Ishay, The History of Human Rights: From Ancient Times to the Globalization Era, University of California Press 2008, p 33

[270] Jeremy Punt, Mapping Human Dignity in the New Testament: Concerns, Considerations and Concepts, Scriptura 105 (2010), pp 621-635, p 623

concept of human rights having roots in Christian theology can be evidenced in messages of equality intrinsically woven into the Christian scriptures ("There is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female; for you are all one in Christ Jesus"[271]), and the foundational belief in the Christian faith that humankind is created in God's image[272].

Similarly, Muftugil argues that Islam contains "resources from which we can reconstruct a conception of human dignity understood as a human right"[273]. Muftugil cites the historic Islamic scholarship of Ibn Khaldun, who wrote in *The Muqaddimah*: "Those who deny people their rights commit an injustice ... This is what the religious law quite generally and wisely aims at in emphasizing five things as necessary: the preservation of religion, the soul (life), the intellect, progeny, and property"[274]. In Muftugil's analysis, "these five items, entrenched in our times as fundamental human rights, form one large edifice of rights ... we can easily see these five items as the building blocks of human dignity"[275]. Muftagil also cites the emphasis placed by contemporary scholars such as Abdulaziz Sachedina and Abdullahi Ahmad An-Na'im on "the equality and inherent dignity of all human beings as constituting the central message of the Quran"[276], which "forwards a universal and predominantly egalitarian conception of human dignity"[277].

Human dignity, with its grounding in universal equality and respect for human life, is also a central concept in the Indian religions[278]. In Hinduism, which considers natural law to be the natural order of the universe, all life must be treated as sacred in the Vedic edict on non-injury (*ahimsa*), "not causing pain to any living being at any time through the actions of one's mind, speech or body"[279]. As Ghosal notes, the ancient Hindu philosophers Manu, Parasar or Kautilya all have sought to protect human

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[271] Galatians 3:28 (New King James Version)

[272] Charles R Taber, In the Image of God: The Gospel and Human Rights, International Bulletin of Missionary Research, Vol 26 Issue 3, pp 98-102, p 98

[273] Onur Muftugil, Human dignity in Muslim perspective: building bridges, Journal of Global Ethics, Volume 13, 2017 - Issue 2, pp 157-167, p 157

[274] *Ibid*, p 163, citing Ibn Khaldun, The Muqaddimah: An Introduction to History - Abridged Edition, Princeton University Press (2020), p 240

[275] *Ibid*, p 165

[276] *Ibid*, p 159

[277] *Ibid*, p 161-162

[278] Micheline R Ishay, The History of Human Rights: From Ancient Times to the Globalization Era, University of California Press 2008, p 20

[279] Sarbani Guha Ghosal, Human Rights: Concept and Contestation, The Indian Journal of Political Science, Oct - Dec 2010, Vol 71, No 4 (Oct - Dec 2010), pp 1103-1125, p 1105

rights and human dignity from the "whims and tyranny of the rulers"[280]. In Hinduism, human dignity has its philosophical basis in the Hindu law of *karma* as justice, which holds that violence committed towards another will return to oneself as "the Divine shin[ing] forth in all peoples and things"[281]. In Buddhism, the doctrine of duty, or *dharma*, is a "universal truth common to all individuals at all times, [as] proclaimed by the Buddha"[282] which points to a "unique coexistent nature of rights and feelings [which] constitutes the saving truth of humanistic existence"[283], with Buddhist teachings emphasising "common and normal human traits such as tolerance, kindness and non-injury" and "peace … as the normal course of human existence"[284].

Concepts of justice, equality and the universal 'truths' of human rights and human dignity might be clearly embroidered, in essence if not explicitly, into nearly every major religious text and tradition, but as Taber points out, there is no single religion, society or civilisation that has ever exclusively practiced "a total concept of human rights, whether Western or non-Western, Christian or non-Christian" and "all societies, without exception, in all times and places, have practised various kinds of discrimination and assigned different degrees of rights (or lack of rights) to different kinds of people"[285]. An alternative, and more secular, view of the conceptual foundations and iterations of human rights and human dignity can be found in Enlightenment philosophy of the mid-17th century, the 'Age of Reason' which saw "revolutionary discoveries in the sciences", taking knowledge to "unimagined levels" and, as Lauren notes, "dramatically changing ways of thinking which tradition, superstition, dogma, and ignorance had previously circumscribed"[286]. This era signified a major break from religious emphasis on natural rights in the medieval age towards a new emphasis on Rule of Law and reason, which would contribute to the

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[280] Sarbani Guha Ghosal, Human Rights: Concept and Contestation, The Indian Journal of Political Science, Oct - Dec 2010, Vol 71 No 4 (Oct - Dec 2010), pp 1103-1125, p 1105

[281] Shiva Hinduism Explained, Ahimsa, Non-Injury, Accessed at https://shiva.redzambala.com/shaivite-hinduism-explained/ahimsa-non-injury.html; Dinah Shelton, An Introduction to the History of International Human Rights Law (2007), GW Law Faculty Publications & Other Works, 1052, p 1

[282] Britannica, Dharma, Accessed at https://www.britannica.com/topic/dharma-religious-concept

[283] Kenneth Inada, A Buddhist Response to: The Nature of Human Rights, Buddhism and Human Rights, eds Wayne R Husted, Damien Keown, Charles S Prebish, Routledge, pp 3-12, p 12

[284] *Ibid*, p 11

[285] Charles R Taber, In the Image of God: The Gospel and Human Rights, International Bulletin of Missionary Research, Vol 26 Issue 3, pp 98-102, p 98

[286] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 181

creation of a future influenced by civil society[287]. In this era, natural rights philosophy became newly rooted not in any divine appeal, but on reason and science, and the transformative meeting of human body and human mind. René Descartes, one of the most important figures in the Scientific Revolution, set the tone for 17th century rationality and what became known as 'Cartesian dualism', which described the interaction and intrinsic relationship between the human body and mind (Descartes believed that humans are "a union of mind and body"[288], so his doctrine of dualism held that the "mind and body are distinct but closely joined"[289]). His famous declaration, *Cogito, ergo sum*, was the embodiment of a new, rational kind of thinking that challenged mysticism and faith in favour of the newfound recognition of rationality and capacity for reason in every human being[290] (as Haule has written: "From unity in faith modern man moved on to unity in universal common human reason"[291]).

The Enlightenment would prove to be a tipping point in human rights history because of the rapid acceleration towards secularism, science, empiricism, individualism, and industrialism which diverged significantly from a theory of rights that had, up to that point, relied greatly on an interpretation of human nature and human dignity rooted entirely in religious belief. For this reason, Tibi argues that human rights are "the cultural project of modernity"[292], the children of modernity's human-centred vision and one of the central truth claims or 'grand narratives' of the Enlightenment[293]. What the Enlightenment did was to replace the divine, mystical or abstract with a newfound confidence in human reason, rationality and logic, with a new emphasis on human autonomy, self-determination and the sovereignty of the individual mind[294]. Together with science, reason, and empiricism, the Enlightenment period compelled into consciousness the concept that human rights were universal, impartial, and inherently linked not necessarily solely with God but with what Gerdsen calls "the

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[287] *Ibid*, p 185
[288] David Cunning, The Cambridge Companion to Descartes' Meditations, Cambridge University Press 2014, p 277
[289] *Ibid*
[290] Cogito, ergo sum, Rene Descartes, Meditations on First Philosophy (1641)
[291] Romuald R Haule, Some Reflections on the Foundation of Human Rights – Are Human Rights an Alternative to Moral Values?, Max Planck Yearbook of United Nations Law, Volume 10 2006, pp 367-395, p 370 to 379
[292] Bassam Tibi, Islam and Individual Human Rights, Universitas, Vol 35 No 1 1993, p 17–26
[293] Rolando Gaete, Human Rights and the Limits of Critical Reason, Darthmouth 1993, p 1
[294] Makhdoom Tipu, Human Rights Evolution: From Natural Rights to Postmodernism, PLD Journal Vol 76, 2015, p 15

majestic term of human dignity"[295]. This was a pivotal time for human rights because the Enlightenment philosophers, as Lauren writes:

> "… had taken ideas about law, natural law, and natural rights that had evolved over the course of many centuries and from different places, built upon them, and then crafted them so that they addressed particular problems. Those who believed that their rights were being denied or flagrantly abused, and who sought protection against the arbitrary exercise of power as well as justification for resistance to oppression, now came to readily invoke these ideas."[296]

These ideas resonated with oppressed peoples of the time looking for a shield against the flagrant and arbitrary post-medieval misuse of power and disregard for human dignity that was endemic at the time, all of them having "emerged out of traditional, hierarchical, patriarchal, and pre-industrial societies ruled by imperial or authoritarian regimes"[297]. Lauren describes this critical snapshot of time in the history of human rights as follows:

> "Up to this point in history, abuse had largely characterized the long-standing pattern. Here, the few ruled the many, and stark stratification separated the strong from the weak. Men dominated women and expected them 'to know their proper place. Human bondage and exploitation in slavery and serfdom were widely practised. Discrimination and persecution on the basis of race, of class or caste, of belief, or of ethnicity, were common. Existing authorities expected obedience rather than claims to individual rights. Moreover, virtually all governments regarded how they treated those under their control as a matter exclusively within their own sovereign, domestic jurisdiction"[298].

These laws, ideas of justice, and concepts around human rights that emerged in this period are all the more remarkable precisely because they emerged from such "fiercely constrained settings"[299] in which, as Lauren writes, "advocacy for justice and rights was more than often not regarded as synonymous with subversion and thus as

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[295] Peter Gerdsen, Human Rights and the Enlightenment, Accessed at http://www.institut-interkulturell-ifi.de/dateien/Human%20Rights%20and%20Enlightenment.pdf
[296] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 185
[297] *Ibid*, p 190
[298] *Ibid*, p 190
[299] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 190

something that could be expected to provoke determined resistance"[300]. The fact that human rights could take root in the climate of the time was, as Lauren saw it, an "indication of the extraordinarily widespread appeal [of laws and ideas of justice and human rights] and the power to transform ways of thinking and acting that characterised them"[301].

The Enlightenment period was pivotal in the evolution of human rights history because it cultivated enduring dignity-based principles that profoundly influenced the growth of civil society, and in doing so, shaped a new vision for the future for human rights. From this point on, the role of the individual becomes more prominent Moyn identifies an "umbilical connection between rights and citizenship [as] the central feature of the history of rights"[302], with many of these connections and lasting democratic traditions birthed during the Enlightenment when, as Rousseau argued, it became "necessary for people joining together in civil society to create laws and legal institutions that promoted justice and protected individual rights"[303]. For Locke, governments derived their authority from the people who had consented to be governed, but if the state failed in its duty to the people, then this legitimated and even necessitated resistance to government[304], but it was Rousseau who famously declared that "man is born free, but he is everywhere in chains"[305] and in doing so championed human rights for the "common person" to achieve a "perfect world … in which the will of the people was most important"[306], and Kant who famously emphasised the "ethical responsibility to defend the dignity and worth of all people" in the following statement: "Because a ... community widely prevails among the

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[300] *Ibid*
[301] *Ibid*
[302] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 38
[303] Jean-Jacques Rousseau, The Social Contract, Wordworth Editions 1998
[304] As Lauren notes: "Such a vision possessed enormous power, and Locke's ideas, along with those developed throughout the earlier centuries, influenced many of the ideas of those that followed him" – see Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 184
[305] Dinah Shelton, An Introduction to the History of International Human Rights Law, The George Washington University Law School Public Law and Legal Theory Working Paper No. 346, Legal Studies Research Paper No. 346, Working Paper (August 2007) 1-30, 1-7; Guy Dammann, For Rousseau, man is born free, but kept free only by compassion, The Guardian, 11 July 2012, Accessed at https://www.theguardian.com/commentisfree/2012/jul/11/rousseau-man-born-free-social-contract
[306] British Library, The Social Contract by Jean-Jacques Rousseau, Accessed at https://www.bl.uk/collection-items/the-social-contract-by-jean-jacques-rousseau

Earth's peoples, a transgression of rights in one place in the world is felt everywhere"[307].

Although, as Moyn writes, the "eternal rights of man were proclaimed in the era of Enlightenment … they were so profoundly different in their practical outcomes – up to and including bloody revolution"[308]. The American and French Revolutions were seismic human rights events, which Henkin described as "among the most significant in Western history"[309], through which essential foundations for international human rights law were laid down by people who cared enough about their rights to assert them, by force if necessary, to reclaim some of their power from arbitrary and unjust repression at the hands of an unaccountable elite, with each of these events, as Ishay has identified, "animated key dimensions of the emerging liberal vision of human rights"[310]. These Revolutions also delivered landmark documents that articulated and expanded upon a more modern idea of rights, with both the American Declaration of Independence of 1776 and the French Declaration of the Rights of the Man and of the Citizen of 1789, as Henkin suggested, representing a "striking … commitment to individual rights"[311] and documenting key ideas drawn upon from natural law, concepts of justice, dignity, self-rule, and Enlightenment principles of autonomy and self-rule. This era was also profoundly significant for women's suffrage because the French Revolution and resulting Declaration inspired both Olympe de Gouges (1748-93) to write her own Declaration of the Rights of Woman and Citizen, "a pioneering document in the history of the struggle for women's rights"[312], and Mary Wollstonecraft (1759-97) to advocate for women's rights in her 1792 book, *A Vindication of the Rights of Woman*. Both works sparked the struggle that would eventually become the women's movement half a century later, human rights being absolutely "central to its activism"[313], representing perhaps the first time

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[307] Immanuel Kant, Perpetual Peace and Other Essays (transl Ted Humphrey), Hackett 1983, p 121

[308] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 1-2

[309] Louis Henkin, Revolutions and Constitutions, Louisiana Law Review, Vol 49 No 5, May 1989, pp 1023-1056, p 1023; see also Robert Lamb, Thomas Paine and the Idea of Human Rights, Cambridge University Press 2015, Introduction, p 1

[310] Micheline R Ishay, The History of Human Rights: From Ancient Times to the Globalization Era, University of California Press 2008, p 65

[311] Louis Henkin, Revolutions and Constitutions, Louisiana Law Review, Vol 49 No 5, May 1989, pp 1023-1056, p 1028

[312] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 188; Olympe de Gouges, Declaration of the Rights of Woman (1791)

[313] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 34

in human rights history that rights diverged in order to specifically address the challenges of a marginalised people, which would become an important growth strategy in the evolution of human rights post-1948 and lends further support to the central argument of this chapter, which is that human rights are for *everyone* and have always been present, in various forms, iterations, and manifestations, throughout recorded human history.

2.3 The system of human rights: Legalising human rights through the UDHR and "international citizen advocacy"

In all the codified Declarations and Bills of Rights, the pivotal instruments and classic founding texts in human rights history, there is clear evidence of emphasis on the responsibility of individuals to each other and to the preservation of dignity and self-determination collectively; a commitment to the *spirit*, essentially, of human rights. The drive to codify and lend constitutional significance to landmark human rights texts in order to integrate natural rights into positive law demonstrates the foresight of human rights defenders throughout history to enshrine rights protections and proclamations in writing during these tinderbox years, in which fledgling normative, societal and structural progress was still too fragile to be left to memory, folklore, social custom or good will. Without attaching constitutional weight to a framework of rights, it would have been impossible to protect emerging rights from being manipulated by political and economic powers, which should explains, in Lauren's view, "why so much effort was expended in drafting, negotiating, promulgating, legislating, or otherwise enacting legal texts"[314]. Codification of new rights was also about empowerment, accountability, and remedy; as Lauren notes, early legal thoughts were codified as "legal guarantees" because this was the only way that human rights defenders of the time could "check the arbitrary exercise of power" and "victims of abuse be transformed from objects of pity into actual subjects of law"[315].

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[314] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 191
[315] *Ibid*; please also see Chapter 4 of this thesis which discusses human rights as information and information as a human right, assessing the history of codification and its roots in empowerment.

This supports my argument that disruptive events throughout history have compelled the codification of law as a means of preserving the spirit of human rights, recognising that "those who championed justice and human rights in the past also came to realise that the existence of written guarantees in legal texts alone is never sufficient to protect the rights of the abused"[316]. Further, Lauren points out that whilst "early ideas of natural law and natural rights provided a necessary foundation for the whole development of subsequent international human rights law" and "laid essential foundations for developments that eventually would result in international human rights law"[317], ideas about natural rights, natural justice, and human rights and dignity were not "fully developed doctrines, precisely articulated definitions, or carefully crafted international laws"[318]. He writes:

> *"Although closely connected, these phrases, and the concepts they represented, were not always equivalent or defined in exactly the same way as we might today. Instead, they marked beginning efforts, impulses, habits of the heart, and embryonic attempts to express ideas about justice and rights and, if possible, to incorporate them into legal texts close to home whenever they could"*[319].

These "embryonic attempts" to incorporate justice and human rights into legal texts and instruments were amplified by the drafters of the UDHR, which has special significance as "a document that virtually every international human rights treaty that would follow cites"[320]. Drafters of the UDHR, in the very first article, emphasised that "[a]ll human beings are born free and equal in dignity and rights"[321], and drew clear inspiration from earlier legal and historical texts as a number of provisions within the document, as Lauren points out, would begin with "the same simple - but extremely powerful - word: *'everyone'*"[322], drawing a clear line under harmful narratives that incubated the Holocaust and allowed a political party to degrade other human beings to sub-human status.

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[316] *Ibid*
[317] *Ibid*
[318] *Ibid*, p 190
[319] *Ibid*
[320] *Ibid*, p 192
[321] Universal Declaration of Human Rights, Preamble and Article 1
[322] Paul Gordon Lauren, Chapter 7: The Foundations of Justice and Human Rights in Early Legal Texts and Thought, The Oxford Handbook of International Human Rights Law, Part II Historical and Legal Sources, edited by Dinah Shelton, Oxford University Press 2013, p 192

There is some consensus that the UDHR was the start of modern 'human rights culture' in the 20th century; for Deaton it was unquestionably the case that the UDHR was a "response to the atrocities of the Second World War … an attempt by the UN to promote peace, stability, freedom, and a minimally decent life for all human beings"[323] whereas for Rorty, human rights were a "welcome post-Holocaust fact"[324]. However, Moyn sees it as "misleading … however tempting … to describe World War II and its aftermath as the essential source of human rights as they are now understood"[325]. Duranti calls this the "foundation myth", that the UDHR, adopted within four years of Auschwitz being liberated, "arose from the shocked conscience of an international community"[326]; rather, as Moyn argues, "human rights embedded themselves slowly but steadily in humane consciousness in what amounted to a revolution of moral concern"[327]. Despite the common belief that the world became acutely human rights aware after the Second World War, Moyn argues that this is a "myth"[328], that there was no such mainstream awareness, no "widespread Holocaust consciousness in the post-war era" – therefore, "human rights could not have been a response to it"[329]. Moyn notes that when the UDHR was proclaimed, the world "looked up for a moment" and then "resumed its post-war agendas"[330]. The fledgling United Nations was overwhelmed with a post-war refugee crisis which had "exploded" in the aftermath of conflict[331], and although the US quickly monopolised and politicised the language of human rights in its war against the Soviet Union in an act of what Brysk calls "Cold War US hegemony"[332], the US and the Soviet Union were by then already too preoccupied in the post-war era with a war of ideologies to care much for individual rights "or their enshrinement in international law"[333].

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[323] Matt Deaton, Universal Declaration of Human Rights, In DK Chatterjee (eds) Encyclopaedia of Global Justice Springer 2011, Accessed at https://link.springer.com/referenceworkentry/10.1007/978-1-4020-9160-5_664
[324] Richard Rorty, Contingency, irony and solidarity, Cambridge University Press 1989; Richard Rorty, Human rights, rationality, and sentimentality, In S Shute & S Hurley (eds), On human rights: The Oxford Amnesty Lectures 1993, pp 111-134
[325] Samuel Moyn, Human Rights and the Uses of History, Verso 2017, p 89
[326] Marco Duranti, The Holocaust, the legacy of 1789 and the birth of international human rights law: revisiting the foundation myth, Journal of Genocide Research 2012, Vol 14 Issue 2, pp 159-186, p 163
[327] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 6
[328] *Ibid*, p 83
[329] *Ibid*, p 7
[330] *Ibid*, p 2
[331] *Ibid*, p 72
[332] Alison Brysk, Chapter 1: Now More Than Ever, The Future of Human Rights, Polity Press 2018, p 3; Moyn also notes that human rights "became almost immediately associated with anticommunism" – see Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 71
[333] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 2

As a global charter for human rights and an anchor for modern civilisation, the UDHR has undoubtedly had "sweeping and undeniable impact" on "issues of global justice"[334]. Alves has written that human rights, after the UDHR, became "strongly entrenched in the minds of … citizens, who used the Declaration to support their claims for freedom and struggles for decolonisation" (and Alves cites examples such as the "mobilisation of international action against South African apartheid and for the defense of the Palestinian cause"[335]). Yet Moyn has argued that even in 1968, which was proclaimed the UN International Human Rights Year, human rights were still "peripheral as an organising concept and almost non-existent as a movement"[336]. Amidst sweeping uprisings that started in Paris and soon swept across the globe[337], a conference in honour of the twentieth anniversary of the UDHR was organised in Tehran that year, to "remember and revive" the "stillborn" UDHR principles, although "outside of the UN in 1968, human rights had not yet become a powerful set of ideals"[338]. Amidst the global tumult of 1968, Moyn writes, no one "thought of the better world they demanded as a world to be governed by human rights"[339].

What the Tehran conference did, according to Moyn, was crystallise the need for "some new style of mobilisation"[340]. Human rights NGOs were non-existent and Amnesty International, according to Moyn, was "practically unknown"[341] until the 1970s, when the concept of human rights pivoted from emancipation from the colonial state to "individual protection against the state"[342], and Amnesty International stepped into that void "to provide the model"[343] for human rights NGOs in what Moyn has called "a new brand and age of internationalist citizen

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[334] "Though the declaration lacks the legal force of a ratified treaty, it has effectively served as a touchstone for more specific and legally binding treaties and covenants, and has framed international politics since its inception. Thus, its impact on issues of global justice has been sweeping and undeniable." See Matt Deaton, Universal Declaration of Human Rights, In DK Chatterjee (eds) Encyclopaedia of Global Justice Springer 2011, Accessed at https://link.springer.com/referenceworkentry/10.1007/978-1-4020-9160-5_664
[335] José A Lindgren Alves, The Declaration of Human Rights in Postmodernity, Human Rights Quarterly, Vol 22 2000, pp 478-500, p 482
[336] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 2
[337] Sean O'Hagan, Everyone to the barricades, The Guardian, 20 January 2008, Accessed at https://www.theguardian.com/world/2008/jan/20/1968theyearofrevolt.features
[338] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 2-3
[339] *Ibid*, p 3
[340] *Ibid*, p 129
[341] *Ibid*, p 3
[342] *Ibid*, p 4
[343] *Ibid*, p 129

advocacy"[344], with the language of human rights beginning to enter the vernacular of social movements and of individuals[345]. Amnesty International, writes Moyn, "invented grassroots human rights advocacy, and through it drove public awareness of human rights generally"[346] which compounded support for human rights as a "universal value … primarily in Western Europe and North America"[347]. Around this time, the role of the individual began to flourish within the 'work' of human rights, with individual action assuming a growing role in human rights advocacy at local and community – if not quite yet state – levels. For example, when Amnesty won the 1977 Nobel Peace Prize, then-Vice Chairman and Turkish prisoner of conscience Mümtaz Soysal in his Nobel Lecture captured the growing sense that individuals were at the heart of rights protection[348], which could not be left to the state alone, when he said:

> *"People everywhere need to be continually reminded that violations of human rights, whether arbitrary arrest and detention, unjust imprisonment, torture, or political assassination, are threats to world peace ... and the place to stop it is at the level of the individual. Therefore, the protection of the rights of the individual to think freely, to express himself freely, to associate freely with others and to disseminate his thoughts is essential to the preservation of world peace."*[349]

In further evidence of the growing role of the individual in grassroots activism from the 1970s on, Schmitz recognises this decade as "the key period when human rights became the central frame of global activism, such as the struggles against colonialism and Apartheid or the movement challenging authoritarian rule in Southern Europe and Latin America"[350]. Although human rights were of little

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[344] *Ibid*, p 4
[345] *Ibid*, p 121
[346] *Ibid*, p 128; Helsinki Watch, now Human Rights Watch, was founded in 1978
[347] Hans Peter Schmitz, Transnational Human Rights Activism in a post-9/11 World, In Human Rights in the 21st Century: Continuity and Change Since 9/11, Palgrave Macmillan 2011, pp 203-221, p 207
[348] Soysal also said during the Nobel Lecture: "Individuals of goodwill must everywhere concern themselves with and act to curb repression, and to defend human rights. The ordinary individual can make a difference. This is the experience of Amnesty International. An aroused public opinion is a powerful weapon. Important as bills of rights and legal mechanisms are, still more important is the concern of one individual for another, one group for another, one nation for another. The active concern of public opinion is everywhere of help." See Mümtaz Soysal, Amnesty International – Nobel Lecture, 11 December 1977, NobelPrize.org, accessed at https://www.nobelprize.org/prizes/peace/1977/amnesty/lecture/
[349] *Ibid*
[350] Hans Peter Schmitz, Transnational Human Rights Activism in a post-9/11 World, In Human Rights in the 21st Century: Continuity and Change Since 9/11, Palgrave Macmillan 2011, pp 203-221, p 204

influence or concern to US policymakers during the Cold War[351], American efforts to 'globalise' human rights ramped up considerably in the 1970s under the Carter administration[352] and through the 1980s by US foreign policy diplomats as "the guiding rationale of the foreign policy of states"[353] who Hopgood describes as "American advocates" who "openly embraced the status of human rights as part of the political ideology of modern liberalism (based on democracy, the rule of law, and increasingly, the working of markets)"[354]. As Backer notes, "any concerted approach to the legalisation of human rights at the international level remained both contentious and latent until after the collapse of the Soviet Union and the emergence of globalization as the operative mode of internationalization"[355], whereas Hopgood points out that "while the United States reverberated with powerful social movements demanding civil rights, women's rights, gay rights, and environmental rights, *human rights* were an elite-level contest between liberals and conservatives over executive policy and power after Vietnam and Watergate"; human rights, Hopgood writes, were still, "in effect, *foreign policy* for non-Americans"[356].

2.4 Disruption as a catalyst for action on human rights: 9/11 and Covid-19

In the first two decades of this century, two significant global events, the 9/11 attacks on the Twin Towers in New York in 2001 and the Covid-19 pandemic in 2020, upended the world's political and economic equilibrium and presented a number of serious human rights challenges that ultimately reminded people of their responsibilities to each other, to their communities and to society overall. They are discussed here to further evidence the growing role of individual action at grassroots level in human rights advocacy at key moments in human rights history, and to support the argument that disruption on a massive scale, on these two occasions

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[351] Sam McFarland and Melissa Mathews, Do Americans Care About Human Rights?, Journal of Human Rights, 2005, Vol 3, pp 305-319, p 305

[352] In his January 1977 inaugural address President Jimmy Carter said: "Our commitment to human rights must be absolute, our laws fair, our natural beauty preserved; the powerful must not persecute the weak, and human dignity must be enhanced." See Inaugural Address of Jimmy Carter, The Avalon Project, Accessed at https://avalon.law.yale.edu/20th_century/carter.asp

[353] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 4

[354] Stephen Hopgood, The Endtimes of Human Rights, Cornell University Press 2013, p 96-97

[355] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 2

[356] Stephen Hopgood, The Endtimes of Human Rights, Cornell University Press 2013, p 97; this is still arguably the dominant viewpoint in the United States today

and at many other points in the past, has proven to be a catalyst for individual action on human rights (and it is individual action on human rights that underpins the R*b*D framework).

As the previous section has argued, through the 1980s and 1990s the US and other influential players in the international community had sought to invoke global acceptance of human rights values as a cover for US-centric global vision for "democracy promotion", as Moyn has called it[357]. Yet in the aftermath of the 9/11 attacks in 2001, the CIA immediately launched a programme of extraordinary rendition, arbitrary and illegal detention, and torture[358], in contravention of the Geneva Convention[359] which in the analysis of Kramer and others, clearly "constitute[d] war crimes under existing international law"[360], as well as retaliatory, unilateral invasions of Afghanistan and later Iraq that undermined the UN Charter and the Rule of Law itself, as well as the entire international human rights system[361].

After 9/11, the public were systematically conditioned to prioritise national security and to accept that the rights of the 'Other' would have to be compromised so that their own rights could be protected. After immense public outrage, a memo declassified after the Abu Ghraib scandal when the Bush administration was in major damage limitation mode, stated that the US would henceforth treat all detainees humanely, included "those who were not entitled to such treatment", which spoke volumes about the contempt of US policymakers towards international human rights and humanitarian law in the aftermath of 9/11[362]. It also spoke to the extent to which rule of law had been weakened in many key liberal democracies and the cover that counterterrorism measures provided to states hostile to human rights but who used

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[357] Samuel Moyn, Human Rights and the Uses of History, Verso 2017, p 87
[358] Jason Burke, The 9/11 Wars, Penguin 2011, p 75
[359] Ronald Kramer, Raymond Michalowski and Dawn Rothe, "The Supreme International Crime": How the US War in Iraq Threatens the Rule of Law, Social Justice, Vol 32, No 2 (100), The Many Faces of Violence (2005), pp 52-81, p 73; Article 3, Geneva Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949 (Accessed at: https://ihl-databases.icrc.org/ihl/WebART/375-590006); Seymour M Hersh, Torture at Abu Ghraib, The New Yorker, 10 May 2004, Accessed at https://www.newyorker.com/magazine/2004/05/10/torture-at-abu-ghraib
[360] Ronald Kramer, Raymond Michalowski and Dawn Rothe, "The Supreme International Crime": How the U.S. War in Iraq Threatens the Rule of Law, Social Justice, Vol 32, No 2 (100), The Many Faces of Violence (2005), pp 52-81, p 73
[361] The UN Charter is, per Kramer et al, "the highest treaty in the world, the embodiment of international law that codifies and supersedes all existing international laws and customs" – *Ibid*, p 74
[362] Rob Freer, Turning to Torture in a Nation of 'Law', Journal of Human Rights Practice, Volume 1, Issue 1, March 2009, pp 168–179

the relaxation of international human rights standards to justify their own crackdowns (often violent) on democracy in their own states (among these, Dhillon identifies Pakistan, Syria, Libya, Iraq and Sri Lanka as "striking examples of the collapse of the Rule of Law and wholesale abuses" of fundamental civil and political rights[363]).

These grievous violations of international human rights law after 9/11 might have gone unchallenged were it not for the diligent efforts of investigative journalists and human rights organisations to hold the powerful to account[364], and of the millions of individuals passionately moved to action both before and after what was widely considered to be an illegal, retaliatory, and opportunistic invasion. When millions marched in 800 cities around the world on 15 February 2003 in unprecedented opposition to the looming invasion of Iraq[365], they did so in protest of the illegality of a war widely felt to compromise the international rules-based order and to have ulterior motivations more closely related to geopolitical advantage, access to Iraq's oil wealth, and the satisfaction of neoconservative ideology[366]. Of the marches, Bennis recalls: "While we did not prevent the Iraq war, the protests proved its clear illegality, demonstrated the isolation of the Bush administration policies, helped prevent war in Iran, and inspired a generation of activists"[367]. The protests around the Afghanistan and Iraq wars would also have profound implications for human rights NGOs in that their role in mobilising action and raising awareness of human rights violations became more widely understood and infinitely more visible because of enhanced media interest in world affairs at an especially turbulent time in human history. Far from being undermined by the shrinking space for civil society in the aftermath of the 9/11 attacks, Schmitz notes that NGOs in particular had "proved resilient and became a key defense for the international human rights regime"[368]. Post-9/11, as Schmitz has written, NGOs became more professionalised and

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[363] Sital Dhillon and Adam Mama-Rudd, Human Rights and Counter-Terrorism, Research Process, International Journal of Social Research Foundation 2016, Vol 4 No 2, pp 1-13, p 2
[364] Kenneth Roth, 9/11 Unleashed a Global Storm of Human Rights Abuses, Human Rights Watch, 9 September 2021, Accessed at https://www.hrw.org/news/2021/09/09/9/11-unleashed-global-storm-human-rights-abuses
[365] This day is known as 'the day the world said no to war' – see Phyllis Bennis, February 15, 2003: The Day the World Said No to War, Institute for Policy Studies, 15 February 2013, Accessed at https://ips-dc.org/february_15_2003_the_day_the_world_said_no_to_war/
[366] Ronald Kramer, Raymond Michalowski and Dawn Rothe, "The Supreme International Crime": How the U.S. War in Iraq Threatens the Rule of Law, Social Justice, Vol 32, No 2 (100), The Many Faces of Violence (2005), pp 52-81, p 60
[367] Phyllis Bennis, February 15, 2003: The Day the World Said No to War, Institute for Policy Studies, 15 February 2013, Accessed at https://ips-dc.org/february_15_2003_the_day_the_world_said_no_to_war/
[368] Hans Peter Schmitz, Transnational Human Rights Activism in a post-9/11 World, In Human Rights in the 21st Century: Continuity and Change Since 9/11, Palgrave Macmillan 2011, pp 203-221, p 203

organised as "human rights ideas continued to flourish and gave rise to significant organisational and strategic innovations", so although the "strength" of human rights was "tested" by and after 9/11, "its power remains largely intact and its reach continues to expand"[369]. I argue that the development and expansion of human rights work after 9/11 would not have happened were it not for individual action, the efforts of those who – often at great risk to their own lives and safety – made it their missions to call out human rights abuses and to seek out ever more sophisticated ways of organising and mobilising support for human rights advocacy, disseminating critical human rights information and testimonies and evidence in order to bring truth and healing to an event which shattered the global psyche, with its aftereffects still felt today in the ever-present threat of extremism and terrorism.

Another significant human rights challenge which has revived support for human rights in the 21st century was the Covid-19 pandemic, which by the close of 2021 had caused over a million deaths[370], testing humanity's empathy and the resilience of the world's institutions in an era already marked by searing inequalities and tensions[371], at a time Mishra has called the 'Age of Anger'[372]. Prolonged curtailments of civil liberties and other restrictions of fundamental freedoms of movement, expression and assembly (in states where such restrictions were convenient to quashing legitimate protest and limiting the ability of civil society to hold the executive to account) greatly impacted the enjoyment of fundamental rights in every region of the world and allowed authoritarian regimes to further derogate from liberal democratic traditions and international law with impunity[373]. Since 2020, the legitimacy and independence of the judiciary, the legal profession, and of civil society have been repeatedly undermined by authoritarian governments (as well as those on the edge of authoritarianism) that have, under cover of 'national security', escalated attacks against and arbitrary detentions of journalists, NGO workers, human rights

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[369] *Ibid*

[370] John Hopkins University & Medicine, COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU), Accessed at https://coronavirus.jhu.edu/map.html

[371] UN Global Compact, COVID-19 and Human Rights: Protection of the Most Vulnerable, 28 April 2020, Accessed on 06 October 2020 at https://youtu.be/IoAYQg-2JC8

[372] Pankaj Mishra, The Age of Anger, Penguin 2017

[373] EU Fundamental Rights Agency, Fundamental rights implications of COVID-19, Accessed at https://fra.europa.eu/en/themes/covid-19; Bonavero Institute of Human Rights (University of Oxford Faculty of Law), A Preliminary Human Rights Assessment of Legislative and Regulatory Responses to the COVID-19 Pandemic across 11 Jurisdictions, Bonavero Report No 3/2020, 06 May 2020, p 11, Accessed at https://www.law.ox.ac.uk/sites/files/oxlaw/v3_bonavero_reports_series_human_rights_and_covid_19_20203.pdf

campaigners, lawyers, and other human rights defenders. Throughout the pandemic, serious concerns were voiced by the UN and other institutions over the threat to data privacy presented by surveillance and 'track and trace' technologies[374], and over the flagrant use of misinformation by some states to weaponise and politicise the "first pandemic in history in which technology and social media [were] used on a massive scale to keep people safe, informed, productive and connected … enabling and amplifying an infodemic that continues to undermine the global response and jeopardise measures to control the pandemic"[375]. Some governments ("in response to the misinformation and disinformation accompanying the Covid-19 crisis, or at least under the guise of responding to it", writes Sherman[376]) rapidly introduced draconian censorship rules that amounted to serious breaches of Article 19 rights in international law on freedom of expression and access to information[377]. Russia, as the Bonavero Institute reported, enacted 'anti-fake news' legislation to crush dissenting opinions on the response of the authorities to the pandemic[378], as did Singapore, Malaysia, and many other Asian and Middle Eastern states, prompting the UN to flag its escalating concern for media freedom and the ability of a free press to hold governments to account[379]. In South Africa, publishing criticisms of the government's pandemic response was criminalised, which had the effect of

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[374] *Ibid*, p 11

[375] Joint statement by WHO, UN, UNICEF, UNDP, UNESCO, UNAIDS, ITU, UN Global Pulse, and IFRC, Managing the COVID-19 infodemic: Promoting healthy behaviours and mitigating the harm from misinformation and disinformation, 23 September 2020, Accessed at https://www.who.int/news/item/23-09-2020-managing-the-covid-19-infodemic-promoting-healthy-behaviours-and-mitigating-the-harm-from-misinformation-and-disinformation

[376] Justin Sherman, Censorship in Crisis: Government Information Crackdowns in the Covid-19 Pandemic, American University Washington College of Law, Fall 8-25-2020, p 3

[377] See Article 19 in the Universal Declaration of Human Rights, for examples of state actions that have adverse impact on Article 19 rights see Spandana Singh and Koustubh Bagchi, How Internet Platforms Are Combating Disinformation and Misinformation in the Age of COVID-19 (Washington DC, New America, June 1, 2020), https://www.newamerica.org/oti/reports/how-internet-platforms-are-combating-disinformation-and-misinformation-age-covid-19/; Joanna Kakissis, New Law Gives Sweeping Powers To Hungary's Orban, Alarming Rights Advocates, NPR, 30 March 2020, Accessed at https://www.npr.org/sections/coronavirus-live-updates/2020/03/30/823778208/new-law-gives-sweeping-powers-to-hungarys-orban-alarming-rights-advocates?t=1603885587217&t=1651863782960; Reuters, Iraq suspends Reuters for three months over report on coronavirus cases, 14 April 2020, Accessed at https://www.reuters.com/article/us-iraq-reuters/iraq-suspends-reuters-for-three-months-over-report-on-coronavirus-cases-idUSKCN21W1RW; Michael Safi, Egypt forces Guardian journalist to leave after coronavirus story, The Guardian, 26 March 2020, https://www.theguardian.com/world/2020/mar/26/egypt-forces-guardian-journalist-leave-coronavirus-story-ruth-michaelson; Louisa Loveluck, Robyn Dixon, and Adam Taylor, Journalists threatened and detained as countries on multiple continents restrict coronavirus coverage, The Washington Post, April 5, 2020, https://www.washingtonpost.com/world/journalists-threatened-and-detained-as-countries-on-multiple-continents-restrict-coronavirus-coverage/2020/04/05/90d9953e-6eb7-11ea-a156-0048b62cdb51_story.html; Joel Simon, COVID-19 is spawning a global press-freedom crackdown, Columbia Journalism Review, March 25, 2020, https://www.cjr.org/analysis/coronavirus-press-freedom-crackdown.php

[378] Bonavero Report No 3/2020, 06 May 2020, p 18

[379] UN News, Press freedom more important than ever, as UN condemns killing of 59 media workers, 23 December 2020, Accessed at https://news.un.org/en/story/2020/12/1080802

"inhibiting media efforts to hold the government accountable"[380], and in Belarus, following massive protests over the authoritarian government's handling of the pandemic and a 'rigged' election in August 2020, "Europe's last dictator" Alexander Lukashenko cut the internet off to prevent protestors from mobilising and then ordered mass arrests of protestors, as harrowing audio evidence and video testimony emerged on international news channels documenting the systematic torture and rape of detainees[381].

Throughout the pandemic, there were escalating warnings of a severe regression of social and economic rights, as countries with minimal social protection systems grappled to deal with whole populations whose incomes had disappeared overnight and where civil unrest was a very real possibility[382]. In countries such as South Africa, "burdens imposed by the lockdown [we]re unequally distributed between the wealthy and the poor"[383]; in India, a country where 95% of workers are engaged in the informal economy with no access to legal or social protections, the pandemic "unleashed a dramatic economic collapse and humanitarian catastrophe"[384]. In Singapore and the GCC States, which rely heavily on migrant workers from Asia and the Indian Subcontinent, there were serious concerns for the plight of vulnerable populations who had been hardest hit "due to pre-existing inequalities"[385]. The pandemic also, according to MacKenzie, led to a marked increase in the vilification of human beings on the basis of race, and scapegoating of the 'Other'[386]. Authoritarian leaders used the pandemic as a convenient pretext to "target – and

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[380] Bonavero Report No 3/2020, 06 May 2020, p 19
[381] Alice Wenner, 'In Being Together, We Had the Power' - A Belarusian Activist Describes Life on the Front Lines of Minsk Protests, Stanford Freeman Spogli Institute for International Studies, 28 August 2020, (Podcast), Accessed at https://fsi.stanford.edu/news/situation-belarus-explained-belarusian-scholar-and-activist; Human Rights Watch, Belarus: Systematic Beatings, Torture of Protesters (OSCE, UN Human Rights Council Inquiries Needed), 15 September 2020, Accessed at https://www.hrw.org/news/2020/09/15/belarus-systematic-beatings-torture-protesters
[382] UN OHCHR, Statement of the UN High Commissioner for Human Rights, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25785&LangID=E; as Asonye pointed out: "Stay-at-home orders cannot be observed by the more than 100 million people homeless worldwide" - see Chime Asonye, There's nothing new about the 'new normal'. Here's why, 05 June 2020, World Economic Forum, Accessed at https://www.weforum.org/agenda/2020/06/theres-nothing-new-about-this-new-normal-heres-why/
[383] Bonavero Report No 3/2020, 06 May 2020, p 19
[384] Jayati Ghosh, A critique of the Indian government's response to the COVID-19 pandemic, Journal of Industrial and Business Economics, Volume 47, pp 519–530 (2020), p 519-521
[385] Bonavero Report No 3/2020, 06 May 2020, p 18
[386] An example here is the use of the racist term 'Kung Flu' by Trump, which has been linked to a rise in attacks on Asian Americans – see The Guardian, Donald Trump calls Covid-19 'kung flu' at Tulsa rally, 21 June 2020, Accessed at https://www.theguardian.com/us-news/2020/jun/20/trump-covid-19-kung-flu-racist-language; Debora MacKenzie, Covid-19: The Pandemic That Should Never Have Happened and How to Stop the Next One (Kindle Edition), The Bridge Street Press 2020, Preface

exacerbate prejudice against – immigrants, refugees, asylum seekers", which "further served to reinforce anti-immigrant sentiment, hate speech, stigma, and the blaming of groups from outside the country for the transmission of COVID-19"[387]. Asylum seekers, refugees, and detainees in states such as Australia, Italy, the United States, and Iran are to this day kept in crowded detention conditions where infections are rife, which as the Bonavero Report finds "might amount to inhuman or degrading treatment which may ultimately be considered to be a crime against humanity"[388].

With pandemics being, according to Rutzen and Dutta, "fertile breeding grounds for governmental overreach"[389], there were warnings at the time that Covid-19 restrictions should be thoroughly "tested against formal principles of legality, and substantive principles of proportionality"[390], and UN Secretary General Guterres repeatedly warned that Covid-19 "threaten[ed] not only development, but also "enhanced instability, enhanced unrest, and enhanced conflict"[391], and emphasised that human rights could not be an "afterthought in times of crisis"[392]. The very real risk, yet to fully unfold, is that a global public health emergency may continue to be used by repressive regimes to justify emergency powers over the legislature, and that the abuse of this power may continue well after the pandemic has passed[393], especially as the timing of the pandemic coincided with a moment of weakness for human rights, a "precarious time of democratic backsliding and growing illiberalism" on the back of a decade of populism gone rogue and an era of "illiberal populist attacks on human rights"[394].

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[387] Diane Cole, Why Scapegoating Is A Typical Human Response To A Pandemic , NPR, 29 August 2020, Accessed at https://www.npr.org/sections/goatsandsoda/2020/08/29/906225199/why-scapegoating-is-a-typical-human-response-to-a-pandemic

[388] Cruel and inhuman or degrading treatment is prohibited in international law – see Article 7, Universal Declaration of Human Rights 1948; Article 7, International Covenant on Civil and Political Rights 1976; Article 1, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984; Article 3, European Convention on Human Rights 1952; Bonavero Report No 3/2020, 06 May 2020, p 14, 17

[389] Doug Rutzen and Nikhil Dutta, Pandemics and Human Rights, Just Security, 12 March 2020, Accessed at https://www.justsecurity.org/69141/pandemics-and-human-rights/

[390] Bonavero Report No 3/2020, 06 May 2020, p 3

[391] UN Secretary General, Transcript of UN Secretary-General's virtual press encounter to launch the Report on the Socio-Economic Impacts of COVID-19, 31 March 2020, Accessed at https://www.un.org/sg/en/content/sg/press-encounter/2020-03-31/transcript-of-un-secretary-general's-virtual-press-encounter-launch-the-report-the-socio-economic-impacts-of-covid-19

[392] UN Secretary General, We are all in this Together: Human Rights and COVID-19 Response and Recovery, 23 April 2020, Accessed at https://www.un.org/en/un-coronavirus-communications-team/we-are-all-together-human-rights-and-covid-19-response-and

[393] Bonavero Report No 3/2020, 06 May 2020, p 3

[394] Bonavero Report No 3/2020, 06 May 2020, p 3

The coronavirus pandemic, which Botting brilliantly parallels with the plague (against which Thomas Hobbes would likely have been quarantined at the time of writing *Leviathan*), is, she says, a return to a 'state of nature' as predicted by Hobbes almost four hundred years ago[395]. In *Leviathan*, written amidst the chaos of the English Civil Wars, Hobbes envisaged that in a world in its state of nature, there would be "no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving and removing such things as require much force; no knowledge of the face of the earth ... no arts; no letters; no society … continual fear, and danger of violent death", and a world in which "the life of man" is "solitary, poor, nasty, brutish, and short"[396]. Like the plague in Hobbes' lifetime, the pandemic defaced our social capital[397], decimated arts and culture, wrecked the world economy, and dismantled 'normal' social order and the self-assuredness of the world's rhizomatic systems of institutional governance which many considered to be infallible before the pandemic. As MacKenzie observes, "no one realized before Covid-19 happened … what a pandemic could do to our complex, just-in-time society, and that economic domino effects would cascade through our tightly coupled global support networks"[398]. For a time, pre-vaccine, the pandemic rendered us continually fearful of death, of infection, and of each other, navigating our 'new normal' and notwithstanding the fact, as Asonye points out, that 'normal' has never really worked for the vast majority of people in the world[399].

The pandemic is unquestionably a "grave human tragedy"[400], but as with all grave human tragedies I believe it is also a turning point for humanity, a once-in-a-

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[395] Botting calls Hobbes' Leviathan "a how-to-guide for managing the threat of a chain of political disasters" – see Eileen Hunt Botting, A novel (coronavirus) reading of Hobbes's Leviathan, History of European Ideas, 20 Jul 2020, p 1

[396] Thomas Hobbes, Leviathan: Or the Matter, Forme and Power of a Commonwealth, Ecclesiasticall and Civil (1651), p 86–90

[397] Fukuyama defines social capital as "an instantiated informal norm that promotes cooperation between individuals", essential to the "efficient functioning of modern economies" and the "*sine qua non* of stable liberal democracy" - see IMF Working Paper, Social Capital and Civil Society, Francis Fukuyama, 2000, Accessed at https://www.imf.org/external/pubs/ft/wp/2000/wp0074.pdf

[398] Debora MacKenzie, Covid-19: The Pandemic That Should Never Have Happened and How to Stop the Next One (Kindle Edition), The Bridge Street Press 2020, Preface

[399] Asonye also makes the point that it is "not normal for society *en masse* to be isolated … [e]ven if we feel loss or despair, we are expected to get used to it — accepting that this morbid reality is now standard." – see Chime Asonye, There's nothing new about the 'new normal'. Here's why, 05 June 2020, World Economic Forum, Accessed at https://www.weforum.org/agenda/2020/06/theres-nothing-new-about-this-new-normal-heres-why/

[400] Kristine Belesova, David L Heymann, Andy Haines, Integrating climate action for health into covid-19 recovery plans, British Medical Journal 2020; 370:m3169, Accessed at https://www.bmj.com/content/370/bmj.m3169;

generation chance to rebuild our economic and social systems towards a fair, sustainable, resilient, and inclusive human future post-pandemic. For the first time since the Second World War, it is in humanity's grasp to reframe human rights as a strategy for post-pandemic recovery that could have an incredibly positive impact, as Gómez Isa identifies, "on economic growth, equality and social and political inclusion"[401]. There are, finally, green shoots of consensus on the value and imperative of socioeconomic rights, which have been dismissed for too long, prompting calls for a "new social contract … to be 'woven' into the fabric of all western societies, especially those that practice a very capital markets-driven and centred model of capitalism"[402]. This will unquestionably be an uphill battle, as Mishra argues that even before the pandemic the very idea of a social contract had already been "torn up" by "managerial politics and neoliberal economics"[403].

Nonetheless, like all other significant events in human rights history, the pandemic has compelled an era of community, a "sense of togetherness into polarised societies" and "feelings of common purpose" that may very well shape our future societies once the pandemic has fully passed[404]. If the decades leading up to the pandemic were marked by excessive individualism, then the pandemic itself has compelled individuals to come together against tyranny. The pandemic has highlighted how easily fundamental civil and political rights can be lost, how willingly individuals will collectively sacrifice their freedoms for a 'greater good'[405], and how human rights standards can regress seemingly overnight at the hands of states all too happy to cynically exploit a global public health emergency to advance agendas of austerity, authoritarianism, and anti-democratic values. The stakes are high for human rights, but this could very well galvanise the civic space because the

[401] Felipe Gómez Isa, A post-pandemic era: Human Rights challenges for a 'new normal', GC Human Rights Preparedness, 20 July 2020, https://gchumanrights.org/preparedness/article-on/a-post-pandemic-era-human-rights-challenges-for-a-new-normal.html

[402] Beyond the obvious link to Rousseau's social contract, see also Mary Robinson and Phil Bloomer, Shaping a new social contract through the pandemic, OpenDemocracy, 08 April 2020, Accessed at https://www.opendemocracy.net/en/shaping-new-social-c-ontract-through-pandemic/; Nicholas M Gilani, Letter: A new social contract will meet resistance, Financial Times, 09 April 2020, Accessed at https://www.ft.com/content/b93075ec-759d-11ea-ad98-044200cb277f

[403] Pankaj Mishra, The Age of Anger, Penguin 2017, p328

[404] Financial Times, Virus lays bare the frailty of the social contract, 3 April 2020, Accessed at https://www.ft.com/content/7eff769a-74dd-11ea-95fe-fcd274e920ca

[405] The term 'greater good' refers to the philosophical concept of utilitarianism of the 'Classic Utilitarians' – see Jeremy Bentham and John Stuart Mill, Chapter 1 - On the Principle of Utility, Utilitarianism and Other Essays, Penguin 2004

pandemic has spotlighted the need to invest in and empower civil society[406] whilst adopting a default rights-based approach[407] to *all* future economic, social, political, environmental, technological and public health crises that have the power and the potential to adversely impact the physical and intellectual realms, and the public and private spaces, that are so intrinsic to the human experience[408]. These are, of course, all the realms and spaces that the R*b*D framework has specifically addressed in the world of the individual, and all of their most intimate, most sacred, and most personal of places.

The UN High Commissioner for Human Rights has referred to Covid-19 as "a colossal test of leadership", a "test of societies, of governments, of communities", and significantly, "of individuals"[409]. Elsewhere, Bachalet has called for "the creation of a more co-operative, global and human rights-based approach to the crisis"[410]. As she told a virtual 'Model UN' student panel in September 2020, the virus has reinforced to the individual and to society as a whole that:

> *"We are not alone. Other people matter. Justice matters. Violence, exploitation, discrimination and injustice have far-reaching consequences. By trying to see matters with full clarity, and understand others' points of view; by acting with integrity, to advance justice and human rights; by seeking always to build on your love for other people and all forms of life; by looking to construct, and advance – rather than to destroy – you will be shaping a life for yourself that holds steady to your principles"*[411].

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[406] Civil society, in Fukuyama's definition, "serves to balance the power of the state and to protect individuals from the state's power" – see IMF Working Paper, Social Capital and Civil Society, Francis Fukuyama, 2000, pg 7-8

[407] 'Rights-based approach' as used in this thesis refers to policy, theoretical and practical approaches that are based in human rights, democracy and Rule of Law, and prioritise civil and political *and* economic, social and cultural rights; the UN High Commissioner for Human Rights' definition of a 'rights-based approach' is also a useful benchmark: "A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress" – see OHCHR, Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation, Accessed at https://www.ohchr.org/Documents/Publications/FAQen.pdf

[408] Hannah Arendt, The Human Condition, University of Chicago Press 2019 (1958)

[409] OHCHR, OHCHR and Covid-19, Accessed at https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx

[410] OHCHR, COVID is "a colossal test of leadership" requiring coordinated action, High Commissioner tells Human Rights Council, 09 April 2020, Accessed at https://www.ohchr.org/en/statements/2020/04/covid-colossal-test-leadership-requiring-coordinated-action-high-commissioner?LangID=E&NewsID=25785

[411] OHCHR, Monash International Affairs Society Model UN, Statement by Michelle Bachelet, UN High Commissioner for Human Rights, 25 September 2020, Accessed at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26312&LangID=E

This is not to undermine the gravity of the situation we find ourselves in, with millions bereaved and many millions more teetering on the edge of economic collapse. Yet far from being in Posner's 'twilight'[412] of human rights, Hopgood's 'endtimes'[413] for human rights, and past Mutua's 'golden age of human rights'[414], these years ahead of us could very well mark a moment of truth for human rights. As the Global Campus of Human Rights put it: "A global pandemic such as the one we are experiencing is one of those disruptive events that can generate momentum to revisit some of our basic assumptions and to delineate creative ways to shape the future(s)"[415], simply because – as Belesova writes: "When habits are temporarily disturbed, people are more sensitive to new information and may adopt a mindset that is more conducive to behaviour change"[416]. The time is right for R*b*D, for human rights by design *and* by default, because it is in times like these that a reimagining of human rights culture that puts the individual at its heart might resonate more deeply, allowing for a human rights-based approach to *being* – both as individuals, and as members of various collectives – to take root.

2.5 Conclusion

The pandemic has exacerbated existing challenges for economic development, social and gender equality, and human rights, and it has undeniably stoked cultural, economic and political clashes in many parts of the world, tensions that have been furiously simmering since the financial crash of 2008, the refugee crisis since 2015, and the surge of post-truth, far-right populism in 2016 that has contaminated mainstream politics and delivered democracy's most recent 'near death experience'[417]. Arundhati Roy, the Indian human rights and environmental activist, has called the pandemic "the wreckage of a train that has been careening down the

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[412] Eric Posner, The Twilight of Human Rights Law, Oxford University Press 2014
[413] Stephen Hopgood, The Endtimes of Human Rights, 2015 Cornell University Press
[414] Makau W Mutua, Is the Age of Human Rights Over?, In Routledge Companion to Literature and Human Rights, ed Sophia A McClennen and Alexandra Schultheis Moore, Routledge 2016, pp 450-458
[415] Felipe Gómez Isa, A post-pandemic era: Human Rights challenges for a 'new normal, GC Human Rights Preparedness, 20 July 2020, https://gchumanrights.org/preparedness/article-on/a-post-pandemic-era-human-rights-challenges-for-a-new-normal.html
[416] Kristine Belesova, David L Heymann, Andy Haines, Integrating climate action for health into covid-19 recovery plans, British Medical Journal 2020 (380), p 2
[417] Martin Wolf, The American republic's near-death experience, Financial Times, 19 January 2021, Accessed at https://www.ft.com/content/c085e962-f27c-4c34-a0f1-5cf2bd813fbc

track for years … a portal, a gateway between one world and the next"[418]. It has taken a global pandemic to finally present the people with an opportunity to reset, to reinvent a 'new normal' and to "imagine their world anew"[419].

There is, says Moyn, a "utopian dimension" to human rights, "the image of another, better world of dignity and respect that underlies their appeal, even when human rights seem to be about slow and piecemeal reform"[420]. Human rights have survived numerous existential crises in history; as Moyn writes, "human rights are best understood as survivors: the god that did not fail while other political ideologies did. If they avoided failure, it was most of all because they were widely understood as a moral alternative to bankrupt political utopias"[421]. In the aftermath of one collapsed political utopia after another, a new moral world could well emerge as a new age of international citizenship and social justice advocacy, a realm of human rights awareness and action that is independent of the human rights system entirely, and rooted in the spirit of the ideal which rests firmly with the human beings at the heart of human rights.

The pandemic has been a call to action to states, to the private sector, and to civil society, but it is also a direct call to us *all* as individuals who collectively constitute humanity to re-examine our values, redress our apathy, and reverse decades of inaction and non-engagement with human rights to find new and innovative ways to turn human rights values into action. It has been called "one of the most dangerous challenges this world has faced in our lifetime"[422], yet it has also been, as this chapter has argued, the opportunity of our lifetimes, to recommit to the spirit and system of human rights, to and to reframe human rights as a call to individual action rather than exclusively a state mandate, as an unequivocal pledge *from* the people and *of* the people that the spirit of human rights, with human dignity at its core, is sacrosanct, numinous, and non-negotiable, going back over many centuries and by far preceding the international, state-centric, legalistic system of human rights that

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[418] Arundhati Roy, The pandemic is a portal, Financial Times, 03 April 2020, Accessed at https://www.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca
[419] Richard Curtis, Nations United: The United Nations at 75, 19 September 2020 (Released on Sky / YouTube), Accessed at https://youtu.be/R_iVODmEkLQ
[420] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 4
[421] *Ibid*, p 5
[422] UN Secretary General, "Now is the time for unity", UN Covid-19 Response, Accessed at https://www.un.org/en/un-coronavirus-communications-team/"now-time-unity"

has largely excluded the individual from its discourse. As this chapter has demonstrated, the individual is at the heart of human rights and so mainstreaming human rights culture that is fit for the challenges of the post-Covid era, should resonate deeply with us all. Human rights are steeped in a volatile, often violent, history, but they have endured in ways that many political and religious ideologies over the ages have not. There is hope for human rights, and the history of human rights itself, and its remarkable resilience against crisis after crisis, gives us all plenty of reason to be hopeful.

Chapter Three
Human Rights at Home and in the Community: Love, Law and Family

3.1 Chapter Introduction

The previous chapter uncovered the significance of human rights in seminal religious, philosophical, and legal texts, making the clear argument that human rights are part of all of our histories as human beings and the cornerstone of our civilisation as representations of human dignity. This reiterates the relevance of R*b*D as a framework with universal applicability, and recognises that mainstreaming human rights culture profoundly impacts each of us in vastly different ways. This pivotal chapter follows by diving deeper into Roosevelt's "*Where do human rights begin? In small places, close to home*" in order to articulate the rationale for embedding human rights values in our individual, most intimate lives, within our family environments, in the homes in which we live, and in the children we bring up in the world, and in doing so the chapter supports Principle 2 of the R*b*D Framework, which calls for the individual to be holistically supported in their creation of rights-respecting homes and their contributions to rights-championing communities.

Rousseau wrote that "the earliest of all societies, and the only natural one, is the family", and so it would be remiss in a thesis on mainstreaming human rights into our everyday existence not to focus on human rights within the family and at home, where we receive our first instruction into what it means to be a part of the world[423], both as our own independent selves and as part of the family unit "kept together", says Rousseau, "by convention"[424]. In sociology, the 'family' is recognised as a "vital element in all societies"[425], and "the primitive model", writes Rousseau, "of political societies"[426]. In the anthropological view, the benefit of "studying a culture through ... families is that it enables one to get at the meaning of institutions to individuals",

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[423] Marcella Horrigan-Kelly, Michelle Millar and Maura Dowling, Understanding the Key Tenets of Heidegger's Philosophy for Interpretive Phenomenological Research, International Journal of Qualitative Methods, January-December 2016, pp 1–8, p 2, citing Martin Heidegger, Being and Time, Harper & Row 2011 (1927), p 38
[424] Jean-Jacques Rousseau, The Social Contract, Wordworth Editions 1998, p 6
[425] James Georgas, Sophia Christakopoulou, Ype H Poortinga, Alois Angleitner, Robin Goodwin, Neophytos Charalambous, The Relationship of Family Bonds to Family Structure and Function Across Cultures, Journal of Cross-Cultural Psychology, Volume 28 Issue 3, pp 303-320, p 303
[426] Jean-Jacques Rousseau, The Social Contract, Wordworth Editions 1998, p 6

writes Lewis; it helps us to "get beyond form and structure [and] puts flesh and blood on the skeleton"[427]. As defined by Cowan et al, family consists of "nuclear mother-father-child groups; heterosexual, gay, and lesbian couples; single mother-child units; multigenerational households; and collectivities of unrelated but closely attached individuals", and "nuclear family arrangements" can no longer be presumed to be "the only ones that are culturally approved"[428]. Although in Pfeffer's analysis, the notion of the 'traditional family' is largely viewed in the context of 'Burkean liberalism', which holds that nature and tradition are interwoven[429], as Carmona writes, "the concept of family should be interpreted in light of present day conditions, in a manner that provides effective protection to all its members and in compliance with other critical human rights principles such as equality and non-discrimination, the best interests of the child and the right to live a life without violence"[430].

According to Berger and Luckmann's theory of social construction, the 'social world' is one continually "in the process of construction, containing within it the roots of an expanding institutional order" that becomes normatively entrenched through what they call 'habitualisation'[431]. Within that ever-evolving, dynamic, and socially constructed order, families are agents of 'primary socialisation', defined as "the first socialisation an individual undergoes in childhood, through which he becomes a member of society"[432]. As such, family is a profoundly important social institution, "if not *the* most important" per Warner and Powell [433], social institutions being the "enduring features of social life" according to Giddens[434], or "the glue that holds

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[427] Oscar Lewis, An Anthropological Approach to Family Studies, American Journal of Sociology, Vol 55, No 5 (March 1950), pp 468-475, p 471

[428] Philip A Cowan, Dorothy Field, Donald A Hansen, Arlene Skolnick, Guy E Swanson, Family, Self & Society: Toward a New Agenda for Family Research, Lawrence Erlbaum 1993, p ix

[429] Burkean liberalism, Pfeffer notes, holds that "nature and tradition are interwoven in two somewhat contradictory ways … nature indicates an order that cannot be changed (or at least, an order that cannot be changed without disastrous consequences) [and] nature indicates a model of change, where change may be growth and maturation or decline and death". – see Jacqueline L Pfeffer, The Family in John Locke's Political Thought, Polity, Vol 33, No 4 (Summer 2001), pp 593-618, p 594-595

[430] Magdalena Sepulveda Carmona, A contemporary view of 'family' in international human rights law and implications for the Sustainable Development Goals (SDGs), UN Women (Discussion Paper No 21, December 2017), p 2, Accessed at https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2017/Discussion-paper-A-contemporary-view-of-family-in-international-human-rights-law-en.pdf

[431] Peter Berger and Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge, Penguin Books 1966, p 75

[432] *Ibid*, p 150

[433] Lisa M Warner, Brian Powell, Family, Oxford Bibliographies, Accessed at https://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0019.xml

[434] Anthony Giddens, The Constitution of Society: Outline of the Theory of Structuration, Polity Press 1984, p 24

human societies together", per Searle[435]. The role of families is well recognised by sociologists for their "centrality … in providing their members with valuable resources, both economic and noneconomic, in creating and shaping self and collective identities, and in the rearing and socialisation of children"[436]. So central is the role of the family in human society that, as Jastram and Newland note, it is "entrenched in virtually all cultures and traditions, including the modern, universal legal 'culture' of human rights"[437], in which:

> "… the family is universally recognised as the fundamental group unit of society and as entitled to protection and assistance from society and the State. The right to family life is recognised in universal and regional as well as in many national legal instruments. The right to family unity is inherent in the right to family life. This right applies to all human beings, regardless of their status"[438].

International law requires States to meet a vast body of human rights obligations related to family, as Carmona points out, by implementing key provisions related to the family in domestic law, policy and social intervention programmes designed to support the family in creating and maintaining healthy, flourishing societies towards the realisation of sustainable development for communities and ultimately, the nation[439]. In the UDHR, family is "the natural and fundamental group unit of society … entitled to protection by society and the State"[440]. The ICESCR and the ICCPR both affirm that the family is "the natural and fundamental group unit of society", deserving of the "widest possible protection and assistance" both in terms of how

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[435] The other influential institutions are the political, educational, and economic realms, as well as religion, although law, media, and the digital world are also arguably just as influential. As Searle asserts, language is also an essential social institution "in a very precise sense: you can have language without money, property, government, or marriage, but you cannot have money, property, government, or marriage without language" – see John Searle, What is an institution?, Journal of Institutional Economics, 27 May 2005, Vol 1, Issue 1, pp 1–22, p 12, 18
[436] Lisa M Warner, Brian Powell, Family, Oxford Bibliographies, Accessed at https://www.oxfordbibliographies.com/view/document/obo-9780199756384/obo-9780199756384-0019.xml
[437] Kate Jastram and Kathleen Newland, Family Unity and Refugee Protection, Cambridge University Press 2003, p 557, Available at: https://www.refworld.org/docid/470a33be0.html
[438] *Ibid*
[439] Magdalena Sepulveda Carmona, A contemporary view of 'family' in international human rights law and implications for the Sustainable Development Goals (SDGs), UN Women (Discussion Paper No 21, December 2017), p 33, Accessed at https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2017/Discussion-paper-A-contemporary-view-of-family-in-international-human-rights-law-en.pdf
[440] Article 16(3), Universal Declaration of Human Rights 1948

families are founded and how their responsibility towards the care and education of children is supported[441].

In the UDHR, "[m]en and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family"[442]. Other specialised instruments also contain reference to the importance of family unity and the fundamental principles of non-discrimination and equality in family settings, including in refugee scenarios. In the ICERD, States are required "to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... the right to marriage and choice of spouse"[443]. In the CEDAW, States must take "all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations"[444]. And the UN Refugee Convention, the "centrepiece of international refugee protection today"[445], recognises that "the unity of the family, the natural and fundamental group unit of society, is an essential right of the refugee, and that such unity is constantly threatened"[446]. The Convention affirms that the rights granted to the refugee are also extended to the members of their family, and governments must take "the necessary measures for the protection of the refugee's family"[447]. As Jastram and Newland note, within international refugee law, "[t]he integrity of the refugee family is a legal principle and a humanitarian goal; it is also an essential framework of protection and a key to the success of durable solutions that can restore a refugee to something approximating a normal life"[448].

The UNCRC, in its preamble, reiterates that "the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world", and that the family, "as the fundamental group of society and the natural environment for the growth and wellbeing of all its

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441 See Article 10(1), International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and Article 23(1), International Covenant on Civil and Political Rights 1966
442 Article 16(1), Universal Declaration of Human Rights 1948
443 Article 5, International Convention on the Elimination of All Forms of Racial Discrimination 1965
444 Article 16(1), Convention on the Elimination of All Forms of Discrimination against Women 1979
445 Preamble, UN Convention Relating to the Status of Refugees 1951
446 Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons 1951, p 10, Accessed at https://www.unhcr.org/uk/3b66c2aa10
447 Ibid
448 Kate Jastram and Kathleen Newland, Family Unity and Refugee Protection, Cambridge University Press 2003, p 556, Available at: https://www.refworld.org/docid/470a33be0.html

members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community"[449]. The child, in the UNCRC's hopeful encapsulation of the ideal home and family life, should "grow up in a family environment, in an atmosphere of happiness, love and understanding ... for the full and harmonious development of his or her personality" to prepare the child to "live an individual life in society ... brought up in the spirit of ... peace, dignity, tolerance, freedom, equality and solidarity"[450]. In Article 7 of the UNCRC, the child has the right, "as far as possible ... to know and be cared for by his or her parents", and in Article 18(1), the UNCRC establishes that parents or legal guardians retain "primary responsibility for the upbringing and development of the child", where the "best interests of the child will" (or at least, *should*) "be their basic concern"[451].

Arguably because of the vast catalogue of rights of the family and of children in international human rights law, and despite the clear dissonance between Western-centric ideals of home and family life and the lived realities of families in social, economic, and generational crisis across the globe, Henricson identifies a "growing international government involvement" with families, manifestly in structural policy areas of poverty, child protection, youth crime, social exclusion, domestic violence and abuse, education, welfare, social and health care, and criminal justice[452]. This is despite parenting being almost universally accepted to belong firmly within the realms of one's private life with government intervention typically seen as the state overstepping precariously into the sacrosanct: the right to a private and family life[453]. In the Lockean view, "the society of parents and children is to 'preserve, nourish, and educate the Children', to raise the children to a state of reason", and to achieve this state, "nature gives parents authority over their children"[454]. Yet it is a fact that in all of the above policy areas, even the world's wealthiest states have largely failed to effectively provide for and protect children and the institution of the family, as in practice – as Henricson and Bainham note – the "[a]pplication of the human rights

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[449] Preamble, UN Convention on the Rights of the Child 1989
[450] Preamble, UN Convention on the Rights of the Child 1989
[451] Article 18, UN Convention on the Rights of the Child 1989
[452] Clem Henricson, Government and parenting: Is there a case for a policy review and a parents' code?, Joseph Rowntree Foundation 2003, p 2
[453] *Ibid*, p 4
[454] Jacqueline L Pfeffer, The Family in John Locke's Political Thought, Polity, Vol 33, No 4 (Summer 2001), pp 593-618, p 598, citing John Locke, Two Treatises of Government (1689), at 56-61

agenda is not consistent", and key provisions of international and regional human rights instruments often fail to translate effectively in social and economic policy[455].

The gap between the 'ideal' presented in international human rights instruments and the social and economic realities on the ground has always been vast, and it continues to widen. Families have faced intensifying social and economic pressures in many States including the UK since the global financial crash of 2008[456], with regressive and austere government policies on social welfare spending and other social protections continuing to adversely impact society's most disadvantaged families – seemingly by design, with Alston reporting to the UN in 2018 that poverty policy in the UK was being driven not by economic factors but by a "commitment to achieving radical social re-engineering"[457]. Family breakdown is endemic around the globe (and, following Gill, I use the term 'family breakdown' to refer not only to the dissolution of relationships between parents but also between parents and young people[458]). Forced family separation due to immigration and asylum policy is an everyday but no less devastating occurrence in many parts of the world, including in the US where under the Trump administration's 'Zero Tolerance' policy young migrant children as young as four months old were forcibly separated from parents at the US-Mexico border in what is a brutalising, traumatic, life-changing and destructive human experience for the family members involved, according to a study by Physicians for Human Rights which found signs and symptoms of trauma and post-traumatic stress in families even after reunification[459]. According to the UN Office on Drugs and Crime, human traffickers have reworked their 'business models'

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[455] Clem Henricson and Andrew Bainham, Human rights obligations and policy supporting children and families, Joseph Rowntree Foundation, 26 May 2005, Accessed at https://www.jrf.org.uk/report/human-rights-obligations-and-policy-supporting-children-and-families

[456] OECD, Chapter 1: Families are changing, Doing Better for Families 2011, Accessed at https://www.oecd.org/els/soc/47701118.pdf

[457] OHCHR, Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, London, 16 November 2018, Accessed at https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf

[458] Abigail Gill, Families under pressure: Preventing family breakdown and youth homelessness, Centrepoint 2016, Accessed at https://centrepoint.org.uk/media/4202/18-families-under-pressure-preventing-family-breakdown-and-youth-homelessness.pdf. Gill's 2016 study for Centrepoint outlines the following key causes of family breakdown: (i) structural factors (including poverty, welfare, and unemployment); (ii) interpersonal factors (such as parental conflict, negative peer influence, and crime); and (iii) individual factors (which include poor mental health and resilience).

[459] Kathryn Hampton, Elsa Raker, Hajar Habbach, Linda Camaj Deda, Michele Heisler, Ranit Mishori, The psychological effects of forced family separation on asylum-seeking children and parents at the US-Mexico border: A qualitative analysis of medico-legal documents, PLoS ONE 16(11) 2021; also see Ed Pilkington, Families separated at border under Trump suffering severe trauma – study, The Guardian, 24 November 2021, Accessed at https://www.theguardian.com/us-news/2021/nov/24/trump-family-separations-trauma-study

after the pandemic, and victims continue to be trafficked for the illegal harvesting of organs, forced labour, forced prostitution, the kidnap of minors forced to become child soldiers, forced marriage, and the selling of children[460] - all horrific human rights crimes which have a lasting and deeply traumatic impact on children and families. In 2021, according to UNHCR, 84 million people worldwide were forced to flee their homes and families due to armed violence, forced migration, adverse security situations and the escalating impact of climate change[461]. The fact that over half of the world's refugees are children raises urgent questions about the impact that decades of conflict, displacement, terrorism, persecution, and other human rights catastrophes are having and will continue to have on individuals, families, and whole communities, and how these events will perpetuate devastating cycles of injustice, abuse, deprivation and inequality across the next and future generations.

Families across the globe are at breaking point[462], with serious implications for social stability and human flourishing. In every region and in every country of the world, the pandemic hit families especially hard, in "economic, educational, employment, financial, mental and physical health, social, spiritual, and other developmental aspects"[463]. Families became disconnected from each other, from their worlds of work, their studies, and the provision of healthcare and other public and social services[464], uprooting deeply entrenched social norms[465], especially for society's most vulnerable groups ("racial and ethnic minorities, the poor and the old, and those who have had physical and mental challenges before or during the pandemic"[466]). A global "spike" in domestic violence, abuse, and femicide has raised important

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[460] UN Office on Drugs and Crime, Impact of the Covid-19 Pandemic on Trafficking in Persons, Accessed at https://www.unodc.org/documents/Advocacy-Section/HTMSS_Thematic_Brief_on_COVID-19.pdf

[461] UN News, 2021 Year in Review: Refugee, migrant numbers rise, despite travel curbs, 29 December 2021, Accessed at https://news.un.org/en/story/2021/12/1108472

[462] Reenee Singh & Timothy Sim, Families in the Time of the Pandemic: Breakdown or Breakthrough?, Special Issue: COVID-19 Systems and Families: Acknowledging Loss, Transcending Hope, Volume 42, Issue 1, March 2021, pp 84-97, p 84

[463] Lena Dahlberg, Loneliness during the COVID-19 pandemic, Aging & Mental Health, Vol 25 Issue 7 2021, pp 1161-1164, p 1161

[464] Reenee Singh & Timothy Sim, Families in the Time of the Pandemic: Breakdown or Breakthrough?, Special Issue: COVID-19 Systems and Families: Acknowledging Loss, Transcending Hope, Volume 42, Issue 1, March 2021, pp 84-97, p 87

[465] Social norms are defined by Neville et al as "rules or standards for behaviour that serve as guides for people's actions, help create expectations about how others will act and promote greater coordination in social life" – see Fergus G Neville, Anne Templeton, Joanne R Smith & Winnifred R Louis, Social norms, social identities and the COVID-19 pandemic: Theory and recommendations, Social and Personality Psychology Compass (2021), Vol 15, Issue 5, p 1 of 12

[466] Reenee Singh & Timothy Sim, Families in the Time of the Pandemic: Breakdown or Breakthrough?, Special Issue: COVID-19 Systems and Families: Acknowledging Loss, Transcending Hope, Volume 42, Issue 1, March 2021, pp 84-97, p 88

concerns for the systemic regression of hard-won advancements in gender equality[467]. The pandemic also took a deep emotional toll on families "at every stage of the development life cycle", as Singh and See note, "from infancy to death" with the unsettling disruption to "life plans and rituals" that "mark the transition from one family life-cycle stage to another" (among them, weddings, religious celebrations, and funerals)[468]. These spiritual and highly personal rituals are defined by Legare and Nielsen as "universal practices of human culture", markers and rites that are "socially stipulated, conventional behaviours … embedded in systems of meaning and symbolism" as a "culturally inherited, behavioural trademark of our species"[469]. Rituals, in the institution of family and in the institutions of law which, per Winn, are "charged with resolving social conflict"[470], and are an important part of creating positive group cultures, fostering social cohesion through the formation of "coalitions" in which group members participate and which allow them to identify as part of a group that subscribes to such rituals (such as a family, a social or religious group, or a profession). As such, rituals create "powerful signals" and promote resilience, tradition, community, and trust, and importantly, as Legare et al argue, they "allow individuals to exert agency through action"[471].

Realistically, even in safe, stable homes and in the healthiest of family environments, human rights are not necessarily topics of ongoing conversation or urgent concern, largely because modern life and work consumes so much time and attention and it is easy to become inundated by the emotional labour of family life[472], especially when our responsibilities to others – to our spouses, partners, children, sometimes to our parents and members of our extended family network – can often overwhelm and, as

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[467] Shalva Weil, Two Global Pandemics: Femicide and COVID-19, Trauma and Memory 2020, Vol 8 No 2, pp 110-112

[468] Reenee Singh & Timothy Sim, Families in the Time of the Pandemic: Breakdown or Breakthrough?, Special Issue: COVID-19 Systems and Families: Acknowledging Loss, Transcending Hope, Volume 42, Issue 1, March 2021, pp 84-97, p 88

[469] Cristine H Legare and Mark Nielsen, Ritual explained: interdisciplinary answers to Tinbergen's four questions, Philosophical Transactions of the Royal Society B, August 2020, Vol 375, Issue 1805, p 1-2

[470] Peter A Winn, Legal Ritual, Law and Critique, Vol II, No 2 1991, pp 207-232, p 207

[471] Cristine H Legare and Mark Nielsen, Ritual explained: interdisciplinary answers to Tinbergen's four questions, Philosophical Transactions of the Royal Society B, August 2020, Vol 375, Issue 1805, p 4

[472] 'Emotional labour', as popularly used and as defined by Gemma Hartley in her book *Fed Up: Emotional Labor, Women, and the Way Forward*, refers to "emotion management and life management combined ... the unpaid, invisible work we do to keep those around us comfortable and happy", but the original definition, coined by Arlie Hochschild in *The Managed Heart* in 1983, actually refers to "the work of managing one's own emotions ... required by certain professions" - see Julie Beck, The Concept Creep of 'Emotional Labor', The Atlantic, 26 November 2018, Accessed at https://www.theatlantic.com/family/archive/2018/11/arlie-hochschild-housework-isnt-emotional-labor/576637/

Berger and Luckmann put it, "the reality of everyday life ... imposes itself upon consciousness in the most massive, urgent and intense manner"[473]. In well-functioning environments, despite the permanently frazzled state in which most modern families function, parents may already instinctively model positive direct action to their children, subconsciously demonstrating a personal commitment to human rights principles such as non-discrimination and equality in the way they conduct themselves in their everyday lives, through (for example) volunteerism in the community at local refuges or food banks, through charity work, their participation in peaceful protest or advocacy for community campaigns, or even in its simplest form, in the empathy they convey in dinner table conversation for victims of war, famine or other human rights emergencies. As this chapter argues, raising children to understand from the earliest stages of their socialisation that they are valued, that they are loved, that they have worth, hope, and agency can help create future generations of human rights defenders who have the confidence and capacity to correct and challenge human rights injustice in both their immediate and wider worlds.

In less than ideal home environments, the role of instilling worth, hope, and agency in marginalised, at-risk families either falls vacant due to maltreatment or parental neglect, or it is fulfilled by an extended family member, a step-parent, or a social or community care worker who becomes a role model or mentor as part of their intervention into family crisis. When we as individuals model human rights values within our intimate and extended families or in our local communities, whether as parents, as active members of society, or as professionals who play key roles in societal wellbeing (and I specifically refer here to teachers, social workers, family health practitioners, community or religious leaders), we are instilling prosocial, pro-rights characteristics, attitudes, and behaviours among the young people we have brought into the world as parents or those we have a duty of care towards as practitioners. Although this chapter is an exploration of human rights values and education within the family (and appears to primarily address those living well-functioning, 'ideal' family lives), the principles, recommendations and discussion in this chapter are as relevant to practitioners who work with children as they are to the

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[473] Peter L Berger and Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge, Penguin 1991, p 35

parents of those children. By nurturing empathy, altruism, and respect for diversity and the dignity of others within our own children or those who see us as role models, through the love and care we provide to them and to others, we are demonstrating human rights values in action and embedding a lifelong respect for human rights within every one of the precious children in our worlds. Helping children to recognise unconscious bias and prejudice, within oneself and within others, equips them to take a more critical view when faced with human rights problems or misinformation in their futures. The process of 'Othering' begins with dehumanising vulnerable and minority groups of people in the eyes of those who are most impressionable, and so teaching children to celebrate diversity is an important step towards empowering individual agency and inspiring people from the earliest ages to approach human rights problems with empathy[474]. Children with high levels of empathy are generally more "socially sensitive" with higher levels of understanding of how their behaviour impacts those around them[475]. When children are raised with both empathy *and* a firm grasp of the social issues that are prevalent in their spheres of immediate consciousness as well as in the wider world and in their everyday lives[476], they are equipped to recognise injustice, to confidently articulate a compelling argument against it, and take appropriate action to remedy the injustice or escalate the situation to someone who can.

As Benneker et al note, the ability of individuals and communities to enforce rights informally and "subsequently change social norms" fills an important capability gap because individual action can "substitute[e] weakly enforced formal human rights" in

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[474] Hoffman defines empathy as both "the cognitive awareness of another person's internal states … his thoughts, feelings, perceptions, and intentions" and "the vicarious affective response to another person" – see Martin Hoffman, Empathy and moral development: implications for caring and justice, Cambridge University Press 2000, p 29

[475] Leanne C Findlay, Alberta Girardi, Robert J Coplan, Links between empathy, social behavior, and social understanding in early childhood, Early Childhood Research Quarterly, Vol 21, Issue 3, 3rd Quarter 2006, pp 347-359

[476] Berger and Luckmann saw the "reality of everyday life … as an intersubjective world, a world that I share with others. This intersubjectivity sharply differentiates everyday life from other realities of which I am conscious. I am alone in the world of my dreams, but I know that the world of everyday life is as real to others as it is to myself. Indeed, I cannot exist in everyday life without continually interacting and communicating with others" – see Peter L Berger and Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge, Penguin 1991, p 37. See also Paoletti's 'Sphere Model of Consciousness', "a model sufficient to describe fundamental dimensions of human experience with consciousness such as time, emotion and self-determination" where the centre of the sphere is a "place of pre-existence" (which Pintamalli and others identify is "causally associated with self-determination") – see Patrizio Paoletti & T Dotan Ben Soussan, The Sphere Model of Consciousness: From Geometrical to Neuro-Psycho-Educational Perspectives, Logica Universalis, Volume 13 (2019), pp 395–415, p 409; and Andrea Pintimalli, Tania Di Giuseppe, Grazia Serantoni, Joseph Glicksohn and Tal D Ben-Soussan, Dynamics of the Sphere Model of Consciousness: Silence, Space, and Self, Frontiers in Psychology, 18 September 2020, https://doi.org/10.3389/fpsyg.2020.548813

their own communities, for the betterment of society in which "informal norms … are never static"[477], such norms varying hugely among communities and evolving through "constant struggle and change"[478]. By driving change at the local level, in what Berger and Luckmann called "the *realissimum* of … consciousness"[479], we as individuals (as members of our local communities, of communities of social practice, or of many other kinds of place- or identity-based communities[480]) can build "human rights bridges"[481] that connect the local context with the international paradigm, emphasising the value of grassroots rights advocacy to the realisation of equality, respect and dignity, whilst driving important, practical, and much-needed changes in all those places "so close and so small that they cannot be seen on any maps of the world"[482].

3.2 Love, Law and Family

In *Elements of the Philosophy of Right*, Hegel articulated a threefold model for what he called the 'ethical life' encompassing family, civil society, and the "architecture" of the state[483], and which he saw as a model for "the living good"[484]. Hegel defined the family as an "association of members or independent individuals in a formal universality … preserved by the law, which secures one's person and property"[485]. In the Hegelian system, family (as a "union of personalities, whereby the family becomes one person"[486]) is the "substance" of the ethical life and a vital constituent to the civic community. This community of the political state, or the 'state-

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[477] Violet Benneker, Klarita Gërxhani, and Stephanie Steinmetz, Enforcing Your Own Human Rights? The Role of Social Norms in Compliance with Human Rights Treaties, Social Inclusion 2020, Volume 8, Issue 1, pp 184–193, p 186
[478] *Ibid*
[479] "The reality of everyday life is organised around the 'here' of my body and the 'now' of my present. This 'here and now' is the focus of my attention to the reality of everyday life ... what is presented to me in everyday life is the realissimum of my consciousness" – see Peter L Berger and Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge, Penguin 1991, p 37
[480] Article 29(1) of the Universal Declaration of Human Rights states that we all have "duties to the community in which alone the free and full development of his personality is possible".
[481] The term 'human rights bridges' is borrowed from the Essex University's Human Rights Local project, led by Koldo Casla, which is a "catalyst for local communities to build a culture of rights [which] seeks to identify opportunities to make human rights locally relevant". See University of Essex, Human Rights Local, Accessed at https://www.essex.ac.uk/research-projects/human-rights-local
[482] Eleanor Roosevelt, 1958
[483] Simon Lumsden, Community in Hegel's Social Philosophy, Hegel Bulletin, Cambridge University Press, 27 June 2017, Vol 41 Issue 2, pp 177–201, p 182
[484] Georg Wilhelm Friedrich Hegel, Elements of the Philosophy of Right (Grundlinien der Philosophie des Rechts) 1820, p 132, Translated by SW Dyde, Accessed at https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/hegel/right.pdf
[485] *Ibid*, p 138
[486] *Ibid*, p 141

constitution' as Hegel called it, is grounded in the actualisation of a "substantive universal, and of the public life dedicated to the maintenance of the universal"[487] – in other words, families together form micro-communities that have a common interest in maintaining what is good for the whole, which is a macro-community sustained by the micro-communities that thrive and flourish within it.

For Hegel, a person who was a citizen of a 'good state' would be shaped by society to exercise their free will in social institutions, within the realms of politics, the economy, over their property, in law and in family life[488]. Individuals within a family become emotionally bound both to each other by love, blood, and proximity, and to the place they share as 'home' through the feelings, memories, and experiences that the place evokes within them[489]. Home is the family's 'first place', the place where one first experiences what it is to feel loved and safe (or not) within the family, which Hegel saw as "an ethical community based on love"[490].

In family life, Hegel wrote, we cease to be independent persons and become members of a community of individuals who have renounced "independent existence" in order to realise self-consciousness, which can only be attained by knowing oneself through one's own "unity … with another and of another with me"[491]. In this view, family in its most traditional sense begins with the spiritual and emotional union of two human beings who enter into what Hegel called a "legal ethical love" – or more romantically, "the special inclination of two persons for each other"[492]. Rather less romantically, for Bentham, who was an advocate for the secularisation of marriage, the "marriage contract was 'beyond comparison' the most important contract of any in law", whereas Diderot considered monogamy to be "incompatible with man's natural inconstancy"[493]. For Hegel, however, the "principle

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[487] *Ibid*, p 138
[488] *Ibid*, p 137
[489] Richard C Stedman, Toward a Social Psychology of Place: Predicting Behavior from Place-Based Cognitions, Attitude, and Identity, Environment and Behaviour, Vol 34, Issue 5, pp 561-581, p 563
[490] Simon Lumsden, Community in Hegel's Social Philosophy, Hegel Bulletin, Cambridge University Press, 27 June 2017, 41/2, pp 177–201, p 182
[491] Georg Wilhelm Friedrich Hegel, Elements of the Philosophy of Right (Grundlinien der Philosophie des Rechts) 1820, p 138-139
[492] *Ibid*, p 140
[493] Mary Sokol, Jeremy Bentham on Love and Marriage: A Utilitarian Proposal for Short-Term Marriage, The Journal of Legal History, Vol 30 Issue 1 2009, pp 1-21, p 4 and 6

of the new family is ethical love"[494], which unifies the individual and the universal, that unity being "one of feeling, the feeling of love" (with love, as he defined it, being "the consciousness of the unity of myself with another"[495]).

However, as love is a feeling, as Hegel stated, it should have no place in the state or in the constitution or in law, where "content must be rational"[496]. Of course, love is anything but rational. The concept of love – for all its irrationality and to some, its "unlawfulness"[497] – may be thought to have little place in a law thesis, especially when considered against Søren Kierkegaard's description of love as "essentially indescribable"[498] which does not sit comfortably with law's need for certainty and specificity. However, to quote the brilliant Martha Nussbaum, "[l]ove is what gives respect for humanity its life, making it more than a shell"[499], and in this light I see love as being inextricably linked with respect for human dignity and human rights as the "highest good"[500], a vital part of human flourishing and in essence, a central concept in this work[501]. To elaborate, in a delightful chapter in Oxford's *Philosophy of Love*, which reveals a complex relationship between love, sex and the legal institutions, Brake asks:

> *"What do love and the law have to do with each other? They evidently come apart, operating independently and in separate spheres. Love can be unlawful, illicit, outside the law. Law cannot compel love for other persons, and law is neither capable of loving nor – ordinarily – the object of love"*[502].

[494] Georg Wilhelm Friedrich Hegel, Elements of the Philosophy of Right (Grundlinien der Philosophie des Rechts) 1820, p 146

[495] *Ibid*, p 139

[496] *Ibid*

[497] Elizabeth Brake, Love and the Law, The Oxford Handbook of Philosophy of Love, edited by Christopher Grau and Aaron Smuts, February 2017, p 1, Accessed at DOI: 10.1093/oxfordhb/9780199395729.013.28

[498] Søren Kierkegaard, Works of Love, HarpPerenM 2009 (1847), p 3, also quoted in Michael Strawser, Chapter 2: Love Is the Highest Good, In Stephen Minister, J Aaron Simmons & Michael Strawser, Kierkegaard's God and the Good Life, Indiana University Press 2017, pp 16-30, p 17

[499] Martha C Nussbaum, Political Emotions: Why Love Matters for Justice, Belknapp Press 2015

[500] As Søren Kierkegaard wrote in *Works of Love*: "It is certain that love is the highest good – something surely no one doubts" – see Søren Kierkegaard quoted in Michael Strawser, Chapter 2: Love Is the Highest Good, In Stephen Minister, J Aaron Simmons & Michael Strawser, Kierkegaard's God and the Good Life, Indiana University Press 2017, pp 16-30, p 16

[501] See 1.2 Key concepts underpinning this research for an elaboration on the relevance of human flourishing to human rights culture

[502] See Brake's excellent exposition of "how law in modern liberal states has treated love, both in marriage law and in legal regulation of sex" in Elizabeth Brake, Love and the Law, The Oxford Handbook of Philosophy of Love, edited by Christopher Grau and Aaron Smuts, February 2017, p 1, Accessed at DOI: 10.1093/oxfordhb/9780199395729.013.28

In this vein, Brake writes that love is "essentially lawless, and law essentially impartial, unloving"[503]. Love is "too ephemeral a foundation for an enduring legal institution"[504], and to laden love with obligation, "legal or otherwise", ultimately "obliterates" love[505]. To regulate, codify or obligate love "is to initiate its extinction"[506]. Law, she writes, "tends to be seen as having nothing to do with love"[507] beyond marriage, family law, and the efforts of some states to regulate romantic love and of others to criminalise acts of sexual expression. In this way, law "incentivises, protects, discourages, and criminalises different forms of love, nudging us toward those it prefers"[508] – a phenomenon that Foucault in 1978 called "the censorship of sex", by which sex came to be viewed, through discursive corrosion and the institutionalisation of desire, as a "police matter"[509]. These are attitudes which endure even today despite there being a "general presumption against state interference" when it comes to our sexual lives[510].

All of this is to illustrate the importance of family, love, and loving relationships as integral to human flourishing and to creating the conditions in which a rights-respecting home can be made. Beyond romantic love, law is deeply engaged with other forms of loving relationship, such as those involving care for elderly or extended relations and associates, which Davenport notes are "central to our lives in contemporary cultures"[511]. Love is also apparent in the form of prosocial, empathic, cooperative, and altruistic behaviours exhibited towards social groups as a whole or even strangers (who may be homeless, displaced, or victims of disaster)[512]. Love is manifestly and normatively abundant in the relationship between parents and children, by which it is universally understood and accepted that parents have legal obligations to physically protect, financially support and to take responsibility for the

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[503] *Ibid*
[504] *Ibid*, p 9
[505] *Ibid*, p 8
[506] *Ibid*, p 1
[507] *Ibid*, p 2
[508] *Ibid*, p 5
[509] Michel Foucault, The History of Sexuality (Volume 1: An Introduction), Pantheon 1978, p 23-25
[510] Elizabeth Brake, Love and the Law, The Oxford Handbook of Philosophy of Love, p 9
[511] John J Davenport, Chapter 4: The Integration of Neighbor-Love and Special Loves in Kierkegaard and von Hildebrand, In Stephen Minister, J Aaron Simmons & Michael Strawser, Kierkegaard's God and the Good Life, Indiana University Press 2017, pp 46-77, p 46
[512] Helen Claire Smith, Finding purpose through altruism: The potential of 'doing for others' during asylum, Journal of Occupational Science, Vol 25, Issue 1, 2018, pp 87-99; Dshamilja Marie Hellmann, Susann Fiedler, and Andreas Glöckner, Altruistic Giving Toward Refugees: Identifying Factors That Increase Citizens' Willingness to Help, Frontiers in Psychology, August 2021, Vol 12, https://doi.org/10.3389/fpsyg.2021.689184

safety and care of their children, for the ultimate benefit of society and humankind's progression into the future[513].

In this way, love is integral to human flourishing, which describes, in Aristotelian ethics, "rational activity of the soul in accordance with virtue" (*eudaimonia*)[514] or, to consider VanderWeele's definition, "a state in which all aspects of a person's life are good"[515]. As Brake writes: "Law has reason to recognise institutions within which we flourish, and human flourishing is in part constituted by love relationships of a certain form"[516]. For Kierkegaard, the highest form of human flourishing is "to love people"; it is "the only thing worth living for, and without this love you are not really living"[517].

3.3 Human Rights at Home and in the Community

With the emergence of 'Human Rights Cities'[518], the idea that human rights culture should be nurtured primarily at local level has taken root in an age where economic inequality has ravaged social bonds, and local communities have become increasingly fragmented, distant, and disconnected from each other[519]. This section advances the idea that human rights culture begins at home, where our identities are formed, and where our capacity for empathy as well as our confidence to take action is first developed. To reiterate, 'human rights culture' is a term used throughout this thesis to refer to the respect, awareness, empowerment and agency among rights bearers about their rights in their immediate environments (a state that Friedman called "rights-consciousness"[520]). In the context of human rights and the institution of family, I argue – following Berger and Luckmann – that rights consciousness is

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[513] Elizabeth Brake, Love and the Law, The Oxford Handbook of Philosophy of Love, edited by Christopher Grau and Aaron Smuts, February 2017, p 6, Accessed at DOI: 10.1093/oxfordhb/9780199395729.013.28
[514] Aristotle, The Nichomachean Ethics, Book I, Chapter 7
[515] Tyler J VanderWeele, On the Promotion of Human Flourishing, Proceedings of the National Academy of Sciences (PNAS), 1 August 2017, Vol 114, No 31, p 8148–8156, p 8149
[516] Elizabeth Brake, Love and the Law, The Oxford Handbook of Philosophy of Love, edited by Christopher Grau and Aaron Smuts, February 2017, p 6, Accessed at DOI: 10.1093/oxfordhb/9780199395729.013.28
[517] Søren Kierkegaard, Works of Love, p 375, also quoted in John J Davenport, Chapter 4: The Integration of Neighbor-Love and Special Loves in Kierkegaard and von Hildebrand, In Stephen Minister, J Aaron Simmons & Michael Strawser, Kierkegaard's God and the Good Life, Indiana University Press 2017, pp 46-77
[518] EU Fundamental Rights Agency, How to become a Human Rights City: a new framework launched, 11 October 2021, Accessed at https://fra.europa.eu/en/news/2021/how-become-human-rights-city-new-framework-launched
[519] Jan Delhey & Leonie C Steckermeier, Social Ills in Rich Countries: New Evidence on Levels, Causes, and Mediators, Social Indicators Research (2020), Volume 149, pp 87–125; David Schiefer & Jolanda van der Noll, The Essentials of Social Cohesion: A Literature Review, Social Indicators Research (2017), Vol 132, pp 579–603
[520] Lawrence M Friedman, The Idea of Right as a Social and Legal Concept, Journal of Social Issues, Vol 27, Issue 2 1971, pp 189-198, p 189

created via the 'habitualisation'[521] of human rights values and action into our everyday lives, so that they become a part of our intersubjective social reality that we internalise and share with others in our communities and society through our everyday human interactions[522], and home is where habitualisation begins.

Home (far from being merely the "site in which we live", per Blunt and Dowling with a nod to the Heideggerian idea of 'dwelling'[523]) is the central venue for our everyday lives "with its rich social, cultural and historical significance"[524]. Home has a special normative power, according to Dohonoe, because it is our yardstick by which we measure the rest of the world, the "foundational standard to which other places are compared in terms of our embodied constitution of world [and] one's style of being in the world"[525]. Home helps us to construct our worldview (or *Weltanschauung*), which Freud called an "intellectual construction which solves all the problems of our existence uniformly on the basis of one overriding hypothesis, which … leaves no question unanswered and in which everything that interests us finds its fixed place"[526]. To Blunt and Dowling, home is:

> *"… an idea and an imaginary … imbued with feelings of belonging, desire and intimacy (as, for instance, in the phrase 'feeling at home'), but can also be feelings of fear, violence and alienation. These feelings, ideas and imaginaries are intrinsically spatial. Home is thus a spatial imaginary: a set of intersecting and variable ideas and feelings, which are related to context, and*

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[521] Habitualisation is "any action that is repeated frequently becomes cast into a pattern, which can then be … performed again in the future in the same manner and with the same economical effort" – see Peter L Berger and Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge, Penguin 1966, p 70-71

[522] *Ibid*, p 23-25; also, as Berman writes, we "must not see law as simply an autonomous system of rules that regulates disputes" but instead as being "constitutive of how members of a society envision themselves and their relations to each other" – see Paul Schiff Berman, The Enduring Connections Between Law and Culture: Reviewing Lawrence Rosen, Law as Culture, and Oscar Chase, Law, Culture, and Ritual, GW Law Faculty Publications & Other Works, 2009, pp 101 - 111, p 102

[523] "The fundamental character of dwelling … reveals itself to us as soon as we reflect that human being consists in dwelling and, indeed, dwelling in the sense of mortals stay on the earth. But 'on the earth' already means 'under the sky'. Both of these also mean 'remaining before the divinities' and include a 'belonging to men's being with one another'. By a primal oneness the four – earth and sky, divinities and mortals – belong together in one" – see Martin Heidegger, The Thing, in Poetry, Language, Thought, transl. by A Hofstadter, Harper & Row 1971, p 149. Also see Shaar, who writes that for Heidegger, 'dwelling' refers to "being at one with the world: peaceful, contented, liberating [and] connected to "the mode of building that involves cultivating and nurturing" – see Adam Sharr, Thinkers for architects: Heidegger for architects, Routledge 2007, p 41

[524] J Moore, Placing home in context, Journal of Environmental Psychology, 20 (2000), pp 207-218, p 207

[525] Janet Donohoe, The Place of Home, Environmental Philosophy, Vol 8, No 1 (Spring 2011), pp 25-40, p 25

[526] Sang Uk Lee, Constructing an Aesthetic Weltanschauung: Freud, James, and Ricoeur, Journal of Religion and Health, Vol 43, No 4 (Winter 2004), pp 273-290, p 274, citing Sigmund Freud, Lecture XXXV: The Question of a Weltanschauung, Standard Edition Vol 22, Hogarth Press 1957, p 158

which construct places, extend across spaces and scales, and connect places"[527].

If, Goetz et al write, we "feel closer to those to whom we are more closely related"[528], it follows that we also feel closest to those we live closely *with* because of the familiarity and intimacy that comes from the everyday spatial proximity in which home and heart intersect[529]. Our experiences at home manifest in the development of self and, in the Lacanian view, in the three phases of our identity formation[530]; they are what we 'know' and therefore what we are, and how we behave and interact in the world. In the Husserlian phenomenological view[531], our home is "our corner in the world", as Bachelard put it[532]; it is where we structure our earliest, formative learnings and our most intimate experiences[533], and where we unconsciously[534] perform the tasks and habits that we engage with – absently and consciously, however mundane or repetitive – as part of our everyday existence[535]. We do this, of course, with an expectation of privacy and non-interference with that privacy, which is where tensions between law and the family most dynamically play out in the international human rights framework[536]. Ideally, individuals can enjoy near complete authority and autonomy in the home as "the only place", according to Marcus, where

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[527] Alison Blunt and Robyn Dowling, Home, Routledge 2006, p 2

[528] Jennifer L Goetz, Dacher Keltner, and Emiliana Simon-Thomas, Compassion: An Evolutionary Analysis and Empirical Review, Psychological Bulletin May 2010, Vol 136 Issue 3, pp 351–374, p 358

[529] As Lyon notes, Bertrand Russell defined familiarity as a "definite feeling, capable of existing without an object" (see Gordon Lyon, The Experience of Perceptual Familiarity, Philosophy, Vol 71 Issue 275, pp 83-100, citing Ludwig Wittgenstein, The Blue and Brown Books, Blackwell 1969, p 182 and Bertrand Russell, The Analysis of Mind, Allen and Unwin 1921)

[530] Jane Gallop, Lacan's "Mirror Stage": Where to Begin, Vol 11/12, Vol 11, No 4 - Vol 12, No 1, Issue 37-38: A Special Issue from the Center for Twentieth Century Studies (1982/1983), pp 118-128

[531] Phenomenology refers, simply, to the "interpretive study of human experience [where] the aim is to examine and clarify human situations, events, meaning and experiences 'as they spontaneously occur in the course of daily life'" - see David Seamon, A Way of Seeing People and Place: Phenomenology in Environment-Behavior Research, in Theoretical Perspectives in Environment-Behaviour Research, pp 157-178, citing Rolf von Eckartsberg, Introducing Existential-Phenomenological Psychology, in Phenomenological Inquiry in Psychology, Spring pp 3-20, p 3

[532] Gaston Bachelard, The Poetics of Space: The Classic Look at How We Experience Intimate Places, Beacon Press 1994, p 4

[533] David Seamon, A Way of Seeing People and Place: Phenomenology in Environment-Behavior Research, in Theoretical Perspectives in Environment-Behaviour Research, pp 157-178, p 157-158

[534] As Manzo notes, "the context of our everyday lives is so familiar that we essentially relate to it in an unconscious way", with the "role of habit and familiarity … critical elements of our sense of place" – see Lynne C Manzo, Beyond house and haven: Toward a revisioning of emotional relationships with places, Journal of Environmental Psychology 2003, 23(1), pp 47-61, p 53, citing M Merleau-Ponty, The phenomenology of perception, Humanities Press 1962

[535] Janet Donohoe, The Place of Home, Environmental Philosophy, Vol 8, No 1 (Spring 2011), pp 25-40, p 30

[536] In the ICCPR, and in regional instruments such as the ECHR and the ACHR, States must ensure that no one is subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, with every person able to rely on the protection of law against any such interference or attacks. See Article 17, International Covenant on Civil and Political Rights 1966; see also Article 8(1), European Convention on Human Rights and Article 11, American Convention on Human Rights

many people can "feel a sense of control"[537], and where, Heidegger believed, people could be their "true authentic selves"[538].

3.3.1 Human rights at home in the early years

What happens in our home, especially in our earliest years of life, influences how we see the world. In this sense, home is much more than a place – it is a person's "first universe"[539], as Bachelard writes. Regardless of the social and economic realities into which a child is born, what every child needs is to be able to develop in what Winnicott called the "holding environment", a safe space where the child is raised in 'good' conditions by a 'good enough' caregiver who "produces a facilitating environment, adapts to the infant's needs and demands and feels the child's need to transition towards autonomy on his or her own terms", per Longhofer[540]. Winnicott's 'holding' concept carries forward into Kirby's concept of the 'nurturing' environment where, from the earliest age, the child is protected from "biologically and psychologically toxic" situations, caregivers promote and reinforce 'prosocial behaviours', and resilience, in the form of "psychological flexibility of individuals", is fostered and encouraged[541]. As Kirby notes, "it is the family environment within which children are raised which can have "long-lasting impacts on a range of developmental outcomes, including brain development, emotion regulation, and empathy, as well as mental and physical health"[542].

In the Freudian view, children position themselves in infancy and early childhood at the centre of their own universe (a state that Freud called *primary narcissism*)[543]. This self-centredness falls away gradually as they grow up and take their first steps out into the world, beyond the arms of their mother, the walls of their home, or the

[537] Clare Cooper Marcus, House as a Mirror of Self: Exploring the Deeper Meaning of Home, Nicolas Hays 2006, p 65

[538] Jeff Collins and Howard Selina, Heidegger for Beginners, Totem 1998, p 64–69

[539] Gaston Bachelard, The Poetics of Space: The Classic Look at How We Experience Intimate Places, Beacon Press 1994, p 4

[540] Jeffrey Longhofer, Good enough mother (Holding environment), A-Z of Psychodynamic Practice, Macmillan Education UK, Accessed at https://www.macmillanexplorers.com/good-enough-mother-holding-environment/15870870

[541] James N Kirby, Nurturing Family Environments for Children: Compassion-Focused Parenting as a Form of Parenting Intervention, Education Sciences 2020, Vol 10 Issue 1, 3, p 1

[542] *Ibid*, p 1

[543] Sigmund Freud, On narcissism: An introduction, in The Standard Edition of the Complete Psychological Works of Sigmund Freud, Volume XIV (1914-1916): On the History of the Psycho-Analytic Movement, Papers on Metapsychology and Other Works 1957, pp 67-102

familiarity of extended family networks and existing social relationships. In a nurturing environment, children are assured from the very beginning of their lives and through their most formative years that they belong, that they are wanted, that they are loved, and that they have a "special corner in the world" where those who are meant to love them do, and can protect, nourish and interact with them in satisfaction of their basic needs are met. Here, it is worth briefly revisiting Maslow's Hierarchy of Needs as an instructive taxonomy that illustrates a person's basic needs for security, love, and belonging, which Maslow classified as physiological needs (for air, water, food, shelter, sleep, clothing, and reproduction), the need for safety (personal security, employment, health, resources); love and belonging (friendship, intimacy, family and connection); esteem (respect, self-esteem, recognition, and freedom), and self-actualisation (the "desire to become the most that one can be")[544].

When these "basic human goals" go unmet or the attainment of them is "thwarted" or disrupted, this, per Maslow, is a psychologically threatening situation, and "[w]ith few exceptions, all psychopathology may be partially traced to such threats"[545]. When these basic needs are met, children in nurturing environments come to see themselves as being part of a unit that provides support, wellbeing, security and safety, bonding, nurture, and a dignified existence. It is in infancy, arguably, that a fundamental understanding of one's own human dignity forms, in the Lacanian 'mirror stage', when the baby identifies with their own image when glimpsed in the mirror and this event becomes a "turning point" which "orients and organises" the baby's sense of self (ego) and sets the tone for their future development from that point forward[546]. As they reposition themselves within the familial order and redefine their external social relationships, they arrive at what Freud termed a *secondary narcissism*[547]. This follows Berger and Luckmann's view that the child's points of reference in the world will depend greatly upon the environment into which they are

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[544] AH Maslow, A theory of human motivation, Psychological Review 1943, Vol 50 Issue 4, pp 370–396
[545] *Ibid*, p 395
[546] Jacques Lacan, Chapter One: The mirror stage as formative of the function of the I, in Écrits: A Selection, translated by Alan Sheridan, Norton 1977, p 1–7; also Jane Gallop, Lacan's "Mirror Stage": Where to Begin, SubStance, Vol 11/12, Vol 11 No 4 - Vol 12 No 1, Issue 37-38: A Special Issue from the Center for Twentieth Century Studies (1982/1983), pp 118-128
[547] Sigmund Freud, On narcissism: An introduction, in The Standard Edition of the Complete Psychological Works of Sigmund Freud, Volume XIV (1914-1916): On the History of the Psycho-Analytic Movement, Papers on Metapsychology and Other Works 1957, pp 67-102

born and through which they experience the external world[548], in that a child born in extreme poverty in Calcutta will be exposed to very different external stimuli and opportunities than a child born in relative extreme privilege in, say, California because of vast disparities in the political, social, technological and economic environments which determine a child's social origins and socioeconomic status[549].

Integrating child development theory with the topic of human rights culture in the wider community is integral to mainstreaming human rights awareness and agency in the next generation of rights bearers because the early years are when key personal and psychological qualities such as empathy, which motivates individual attitudes towards human rights in later life, are developed. The development of empathy is, according to the Early Education charity in the UK, "time-sensitive" to the first three years of life and throughout early childhood because of "biological factors that enable rapid brain connections"[550]. As Hoffman identified in his three levels of empathy development in early children, the first level ('emotional contagion') is the newborn phase, "an innate, automatic, and non-modulated response to others' emotions, due to an immature sense of self whereby the child is not yet able to perceive itself as a separate entity"[551]. The second level, according to Hoffman, develops at around a year old, when the child becomes aware of others' feelings and expressions of emotion[552]. It is also around this time, per Ornaghi et al, children are able to show concern for another person[553].

The third milestone is reached at the age of two when children begin to become more aware and understanding of the emotional states of others, and begin to demonstrate positive, pro-social behaviours, which Eisenberg and Fabes define as "voluntary behaviours intended to benefit others"[554] (such as helping, sharing,

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[548] Peter L Berger and Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge, Penguin 1966, p 34-35

[549] Timothy M Smeeding, Robert Erikson & Markus Jäntti, Introduction, in Persistence, Privilege, and Parenting: The Comparative Study of Intergenerational Mobility, Russell Sage Foundation 2011, p 1

[550] Birth to 5 Matters, Prime Areas, Accessed at https://www.birthto5matters.org.uk/prime-areas-of-development-and-learning-lay-vital-foundations-in-the-early-years/

[551] Veronica Ornaghi, Elisabetta Conte and Ilaria Grazzani, Empathy in Toddlers: The Role of Emotion Regulation, Language Ability, and Maternal Emotion Socialization Style, Frontiers in Psychology, 20 October 2020, Accessed at https://www.frontiersin.org/articles/10.3389/fpsyg.2020.586862/full

[552] *Ibid*

[553] *Ibid*

[554] Nancy Eisenberg, ND Eggum-Wilkens and TL Spinrad, The development of prosocial behavior, in Oxford Handbook of Prosocial Behavior, eds DA Schroeder and WG Graziano, Oxford University Press 2015, p 114–136; as Ornaghi et al find in their analysis of Hoffman's three-level model for the development of empathy: "This

comforting, or collaborating with others). Per Wagers and Kiel, the second year of a child's life is considered to be especially critical for empathy development because at this time, "higher-order emotions begin to emerge and parents begin to shape their children's patterns of social responsibility"[555]. At this age, parents also expect "intentionality" from their children, and it is age appropriate to "hold them accountable for their actions, and to expect interpersonally appropriate behaviour"[556].

Through this internal, "intentional" process by which children "decide that representations stand for something other than themselves"[557], children develop empathy, defined by Wagers and Kiel as "an emotional state … in which an individual is able to understand and share the feelings or experiences of another individual"[558] and by von Harbou as "a natural human faculty and the fundament of altruism and morality"[559]. Wagers and Kiel identify empathy as "critical for developing and maintaining relationships with others" and a "precursor of prosocial and moral behaviour", with deficits in empathy linked with "various maladaptive social outcomes"[560]. Disruptions in empathy in a child's earliest years, as Zahn-Waxler and Radke-Yarrow have identified, lead to negative or antisocial behavioural outcomes, "marked by lack of regard for others, inability to feel remorse, and even the derivation of pleasure from the distress of others"[561].

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developmental sequence suggests that empathy may be observed from a very young age. However, differences in children's empathy are shaped by multiple factors, such as child emotion regulation and verbal ability, and mothers' emotion socialization style"; they also highlight "contribution of … individual and family factors" in early years to variances in the development of empathy – see Veronica Ornaghi, Elisabetta Conte and Ilaria Grazzani, Empathy in Toddlers: The Role of Emotion Regulation, Language Ability, and Maternal Emotion Socialization Style, Frontiers in Psychology, 20 October 2020

[555] Keshia B Wagers, Elizabeth J Kiel, The influence of parenting and temperament on empathy development in toddlers, Journal of Family Psychology 2019, Vol 33 Issue 4, pp 391–400, p 391

[556] Carolyn Zahn-Waxler & Marian Radke-Yarrow, The origins of empathic concern, Motivation and Emotion 1990, Volume 14 Issue 2, pp 107–130, p 111

[557] Sabela F Monteira, María Pilar Jiménez-Aleixandre & Christina Siry, Scaffolding Children's Production of Representations Along the Three Years of ECE: a Longitudinal Study, Research in Science Education (2020), Accessed at https://link.springer.com/content/pdf/10.1007/s11165-020-09931-z.pdf

[558] Keshia B Wagers, Elizabeth J Kiel, The influence of parenting and temperament on empathy development in toddlers, Journal of Family Psychology 2019, Vol 33 Issue 4, pp 391–400, p 391, citing EB Tone and EC Tully, Empathy as a "risky strength": A multilevel examination of empathy and risk for internalizing disorders, Development and Psychopathology 2014, Vol 26 (4, Pt 2), pp 1547–1565, and Carolyn Zahn-Waxler & Marian Radke-Yarrow, The origins of empathic concern, Motivation and Emotion 1990, Volume 14 Issue 2, pp 107–130

[559] Frederik von Harbou, A Remedy called Empathy: The Neglected Element of Human Rights Theory, Archives for Philosophy of Law and Social Philosophy, Vol 99, No 2 (2013), pp 133-151, p 133

[560] Keshia B Wagers, Elizabeth J Kiel (2019), The influence of parenting and temperament on empathy development in toddlers, Journal of Family Psychology, 33(4), 391–400

[561] Carolyn Zahn-Waxler & Marian Radke-Yarrow, The origins of empathic concern, Motivation and Emotion 1990, Volume 14, Issue 2, pp 107–130, p 110

Although early years education is pedagogically advanced in supporting preschool learners in the development of prosocial skills such as empathy, the learning of prosocial, rights-respecting behaviours in children always begins at home. When the caregiver role models positive behaviours such as kindness, empathy and compassion ("a sensitivity to the suffering in self and others, with a commitment to try and alleviate or prevent it", in Gilbert's definition[562]), these behaviours imprint upon the child and influence how that child engages with the world, and so turn the child into what Morgenroth et al call a 'role aspirant', one who is positively influenced by the role model and aspires to emulate their positive behaviours[563].

As Bergin writes, one of the most powerful ways for caregivers to teach children empathy is to behave empathetically in their own parenting style, mindfully modelling empathy and compassion in the way they handle misbehaviour, in the interest they express in their child's friendships, activities and experiences, how actively they listen to their children's stories and worries, and how effectively they utilise nonverbal and verbal cues to help their children clarify their own thoughts and feelings[564]. A rights-respecting home is a safe, supportive, nurturing family environment, where caregivers are "sensitive to the child's needs and distress", one of the most important parental responsibilities[565], with compassion in this setting teaching two important qualities that are integral to rights consciousness: the ability to detect suffering ("sensitivity and awareness") and the ability to respond to suffering ("taking action to alleviate and prevent" it)[566]. In early childhood, the primary caregiver is almost always the provider of "need fulfilment, and emotion and distress regulation", and so, as Kirby identifies, the various ways in which they model compassion-related competencies are "crucial to the provision of safe, predictable, and secure

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[562] The term 'role model' is used in this chapter with a nod to Morgenroth et al's Motivational Theory of Role Modeling, which defines 'role models' as "individuals who influence role aspirants' achievements, motivation, and goals by acting as behavioural models, representations of the possible, and/or inspirations" – see Thekla Morgenroth, Michelle K Ryan, Kim Peters, The Motivational Theory of Role Modeling: How Role Models Influence Role Aspirants' Goals, Review of General Psychology, Volume 19 Issue 4, pp 465-483, p 468; see also Paul Gilbert, The origins and nature of compassion focused therapy, British Journal of Clinical Psychology 2014, Vol 53, pp 6–41, p 19

[563] Thekla Morgenroth, Michelle K. Ryan, Kim Peters, The Motivational Theory of Role Modeling: How Role Models Influence Role Aspirants' Goals, Review of General Psychology, Volume 19 Issue 4, pp 465-483, p 466

[564] M Sue Bergin, Teaching Children Empathy, Brigham Young University Magazine 2011, Accessed at https://dhmontessori.org/wp-content/uploads/2015/01/empathy.pdf

[565] James N Kirby, Nurturing Family Environments for Children: Compassion-Focused Parenting as a Form of Parenting Intervention, Education Sciences 2020, Vol 10 Issue 1, 3, p 5

[566] *Ibid*

environments for children"[567]. These competencies might involve what he calls "social intelligence competencies"[568]: paying attention to children's stories and the retelling of their experiences; responding to distress calls with sympathy; and demonstrating empathy in understanding that certain behaviours in children may underpin other emotions, such as hunger, pain, or tiredness[569]. Children with high levels of empathy are generally more "socially sensitive" with higher levels of understanding of how their behaviour impacts those around them[570].

The modelling of rights-respecting behaviours within the home should extend to caregivers demonstrating positivity, generosity, and compassion in their social engagements and micro-interactions outside of the home, which children frequently observe and imitate (especially when those behaviours are displayed by the like-sex parent, as Hartup has observed[571]). As Kirby argues, the benefits of communities investing in and supporting families to raise children within a nurturing environment that normalises and promotes compassion whilst strengthening a "prosocial phenotype" has clear benefits for children's rights, their health, mental and social wellbeing, and for society overall[572].

3.3.2 Human rights at home for older children

During adolescence, the parent-child attachment (which provides "an initial sense of security and likeness with others"[573]) gives way to "peer affiliations and group memberships [which] allow individuals to identify with others who share similarities in appearance, interests and talents"[574]. As Lee et al note, this transition comes at a time in the young person's development in which social connectedness becomes integral in the "life transition" from parent, family, and home to the wider world of

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[567] *Ibid*

[568] *Ibid*

[569] *Ibid*

[570] Leanne C Findlay, Alberta Girardi, Robert J Coplan, Links between empathy, social behavior, and social understanding in early childhood, Early Childhood Research Quarterly, Vol 21, Issue 3, 3rd Quarter 2006, pp 347-359

[571] Willard W Hartup, Some Correlates of Parental Imitation in Young Children, Child Development, Vol 33, No 1 (Mar 1962), pp 85-96

[572] James N Kirby, Nurturing Family Environments for Children: Compassion-Focused Parenting as a Form of Parenting Intervention, Education Sciences 2020, Vol 10 Issue 1, 3, pp 2 of 15

[573] Richard M Lee, Matthew Draper, Sujin Lee, Social Connectedness, Dysfunctional Interpersonal Behaviors, and Psychological Distress: Testing a Mediator Model, Journal of Counseling Psychology 2001, Vol 48, No 3, pp 310-318, p 310

[574] *Ibid*

friends, study, recreation and work[575]. By the time the young person reaches adulthood, per Lee et al, "the aggregate of these past and present relationship experiences are gradually incorporated into one's overall sense of self, providing a relatively stable psychological sense of connectedness"[576], which Stavrova and Luhmann link with the positive social relationships that give life meaning[577].

In Barton's study on young people's views of human rights, it is at this age that ideas about the rights of others and about society are developed and derived from the exposure and "active engagement" of this age group "with a variety of influences that include not only formal educational programs but also peers, family, and wider social, cultural, and political contexts"[578]. As such, ideas about human rights depend on the young person's "personal and community experiences with human rights and broader public discourses about such issues"[579]. They may also depend on the experiences of parents, grandparents, and other family members, but they generally are considered in the context of other places, and other people. As Barton's research demonstrates, young people rarely talk about human rights occurring in their own communities or "immediate vicinities"; rather, human rights violations happen, in their minds, in other countries, and when human rights issues closer to home do come up, "they rarely related personal experiences, except for infrequent and vague mention of having witnessed discrimination or discriminatory attitudes"[580].

Older children arguably have the maturity and curiosity about the world to hold serious conversations about and pursue a genuine interest in matters of social justice and the historical background and geopolitical context of human rights emergencies and world-changing events, both abroad and at home, as they unfold on the news or in popular culture and discourse. As Tucker notes, "children and young people are more than capable of presenting detailed insights into what they

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[575] *Ibid*, p 317
[576] *Ibid*, p 310
[577] Olga Stavrova & Maike Luhmann, Social connectedness as a source and consequence of meaning in life, The Journal of Positive Psychology, Vol 11 No 5 2016, pp 470–479, p 470
[578] Keith C Barton, Young adolescents' positioning of human rights: Findings from Colombia, Northern Ireland, Republic of Ireland and the United States, Research in Comparative & International Education 2015, Vol 10 No 1, pp 48–70, p 51
[579] *Ibid*
[580] Keith C Barton, Young adolescents' positioning of human rights: Findings from Colombia, Northern Ireland, Republic of Ireland and the United States, Research in Comparative & International Education 2015, Vol 10 No 1, pp 48–70, p 61

see, believe and understand; they are capable of offering an informed level of analysis, to question where appropriate and thereby shape discussion and debate"[581]. For this reason, the words spoken and overheard by children matter immensely at any age, because micro-aggressions (subtle but harmful everyday interactions that perpetuate and aim to legitimise racial, stereotypical, gender-based or ethnic labelling, or other slurs such as those targeting women) can become so easily ingrained – in popular vernacular and in the behaviours that such language 'legitimises' – in the age of social media. The language that young people hear at home becomes the language they adopt themselves when talking with their peers in the wider community about women, about minorities, refugees, or the LGBTQ+ community, and it is in the community where words ("impotent" in themselves) gain "meaning and power", and where the language and concepts they are exposed to within their peer groups can influence the ideas they bring home, both home and community being essential vessels for social life[582].

Through family and peer interactions that constitute 'social life', adolescents develop lasting ideas about the world and about their own identities, determining who they are in the world through these interactions and, per Rollins, "through the filters of family stories that provide a sense of identity through historical time"[583]. Learning about their parents' and grandparents' histories and experiences as 'family stories' or 'intergenerational narratives' is important, according to Driessnack, because the ability to know these stories "creates meaning that goes beyond the individual to provide a sense of self, through time, and in relation to family. This expanded sense of self is referred to as our intergenerational self, which not only grounds an individual but also provides a larger context for understanding and dealing with life's

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[581] Stan Tucker, Editorial: political awareness or a day off school? Climate protest and young people, Pastoral Care in Education: An International Journal of Personal, Social and Emotional Development, Vol 37, Issue 2, pp 91-93, p 92

[582] As McConnell-Ginet writes: "Words (and meaningful silences) matter enormously in our lives. They enable us to cooperate, collaborate, and ally with one another - as well as to exclude, exploit, and subordinate one another. They script our performances as certain kids of people in certain social locations. They are politically powerful, both as dominating weapons that help oppress and as effective tools that can resist oppression. But words in and of themselves are impotent. It is the socially structured practices and historically situated circumstances constituting our social lives that pour content into words, endow them with meaning and power". See Sally McConnell-Ginet, Words Matter: Meaning and Power, Cambridge University Press 2020, p 1

[583] Judy A Rollins, The power of family history, Pediatric Nursing, May/June 2013, Vol 39 Issue 3, pp 113-114, p 113, citing R Fivush, J Bohanek, M Duke, The intergenerational self: Subjective perspective and family history, in Individual and collective self-continuity, Psychology Press 2008; MW Pratt, BH Fiese, Family stories and the life course: Across time and generations, Erlbaum (2004)

experience(s) and challenges"[584]. Through precious family stories and experiences, young people can gain a "sense of continuity and relatedness to heroes seems to serve the purpose in children of making them more resilient"[585], and be inspired by and take pride in the actions of those who have had to summon immeasurable courage in their lifetimes in order to stand up for what is just, to forcibly leave their homes and entire histories behind, to protect their rights or the rights of others – and often, simply to survive.

In this way, by understanding, identifying with, and learning lessons from the experiences of their ancestors, young people are able to proximally position themselves and their developing identities to world historical narratives and possibly, to human rights history. Given the scale of human rights events that have occurred in the last century, the chances that family histories might intersect at some point in the family tree with significant human rights events are reasonably high. Although 'human rights heroes' such as Mahatma Gandhi, Mother Teresa, Nelson Mandela, Archbishop Desmond Tutu, and many other public figures are legendary for their human rights activism and legacies, it must be remembered that the vast majority of human rights heroes are nameless, unknown in the public realm, and otherwise 'unremarkable', 'ordinary' people living relatively anonymous lives. Just as most families have what Rollins calls "family heroes, people who faced the worst and made it through"[586] and have become legendary in family folklore for their resilience and sense of survival over the adversities of life, many families will also have 'human rights heroes' in their personal histories – parents, grandparents and great-grandparents who have faced unimaginable trauma, persecution, hardship and indignity arising from human rights emergencies over the decades and centuries.

This also means that there are young people today who, despite living relatively privileged existences when compared with those of their recent ancestors, may be vulnerable to 'inherited' or 'intergenerational trauma' from their parents' and even grandparents' experiences[587], as refugees and asylum seekers or displaced

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584 Martha Driessnack, "Who Are You From?": The Importance of Family Stories, Journal of Family Nursing 2017, Volume 23 Issue 4, pp 434-449, p 434
585 Judy A Rollins, The power of family history, Pediatric Nursing, May/June 2013, Vol 39(3), pp 113-114, p 113
586 Judy A Rollins, The power of family history, Pediatric Nursing, May/June 2013, Vol 39(3), pp 113-114, p 113
587 Tori DeAngelis, The legacy of trauma, Monitor on Psychology, February 2019, Vol 50, No 2, p 36

members of diaspora groups exiled from their homelands because of political or religious persecution, as victims of torture and survivors of armed conflict, war crimes, or other events which may have catastrophic implications for human rights and human dignity. These events typically result in permanent displacement from one's country of origin and the brutal severance of that family's history as it relates to a particular place in the world, in what Luci calls the "displacement of the central axis of Self, in which the ego complex yields its position to other complexes, with a deep change in the organisation and functioning of self"[588]. These are all life experiences which leave deep-rooted scars of trauma and post-traumatic stress, and the adverse, prolonged and repeated impacts of such significant and highly traumatic life events are often internalised by the spouses, partners, children and other family members of those whose rights have been violated, passing from one generation to the next as the psychologically unsettling and often soul-destroying phenomenon of intergenerational trauma which in my view, is largely the underlying cause of many of our social ills in the world today.

3.3.3 Intergenerational and inherited activism

Just as trauma is inheritable by future generations, so too is activism. 'Inherited activism' refers to the passing on of beliefs, values, and moral reasoning from one generation to the next, a transfer of moral power from parent to young adult, so that human rights progress made by one generation (or indeed, human rights disasters created by said generation) can be carried forward (or corrected) by the next. One always needs to exercise caution in suggesting that what is done today is for the benefit of future generations of individuals, given the assertion of De George and of Macklin that human beings who have not yet been born cannot be bound as "the present bearer or subject of anything, including rights"[589]. Philips has called this "*the challenge of future people* ... especially urgent in the current times of climate change", citing the need to consider future generations in actualising human rights,

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[588] Monica Luci, Displacement as trauma and trauma as displacement in the experience of refugees, The Journal of Analytical Psychology, Vol 65, Issue 2, April 2020, pp 260-280, p 260
[589] Richard De George, The Environment, Rights, and Future Generations, in Ernest DeAlton Partridge, Responsibilities to Future Generations: Environmental Ethics, Prometheus 1981, pp 157–166, p 161; Ruth Macklin, Can Future Generations Correctly Be Said to Have Rights?, in Ernest DeAlton Partridge, Responsibilities to Future Generations: Environmental Ethics, Prometheus 1981, pp 151–156, p 151-152

and setting appropriate and relevant priorities now so that they effectively address human rights challenges of the future[590].

Yet, empowering the future generation with the skills, knowledge and motivation to care about their own rights and those of others enough to take action to protect, defend and extend them is about not about binding future generations to an immovable, unattainable international human rights framework or an irrelevant model of intergenerational justice that may be unfit for purpose decades from now. It is about, as Rawls noted in his *Theory of Justice*, creating "the conditions needed to establish and to preserve a just basic structure over time"[591], 'just basic structure' referring to how "major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation"[592]. It is, in other words, about creating a system of social cohesion that works long-term for the many and not just the few[593], with a more localised, personal, and meaningful connection to human rights at its heart.

Parents and caregivers play a vital role in embedding the principles and values within their children that empower human rights awareness activism in young people, and this influence extends beyond the instilling of empathy, self-compassion or social awareness as has been explored in previous sections, helping them to build the confidence to articulately defend themselves and others, or taking decisive action to intervene when human rights injustices are witnessed, experienced or exposed. It must extend to actively supporting the younger generation in their activism by recognising them as equal partners in human rights advocacy. This is intergenerational activism, which involves the holistic and dialogic empowerment of contemporary generations as legitimate political constituencies in their own right

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[590] Jos Philips, Actualizing Human Rights: Global Inequality, Future People, and Motivation, Routledge 2020, p 1
[591] John Rawls, Justice as Fairness, Harvard University Press 2001, p 159
[592] John Rawls, The Basic Structure as Subject, American Philosophical Quarterly, Vol 14, No 2 (Apr 1977), pp 159-165, p 159. In order to achieve this 'just basic structure' of society, which forms the basis of Rawls' social contract theory, one starts from the Rawlsian 'original position', defined as "a fair and impartial point of view that is to be adopted in our reasoning about fundamental principles of justice" – see Samuel Freeman, Original Position, Stanford Encyclopaedia of Philosophy, 3 April 2019, Accessed at https://plato.stanford.edu/entries/original-position/
[593] The many and the few is a concept beautifully encapsulated in Shelley's poem The Masque of Anarchy, which is about unjust abuse of power and the ability of the 'fearless and free' to "Rise, like lions after slumber ... shake your chains to earth like dew, Which in sleep had fallen on you: Ye are many - they are few!" Percy Bysshe Shelley, The Masque of Anarchy (1819), in The works of Percy Bysshe Shelley 1847, pp 231–235

(whose voices must be heard) *and* as equal subjects and beneficiaries of human rights (both now and in the future).

The concept of 'intergenerational activism', as an inclusive engagement strategy popularly deployed in the context of climate action, feminism and racial inequality, refers to "intentionally disrupting generational power dynamics" between adults and young people, following Bent's definition, by which young people's voices interact with equal weighting to those of their elders (a phenomenon especially prevalent in the youth-led climate change movement)[594], where both generations benefit in equal parts from the interaction by learning from each other and coming to understand each other in the process. As Brown notes:

> "*As adults, we don't think much about the "inter" in intergenerational activism. We talk a lot about what we do for youth – the support we give, the sense of perspective we offer, the resources and contacts we provide, the conditions we create – but not so much about what we learn from youth, and how we are challenged, affirmed, and transformed by our interactions with them*"[595].

This requires, as Bent identifies, "sustained trust, respect, partnership, transparency among members" of contemporary generations in order for intergenerational activism to effectively support the realisation of human rights in the community[596], noting that 'community rights' are not formally recognised nor defined as such in international human rights law[597]. Nonetheless, such rights impact a "broad range of groupings including minorities, rural communities and other kinds of groups" as the Danish Institute for Human Rights identifies[598], especially when "there may be commonalities between community rights and indigenous peoples' rights" and where economic projects or policies interfere with rights and resources, in ways that adversely impact whole communities, not just individuals[599].

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[594] Emily Bent, Intergenerational Activism and the Ethics of Empowering Girls, Girlhood Studies Vol 9 No 3, Winter 2016, pp 105-121, p 108
[595] Lyn Mikel Brown, The Transformative Power of Intergenerational Activism, 3 January 2017, Accessed at https://www.edweek.org/leadership/opinion-the-transformative-power-of-intergenerational-activism/2017/01
[596] Emily Bent, Intergenerational Activism and the Ethics of Empowering Girls, Girlhood Studies Vol 9 No 3, Winter 2016, pp 105-121, p 108
[597] Danish Institute for Human Rights, Community Rights, Accessed at https://biz.sdg.humanrights.dk/salient-issue/community-rights
[598] *Ibid*
[599] *Ibid*

Human rights activism at the local level often shines a light on uncomfortable truths that contradict narratives perpetuated by the state, with Izsák-Ndiaye noting that socioeconomic concerns in particular "often manifest in intergenerational hostility, false and harmful stereotyping, negative discourse about youth in the media, and disapproval and rejection of their activities by their immediate and wider community"[600]. Human rights activism, by its nature, threatens the status quo and challenges entrenched political norms, so when young people engage in it, they open themselves up to the risk of being delegitimised and undermined as 'radicals', 'lefties', 'social justice warriors', or 'snowflakes'. Thanks to the visibility of young change agents such as Malala Yousafzai and Greta Thunberg[601], there is growing recognition that young people have long been, and remain "underrepresented in, or totally excluded from, formal decision-making processes … despite overwhelming evidence that when youth are engaged, when their voices are genuinely heard and taken into account, when they are empowered and can influence decisions, there are multiple benefits for societies at large"[602]. Youth-led activism has been recognised by the UN High Commissioner for Human Rights, in the foreword of a 2021 report on protecting young people in the civic sphere, as being:

> "… always been at the forefront of change. They challenge injustice and inequalities and push for participation and accountability. They are often extremely creative and inventive when it comes to pointing democratic deficits and discrimination. They organize peaceful protests to restrictions on access to education and employment, election results, advocate for peace and climate action, and fight for non-discrimination and equality. Countless times, youth have been successful in influencing debates of national and international importance and prompting social change"[603].

Role modelling prosocial, pro-rights behaviour is a clear strategy to fostering self-awareness, self-accountability, and the motivation within children and adolescents to act on behalf of the self and marginalised, silenced, and disenfranchised others when confronted with an unjust situation. As Tucker notes, "some children and

[600] Rita Izsák-Ndiaye, If I Disappear: Global Report on Protecting Young People in Civic Space, Office of the Secretary-General's Envoy on Youth 2021, p 6, Accessed at https://www.un.org/youthenvoy/wp-content/uploads/2021/06/Global-Report-on-Protecting.-Young-People-in-Civic-Space.pdf
[601] Emma Marris, Why young climate activists have captured the world's attention, Nature, 18 September 2019, Accessed at https://www.nature.com/articles/d41586-019-02696-0
[602] Rita Izsák-Ndiaye, If I Disappear: Global Report on Protecting Young People in Civic Space, Office of the Secretary-General's Envoy on Youth 2021, p 1
[603] *Ibid*

young people will want to actively seek out places and spaces where they can pursue their ideas and opinions, and present alternative possibilities that might on occasions directly oppose those advocated by adults"[604]. Embracing intergenerational activism means contemporary – older and younger – generations working *together* to exchange experiences and views (even when they are in opposition to those held by their elders) and mentoring *each other* (avoiding normative assumptions that knowledge can only legitimately flow from the elder to the younger generation). It requires both generations to do the work of challenging sociocultural normative deference to elders (which Curry et al identify as one of seven moral behaviours consistent across sixty societies[605]), and for adults to embrace what Tucker identifies as the 'pastoral element' of intergenerational activism, as uncomfortable as that may be: *"Are we willing to give young people space: to take risks; to locate themselves in the life worlds via their own experiential lenses; to deal with the fallout that may occur when adult and child perspectives differ?"[606]*

3.4 Living human rights values as a family

As the previous sections have articulated, the confidence to intervene on behalf of another human being emanates from an inherent sense of compassion and from empathy, motivated by what Santos calls an "external solidarity"[607] and mobilised by love, which as Nussbaum has suggested, can "motivate citizens to work for liberal justice and to give emotional force to aspirations to equality"[608]. This confidence is what compels us as human beings to confront human rights problems when they manifest in our everyday lives and in our local communities, such as hate crime, race discrimination, misogyny, poverty, and homelessness[609].

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[604] Stan Tucker, Editorial: political awareness or a day off school? Climate protest and young people, Pastoral Care in Education: An International Journal of Personal, Social and Emotional Development, Vol 37, Issue 2, pp 91-93, p 92

[605] Oliver Scott Curry, Daniel Austin Mullins, and Harvey Whitehouse, Is It Good to Cooperate? Testing the Theory of Morality-as-Cooperation in 60 Societies, Current Anthropology, Vol 60, Number 1, February 2019, pp 46-67, p 46

[606] Stan Tucker, Editorial: political awareness or a day off school? Climate protest and young people, Pastoral Care in Education: An International Journal of Personal, Social and Emotional Development, Vol 37, Issue 2, pp 91-93, p 92-93

[607] Felipe G Santos, Social movements and the politics of care: empathy, solidarity and eviction blockades, Social Movement Studies, Vol 19 2020, Issue 2, pp 125-143, p 126

[608] Elizabeth Brake, Love and the Law, The Oxford Handbook of Philosophy of Love, p 2

[609] Stuart Isaacs, Social Problems in the UK: An Introduction, Routledge 2021, p 1-5

In the context of human rights, compassion – in Sznaider's view – is "an organised, public response to wrongdoing … more than 'just' sentiment; it is revolt against contempt, torture, humiliation and pain. It is an affirmation of humanity – the organized campaign to lessen the suffering of strangers – and a distinctly modern form of morality"[610]. For von Harbou, empathy is "the neglected element of human rights theory", and its contributions to the development of human rights (which in his view prescribe a telic, world-to-mind "minimal morality") have gone largely unrecognised in the "evolution of human rights standards"[611]. He writes:

> "While the cultural, historical and rational determinants of the development of our present human rights regimes are widely acknowledged and described in human rights literature, the contributions of empathy - as, more generally, emotions - to the evolution of human rights standards remain almost unexplored. This is all the more surprising since ... the emotional engagement with the plight of others, specifically generated by compassion and empathy, seems to be a necessary precondition for any motivation to truly respect another person's interests, that is, among others, her or his rights as a human being"[612].

Although there is a "more or less obvious" connection between empathy and human rights when it comes to certain rights over others (and von Harbou offers as an example the prohibition of torture; others include the right to life, or the right to work, to express oneself freely, or to receive an education), he also argues that *all* rights are substantively linked not only to human rights and principles of justice and equality, but to "the human propensity to empathise and sympathise with others"[613]. This is especially relevant to this research because it is this propensity for empathy and compassion that could help to propel human rights culture from passive but abstract appreciation of human rights to empowering the 'ordinary' human being to protect, respect and defend human rights in their own communities and their immediate spheres of consciousness, in all the small places close to home. In rights-respecting families, children and young people develop 'social mindfulness', defined as "seeing and considering the needs and wishes of others before making a

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[610] Natan Sznaider, Compassion, Cruelty, and Human Rights, World Suffering and Quality of Life, Social Indicators Research Series, Vol 56 Springer 2015, pp 55-64, p 55
[611] Frederik von Harbou, A Remedy called Empathy: The Neglected Element of Human Rights Theory, Archives for Philosophy of Law and Social Philosophy, Vol 99, No 2 (2013), pp 133-151, p 134
[612] *Ibid*
[613] *Ibid*, p 149

decision", or "active rather than reactive prosociality"[614], which according to Van Doesum et al, "involves anticipating the needs of others by proactively shaping situations with the intent to benefit others, whereas reactive prosociality involves responding to the opportunities that arise"[615]. Empathy, compassion, and proactive social mindfulness, as the previous sections have argued, are integral to the actualisation of human rights in the local context, because as Van Doesum et al note, "being socially mindful is holding others in mind *unsolicited*, thus by one's own initiative. It opens interpersonal negotiations by assigning others an *a priori* place of equality"[616].

Consciously nurturing empathy and compassion in children towards others is a foundational step towards helping them to recognise their own fundamental right to a dignified human existence in a nurturing, rights-respecting environment, as a human being with "intrinsic worth, ie. dignity" and who is "above all price"[617]. As such, they are a part of the wholeness of humanity where, once superficial social and economic classifications are stripped away, we are all human beings with a moral responsibility to act humanely and conscientiously towards each other, compelled – in the Kantian view – to "act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only"[618]. As human beings who are rational beings capable of reasoning over our own conduct and behaviour[619], of acting in such rational ways that through our actions we "could be a legislator of universal laws"[620], and of coming to our own "rational conception of what is best", we are obliged to "a strict duty of beneficence" toward others, per Rachels; "we must strive to promote their welfare; we must respect their rights, avoid harming them, and generally 'endeavour, so far as we can, to further the ends of others'"[621].

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[614] Niels J Van Doesum, Reinout E de Vries, Arjan AJ Blokland, Jessica M Hill, David M Kuhlman, Adam W Stivers, Joshua M Tybur & Paul AM Van Lange, Social mindfulness: Prosocial the active way, The Journal of Positive Psychology, Vol 15 2020, Issue 2, pp 183-193, p 183
[615] *Ibid*
[616] *Ibid*, p 189-190
[617] James Rachels, Kantian Theory: The Idea of Human Dignity, in The Elements of Moral Philosophy, Random House 1986, pp 114-17, 122-23
[618] Immanuel Kant, The Categorical Imperative, in the Groundwork of the Metaphysics of Morals (1785)
[619] *Ibid*
[620] *Ibid*
[621] James Rachels, Kantian Theory: The Idea of Human Dignity, in The Elements of Moral Philosophy, Random House 1986, pp 114-17, p 122-23

Proactive social mindfulness is present when empathic, compassionate individuals take action to remedy social injustices that adversely impact human rights of those in their communities and societies, even when the social issues in question do not directly or personally impact them, but out of an altruistic concern for the wellbeing of others, even for those one does not personally know (or, as Von Harbou puts it, "deliberately striving for the wellbeing of another person"[622]). At community level, Santos has coined the term *conscience entrepreneurs* to refer to "individuals and groups who initiate a social movement … but will not benefit directly from the accomplishment of its goals"[623]. The furthering of the ends of others drives human rights advocacy and activism and at the local level, this is inherent in local volunteerism, and in direct action and engagement with and on behalf of local charities. Volunteerism usually takes place in community places, such as women's refuges, halfway houses, places of worship, or youth centres, all places that offer active support and immediate relief to the marginalised victims of socioeconomic deprivation, crime, abuse and injustice. One need not look far in their own communities to see that violations of fundamental rights and human dignity do not just occur overseas, to other people in other nations – they are unfolding in real time, on our doorsteps, in our town centres, and on our city streets. These, for many, constitute moral shocks which are "often the first step toward recruitment into social movements", per Jasper[624], which "occur when an unexpected event or piece of information raises such a sense of outrage in a person that she becomes inclined toward political action, whether or not she has acquaintances in the movement"[625] and explain why people become so impassioned about a movement or human rights issue to which they may have no pre-existing or personal relationship.

Volunteerism is known to positively impact the wellbeing of volunteers, increase social capital, and strengthen social cohesion, per Grönlund and Falk[626]; yet on the

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[622] Frederik von Harbou, A Remedy called Empathy: The Neglected Element of Human Rights Theory, Archives for Philosophy of Law and Social Philosophy, Vol 99, No 2 (2013), pp 133-151, p 136

[623] Felipe G Santos, Social movements and the politics of care: empathy, solidarity and eviction blockades, Social Movement Studies, Vol 19 2020, Issue 2, pp 125-143, p 126

[624] James M Jasper, The Emotions of Protest: Affective and Reactive Emotions in and around Social Movements, Sociological Forum, Vol 13, No 3 (Sep 1998), pp 397-424, p 409

[625] *Ibid*, p 409, citing James M Jasper and Jane D Poulsen, Recruiting strangers and friends: Moral shocks and social networks in animal rights and anti-nuclear protests, Social Problems Vol 42, pp 493-512 and James M Jasper, The Art of Moral Protest: Culture, Biography and Creativity in Social Movements, University of Chicago Press 1997, p 106

[626] Henrietta Grönlund & Hanna Falk, Does it Make a Difference? The Effects of Volunteering from the Viewpoint of Recipients – A Literature Review, Diaconia, Vol 10, No 1, pp 7-26, p 7

personal level it is an "experience of participation" based on "reciprocity, neutrality and presence", all fundamental to alleviating loneliness (which they define as "a negative psychological state in which an individual experiences distress because of perceived social isolation", in which the profound human need for interaction and affection goes unfulfilled[627]). In this way, the volunteer empowers the victim to develop a sense of self-worth, agency, and self-care, "reaffirming a positive self-image and a positive outlook toward their living environment"[628] and contributing towards rehabilitation and healing. Following Bourdieu's concept of 'habitus' as a "system of predispositions" where people become habitualised to "certain modes of conduct through everyday practice"[629], Janoski et al note that for people who volunteer in the earlier parts of their lives, there will be "continuity in volunteering over the life span" as volunteerism becomes a 'habit' ("part of a set of routines, habits, and practices in which people become involved") to which people become "attached"[630]. For this reason, it is vital to creating a culture of rights consciousness that parent volunteers involve their children in their activities wherever it is safe and appropriate to do so, so that active citizenship becomes 'habit'.

For the volunteer, the "experience of participation" provides a structural outlet to transpose strong oppositional feelings towards injustice into decisive action, something which (as Janoski et al point out) only a small minority ultimately do[631], largely because of barriers that exist at personal, institutional and structural levels[632]. Beyond volunteerism, human rights activism calls for direct and persistent engagement with representative democracy and local government, in an age where politics has "become dominated by identity- and issue-based activism"[633] and signing one's name to a petition[634] is a 'micro-act' of what Vidgen and Yasseri call

[627] *Ibid*, p 21
[628] *Ibid*
[629] Thomas Janoski, March Musick and John Wilson, Being Volunteered? The Impact of Social Participation and Pro-Social Attitudes on Volunteering, Sociological Forum, Vol 13, No 3 (Sep 1998), pp 495-519, p 497
[630] Thomas Janoski, March Musick and John Wilson, Being Volunteered? The Impact of Social Participation and Pro-Social Attitudes on Volunteering, Sociological Forum, Vol 13, No 3 (Sep 1998), pp 495-519, p 499, 501
[631] *Ibid*, p 496
[632] Kris Southby, Jane South & Anne-Marie Bagnall, A Rapid Review of Barriers to Volunteering for Potentially Disadvantaged Groups and Implications for Health Inequalities, VOLUNTAS: International Journal of Voluntary and Nonprofit Organizations, Vol 30 (2019), pp 907–920, p 908
[633] Bertie Vidgen & Taha Yasseri, What, when and where of petitions submitted to the UK government during a time of chaos, Policy Sciences 2020, Volume 53, pp 535–557, p 535
[634] Petitions are memorably described as a "tool for the voicing of grievances", per Melo and Stockemer – see DF Melo & D Stockemer, Age and political participation in Germany, France and the UK: A comparative analysis, Comparative European Politics 2014, 12(1), pp 33–53; Bertie Vidgen & Taha Yasseri, What, when and where of petitions submitted to the UK government during a time of chaos, Policy Sciences 2020, Volume 53, pp 535–557

"unconventional political participation … one of the few ways in which citizens can easily and legally raise issues in between elections"[635]. Online petitions in the social media age are seen as a means of 'crowdsourcing' citizen engagement in policymaking as a way for governments to legitimise outcomes and promote transparency (or at least, the illusion of transparency)[636]. As such, they are, according to Rosenberger et al, "a long-established right of expression and participation that has gained increased public attention and political relevance through online technologies and social media"[637]. Apart from being a tool for citizen-led democracy (noting that not all petitions originate with parliaments or governments and that many, especially in the digital space, offer popular "alternatives for political participation and mobilisation"[638]), petitions serve as a conduit for the expression of emotion and a barometer on the human rights issues that aggrieve us. In this way, petitions become a personal expression of our innate desire to do good in the world, but they are most effective when they are followed up with action more broadly, active citizenship more specifically, defined by Janoski et al as:

> *"… being active, taking responsibilities, voting with adequate information, writing to public officials, joining organisations and volunteering, trying to improve the country, working to improve or better the nation, working to better the community, being active in community affairs, being interested in school affairs, helping people, working within the system to change things, and trying to change unjust laws"[639].*

This activity might take the form of supporting existing campaigns; writing letters to one's representative in Parliament, Congress or Senate; or indeed, running for political office – and those who do, should run on an openly pro-rights platform to correct the trend of politicians labelling human rights as a taboo topic and steering clear of human rights for fear of alienating those who do not believe in the

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[635] Bertie Vidgen & Taha Yasseri, What, when and where of petitions submitted to the UK government during a time of chaos, Policy Sciences 2020, Volume 53, pp 535–557, p 536

[636] V Lehdonvirta & J Bright, Crowdsourcing for public policy and government, Policy and Internet 2015, Vol 7 Issue 3, pp 263–267, p 265; Bertie Vidgen & Taha Yasseri, What, when and where of petitions submitted to the UK government during a time of chaos, Policy Sciences 2020, Volume 53, pp 535–557, p 536

[637] Sieglinde Rosenberger, Benedikt Seisl, Jeremias Stadlmair & Elio Dalpra, What Are Petitions Good for? Institutional Design and Democratic Functions, Parliamentary Affairs, Volume 75, Issue 1, January 2022, pp 217–237, p 217

[638] Sieglinde Rosenberger, Benedikt Seisl, Jeremias Stadlmair & Elio Dalpra, What Are Petitions Good for? Institutional Design and Democratic Functions, Parliamentary Affairs, Volume 75, Issue 1, January 2022, pp 217–237, p 220

[639] Thomas Janoski, March Musick and John Wilson, Being Volunteered? The Impact of Social Participation and Pro-Social Attitudes on Volunteering, Sociological Forum, Vol 13, No 3 (Sep 1998), pp 495-519, p 501

universality, effectiveness or necessity of human rights. Those of us whose circumstances prevent us from entering local politics could instead seek out – and expose our children to – as many opportunities to exercise active citizenship as possible, consuming and sharing credible human rights information, actively fighting rights misinformation, and importantly, exercising their right under Article 11 to assemble and associate, joining peaceful protests wherever we can – and taking our children wherever and whenever it is safe to do so. Older children should be encouraged not only to attend peaceful demonstrations and other protest activities but even to organise them; as Tucker has observed, many of the climate change protests held in the UK since 2018 were organised by young people themselves[640].

3.5 Conclusion

For those in 'ideal' holding environments, who live in 'good' families and 'decent' homes, small starts in every 'good *enough*' home can contribute to the creation of human rights culture that compels a common social good as – per Finnis – "a set of conditions which enables members of a community to attain for themselves reasonable objectives, or to realise reasonably for themselves the value(s), for the sake of which they have reason to collaborate with each other (positively and/or negatively) in a community"[641]. By personalising, internalising, and localising human rights culture, by infusing our family homes and our rural and urban community spaces with human rights values and importantly, with decisive citizen action, we both create and support normative change towards a 'just basic structure' that is fit for the future of human rights. In doing so, we reiterate the Rawlsian position that human dignity is the 'overlapping consensus' in our increasingly multipolar world and in all our diverse and politically discontented societies – as, in Rawls' words, "a consensus in which it is affirmed by the opposing religious, philosophical and moral doctrines likely to thrive over generations in a more or less just constitutional democracy"[642] (a consensus, in other words, that transcends political, religious, and social divisions).

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[640] Stan Tucker, Editorial: political awareness or a day off school? Climate protest and young people, Pastoral Care in Education: An International Journal of Personal, Social and Emotional Development, Vol 37, Issue 2, pp 91-93
[641] George Duke, Finnis on the Authority of Law and the Common Good, Cambridge University Press 2013, p 46
[642] John Rawls, The Idea of an Overlapping Consensus, Oxford Journal of Legal Studies, Vol 7, No 1 (Spring 1987), pp 1-25, p 1

However, it is acknowledged that the global reality of the situation of children who have been failed by those with the privilege of bearing them and caring for them is far from ideal. For the lucky ones, home is a "haven" of safety, protection, and belonging[643], but for many others, as Ahrentzen points out, home is a place of violence[644], a place – as Moore argues – that "disappoints, aggravates, neglects, confines and contradicts as much as it inspires and comforts us"[645]. As Kirby notes: "The style of parenting a child receives has profound long-term impacts on that child's life. Yet, the rates of child maltreatment globally are high (in both developing and developed countries), indicating that many children around the world are being raised in toxic environments"[646], and "many children around the world continue to be raised in environments characterized by punishment, emotional and physical abuse, and neglect"[647]. Not all families and homes provide children with the holding environment that is conducive to a rights-friendly upbringing and of course, not all children will be receptive to a rights-friendly upbringing, especially if they are vulnerable to 'inherited' or 'intergenerational' trauma from their parents' lived experiences as refugees, as survivors of war, conflict, and abuse, or those in the throes of addiction, mental health crisis, or other traumatic events[648]. John Stuart Mill and Harriet Taylor Mill famously highlighted the effect of violence and abuse on children in the family environment[649], which sadly plays out every day in a horrifyingly high number of families, across all societies in every corner of the world. Societal issues arising from trauma, abuse, addiction, and economic marginalisation borne of deep-rooted and normatively entrenched inequality have deprived families of stability and social mobility, and children of a secure, safe holding environment, exacerbating serious social issues such as civil unrest, poverty, and crime.

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[643] Louise Chawla, Childhood Place Attachments, in Place Attachment, Human Behavior and Environment (Advances in Theory and Research), Vol 12, Springer 1992, p 63-86; also see Lynne C Manzo, Beyond house and haven: Toward a revisioning of emotional relationships with places, Journal of Environmental Psychology 2003, 23(1), pp 47-61, p 48-49

[644] Sherry B Ahrentzen, Home as Workplace in the Lives of Women, in I Altman & SM Low (eds), Place Attachment: Human Behavior and Environment, Plenum Press 1992, pp 113-138, p 113

[645] Lynne C Manzo, Beyond house and haven: Toward a revisioning of emotional relationships with places, Journal of Environmental Psychology 2003, 23(1), pp 47-61, p 57

[646] James N Kirby, Nurturing Family Environments for Children: Compassion-Focused Parenting as a Form of Parenting Intervention, Education Sciences 2020, 10(1), 3, p 1

[647] *Ibid*

[648] Tori DeAngelis, The legacy of trauma, Monitor on Psychology, February 2019, Vol 50, No 2, p 36

[649] Rita Manning, Chapter 11: The Tyranny of Bodily Strength: Harriet Taylor Mill and John Stuart Mill on Domestic Violence, in Analyzing Violence Against Women (ed Wanda Teays), Library of Public Policy and Public Administration 12, pp 151–165, p 154

Children in unhealthy home environments would clearly benefit profoundly from rights-centred education, culture, and care, and from knowing that they, as children, have rights in international law that are designed to compel their states to protect and nourish them when their primary caregivers are unable, unwilling or unequipped to do so. Children in such home environments are also the least likely members of society to enjoy opportunities to engage with human rights education, information, and culture. It is therefore critical that professionals who intervene in the lives of the marginalised, the innocent, the oppressed, the abused, and the deprived – key among them, teachers, social workers and community carers – are guided throughout their early vocational study and in their later / continued professional training to develop a rights-based teaching or social care practice that explicitly addresses the gaps in rights education for children from homes in crisis. Such training should equip key workers with sound knowledge of children's rights that they can impart to the children they come into contact with, and should encourage practitioners to adopt a trauma-informed approach in all their interactions with families in crisis, but *especially* with children.

Many teachers and social workers already role model empathy, prosocial behaviour, and respect for others in the relationships they build with children in their classrooms or in their care who live in homes where neither respect for human rights nor empathic, prosocial behaviour can be effectively modelled. However, formal training on how human rights realisation can transform the lives of families and children in crisis is our best hope for ensuring that children are fully informed and inherently inspired, no matter their background, to develop the prosocial, pro-rights behaviours and attitudes that human rights culture thrives upon. Rights education initiatives focused on families in crisis should be designed to proactively prevent negative generational patterns from repeating and re-embedding themselves in children, at three critical levels of intervention which I briefly outline here but which warrant much deeper analysis and investigation in a future research project on promoting rights education, culture, and values to families in crisis and children in care[650].

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[650] In this section, I have been inspired by a US Department of Health framework for preventing maltreatment of children and breaking cycles of neglect, abuse and poor family functioning – see US Department of Health & Human Services, Child Welfare Information Gateway: Framework for Prevention of Child Maltreatment,

The first opportunity to promote rights-based, rights-positive parenting is at the start of a child's life, through the NGO-led creation of public information and advocacy programmes that raise awareness of the transformative impact that a rights-based, positive parenting approach can have on family life. This is an intervention strategy that can be most effectively implemented by teachers and other community leaders who interact regularly with younger children and their parents, such as nursery, breakfast / after school club staff, social workers, health visitors, and leaders of play groups and other community-based venues such as food banks where young families may gravitate. The second level of prevention is designed to reach high-risk families where crisis is likely due to poverty, parental addiction, or mental health challenges, and might include rights education programmes in schools in low-income communities, in substance treatment programmes for mothers or families; and as part of maternity care for new parents or respite support for families with special needs and disabled children.

The third level of intervention should be designed to support children who have already experienced human rights violations and neglect and maltreatment by making them aware of how their rights have been violated, facilitating structured interaction with families where prosocial behaviours can be adopted, and filling important role modelling gaps through rights-focused community clubs or classes (such as art therapy or sport). Access to mental health services for families in crisis remains an urgent and deeply underfunded priority in the United Kingdom and most of the rest of the world, but a prevention strategy that encompasses as many of these approaches as possible could very well help to heal children who are hurting, and encourage them to reclaim their dignity, respect the dignity of others around them, and make consciously prosocial choices about their own behaviours and interactions with their peers.

Clearly, these approaches speak to an urgent need to make human rights education and specialised, trauma-informed practitioner training more readily available (and ideally, mandatory) for social workers, teachers from early years education through

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Accessed at https://www.childwelfare.gov/topics/preventing/overview/framework/; also see Howard J Parad and Gerald Caplan, A Framework for Studying Families in Crisis, Social Work, Vol 5 No 3 1960, pp 3-15

to university lecturers, local community leaders, mental health practitioners, medical and midwifery staff, charity and religious leaders – essentially, to all current and future members of the professions that provide interventionist support to families in crisis and the children who are subsequently affected. The key to human rights at home, in the community, and at local level is tackling economic injustice where it occurs on our doorsteps, which requires serious political will that is at this time fundamentally and ideologically absent. The concept of 'Human Rights Cities' could well represent a promising opportunity for human rights culture to reach marginalised members of urban communities, an exciting premise that also warrants its own research project and further exploration of the EU Fundamental Human Rights Agency's framework for "explicitly linking the work of the city to human and fundamental rights obligations ... [to] ultimately help make fairer societies for all"[651] – a promising opportunity for the localisation of human rights which warrants further focus in future research. In the meantime, our best hope in the near term is human rights education, which can inform and inspire individuals to mobilise and influence policy change at national level whilst living that change in their own communities and in their own families. This is a core recommendation of this thesis which is examined in more depth in the later dedicated chapters on human rights education[652].

Lastly, if one views human dignity, following Reardon[653], as the golden thread that runs through and binds all three spheres within Hegel's model for an 'ethical life', then it warrants a final mention here as being at the heart of family life, the bedrock of inclusive, equitable and just communities that underpins social life, which Burns describes as "the pervasive or inclusive factor in all the processes by which stones and stars and triangles are in contact with us"[654]. The fulfilment of human dignity, as Reardon has noted, is at the heart of human rights education, which assumes that:

> *"… a society conducive to the fulfillment of human dignity derives from the honoring of a social contract by observing fundamental rules of behavior*

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[651] EU Fundamental Rights Agency, How to become a Human Rights City: a new framework launched, 11 October 2021, Accessed at https://fra.europa.eu/en/news/2021/how-become-human-rights-city-new-framework-launched
[652] Please see Chapters 6, 7 and 8 in this thesis on the significance of human rights education and training, from early years to university, vocational and continued professional development, as well as lifelong learning.
[653] Betty A Reardon, A Developmental Sequence for Presentation of the Core Concepts, in Educating for Human Dignity: Learning About Rights and Responsibilities, University of Pennsylvania Press 1995, p 14
[654] CD Burns, The Philosophy of Social Life: IV Man and Society, Journal of Philosophical Studies, Vol 4, No 15 (July 1929), pp 367-378, p 373

respectful of the dignity and humanity of all members of the society. Thus respect for persons is the first and fundamental concept of this developmental sequence, as human dignity is the central concept of a values base for human rights"[655].

I conclude this chapter by summarising its most central argument, which is that by mainstreaming human rights culture as a common and minimum standard in our social institutions and societal interactions, we are setting future generations up to enjoy equity in human rights through what Thomas has called "successive definitions of the situation"[656]. In other words, if this generation acts now to build human rights equity, correct injustices in our own neighbourhoods, our own communities, and our own local government, then future generations will be much further along the path to true rights realisation and consciousness because of the legacies left by the generations of human rights defenders who came before them.

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[655] Betty A Reardon, A Developmental Sequence for Presentation of the Core Concepts, in Educating for Human Dignity: Learning About Rights and Responsibilities, University of Pennsylvania Press (1995), p 14
[656] The 'Thomas Theorem' of W.I. and DS Thomas is as follows: "If men define situations as real, they are real in their consequences" – see RS Smith, Giving Credit Where Credit Is Due: Dorothy Swaine Thomas and the "Thomas Theorem", The American Sociologist, Winter, 1995, Vol 26 No 4 (Winter 1995), pp 9-28

Chapter Four
Human Rights and the Infosphere I: Information as a Human Right and Human Rights *as* Information

4.1 Chapter Introduction

Law is deeply influential and relevant to the "defining circumstances" of our everyday lives[657], with the 'ordinary' citizen's level of legal awareness (of law, the legal institutions, and basic fundamental rights) playing a critical role in influencing their response when legal challenges arise, most commonly in their social and economic lives, but increasingly in their civil and political realities as well[658]. As this chapter will argue, when rights bearers engage with legal information in general and human rights information in particular, this level of legal awareness is nurtured and becomes essential to creating an information- and knowledge-based culture of human rights where rights bearers are informed and can confidently and authoritatively challenge human rights problems when they occur in their immediate spheres of consciousness and in their wider worlds. This is a central position in this research and one that is directly linked with Principle 1 in the R*b*D Framework, which calls for individuals to be empowered with knowledge of human rights history *and* access to the information that codifies, evidences and challenges that history.

Empowering a rights-respecting, rights-aware citizenry entails making objective, fact-based human rights information more accessible and human rights knowledge and understanding more attainable, towards the realisation of human rights wisdom. As individuals progress through life, situations compel their engagement with various kinds of information, and different legal problems may present the need to interact with various types of legal information. In the earlier parts of their lives, people may be more concerned with tenancy rights, equality law, education, race and gender discrimination, as well as socioeconomic issues, whereas in their later lives they might more commonly engage with issues of employment law, discrimination, land

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[657] Gillian K Hadfield and Jamie Heine, Life in the Law-Thick World: The Legal Resource Landscape for Ordinary Americans, in Beyond Elite Law: Access to Civil Justice in America, Cambridge University Press 2016, p 21
[658] Pascoe Pleasence, Nigel J. Balmer and Catrina Denvir, How People Understand and Interact with the Law, Cambridge 2015, (Project funded by the Legal Education Foundation), p i, Accessed at https://www.thelegaleducationfoundation.org/wp-content/uploads/2015/12/HPUIL_report.pdf

issues, family law, trusts, and inheritance. *All* of these categories for legal problems, which can be neatly categorised into precise legal practice specialisms, are arguably rooted in human rights because *all* are engaged with the protection of rights – property rights, the right to a family life, or the right not to be discriminated against at work, to give just a handful of examples, and can all be linked with a corresponding human right in the UDHR and subsequent treaty bodies. And yet, although law "reaches deep into our work and family lives", as Pleasence finds, "legal institutions, processes and services remain largely peripheral to everyday life"[659].

In addition, the majority of the population "systematically mispredict … the content of the law"[660], and rights bearers have "only limited comprehension of the extent to which law impinges upon contemporary life"[661], indicating a clear awareness-action gap that is triggered when legal information is searched for (typically on the internet) but the searcher struggles to translate that information into meaning. This gap arises from generally low levels of subjective legal empowerment, the purpose of which is, per Kolisetty, "empowering individuals to realise their rights and voice their demands more actively"[662]. Subjective legal empowerment is further defined by Golub as "use of the law to specifically strengthen the disadvantaged"[663], and by Gramatikov as "the self-belief that a person possesses and can mobilise the necessary resources, competencies and energies to solve particular problem of legal nature", noting that "people's beliefs in their ability to solve legal problems differ by type of problem distribution of power in important relationships, social support infrastructure, language and many other factors"[664]. The value of language, especially, cannot be underestimated; as Marcuse noted in *Reason and Revolution*, language is a person's "first actual community" through which they can "stake out [their] sphere of

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[659] Pascoe Pleasence, Nigel J Balmer and Catrina Denvir, How People Understand and Interact with the Law, Cambridge 2015, (Project funded by the Legal Education Foundation), p 66, Accessed at
https://www.thelegaleducationfoundation.org/wp-content/uploads/2015/12/HPUIL_report.pdf
[660] *Ibid*, p 26
[661] *Ibid*, p 63
[662] Akhila Kolisetty, Examining the Effectiveness of Legal Empowerment as a Pathway Out of Poverty: A Case Study of BRAC, Justice and Development Working Paper Series 2014, World Bank No 26, p 9, Accessed at
https://openknowledge.worldbank.org/handle/10986/17563
[663] Stephen Golub, What is Legal Empowerment? An Introduction, International Development Law Organisation 2010, p 1
[664] Martin Gramatikov and Robert Benjamin Porter, Yes, I Can: Subjective Legal Empowerment, Tilburg Law School Research Paper No. 023/2010

influence" and it also "makes it possible for an individual to take a conscious position against his fellows"[665].

Subjective legal empowerment is one of the "most influential factors associated with taking action to resolve legal problems"[666], as it helps to build confidence and develop the capacity to make sense of legal information, in order to take the most appropriate steps to protect or defend a particular right when it is attacked. This ability to cognitively deal with legal information is what constitutes legal literacy, which can be defined as a fundamental condition of effective legal empowerment of the individual, as the 'end user', through the ability to access, synthesise and correctly apply legal information to the legal problem at hand. End users of human rights information include policy makers, journalists, and as Capurro and Hjørland point out, "publishers, researchers, historians, lawyers, and teachers", who can all "be said to be professional information handlers in some fashion"[667], although as Probert notes, and as is reiterated throughout this chapter, beyond the "masses [of lawyers] who are most involved in law, there are many others besides lawyers who are involved in the technical and official parts of the legal process"[668].

Literacy, to borrow UNESCO's definition, is "the ability to identify, understand, interpret, create, communicate and compute, using printed and written materials associated with varying contexts", involving "a continuum of learning in enabling individuals to achieve their goals, to develop their knowledge and potential, and to participate fully in their community and wider society"[669]. Literacy is almost universally recognised as a fundamental human right by UNESCO, but there is no consensus on a universal definition of 'literacy' itself beyond "traditional skill-centred, functional, and individually focused definitions of literacy [which] have dominated the educational landscape", per Keefe and Copeland[670]. To Goody and Watt, literacy is

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[665] Herbert Marcuse, Reason and Revolution: Hegel and the Rise of Social Theory (1941), p 75

[666] Pascoe Pleasence, Nigel J Balmer and Catrina Denvir, How People Understand and Interact with the Law, Cambridge 2015, (Project funded by the Legal Education Foundation), p 137

[667] Rafael Capurro and Birger Hjørland, The Concept of Information, Annual Review of Information Science and Technology 2003, p 343-411, p 388

[668] Walter Probert, Reviewed Work(s): The Language of the Law by David Mellinkoff, Stanford Law Review, May 1964, Vol 16, No 3, pp 767-773, p 767

[669] UNESCO Institute for Statistics, Literacy, Accessed at http://uis.unesco.org/en/glossary-term/literacy

[670] Elizabeth B Keefe, Susan R Copeland, What is Literacy? The Power of a Definition, Research and Practice for Persons with Severe Disabilities, Vol 36, Sue 3-4, pp 92-99, p 95

a "technology of the intellect"[671], conjoining traditional forms of literacy (reading and writing) with "what counts as knowing in a complex technological society", per Spencer[672]. Here, traditional notions of literacy begin to divest under the pressure of rapid advancements in the technologisation of literacy, and the advent of new, digital, 'emergent literacies', a term Spencer used over three decades ago to refer to the shift away from classroom-based literacy towards non-traditional literacies of television, video, and gaming[673]. There are now many new, portable and rhizomatic models of literacy[674] – digital, visual, financial, legal, cultural, information and media literacies, all rapidly developing in different but converging directions in the age of digitisation and big data[675].

One of these literacies, 'legal literacy', which Freudenberg called "a critical component to ensuring that [people] are full members of society with the capacity to make a meaningful contribution"[676], is a fundamental concept within this chapter and this research overall, because it is directly concerned with subjective legal empowerment and aim to ensure that rights bearers are equipped with the legal knowledge, intellectual technologies, and digital, creative, or interpersonal skills to effectively problem-solve their own legal challenges in order to avoid being "disenfranchised and marginalised"[677]. Legal literacy is not about turning non-lawyers into legal experts, but rather, empowering them with a basic and fundamental knowledge of their own rights so they may exercise them confidently. As Freudenberg has noted, "simply making legal information available via pamphlets or websites is not enough"[678], as:

> *"… legal literacy does not mean that every person is being taught the detailed content of the law, as most are not training to be lawyers. Instead the aim is to*

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[671] Jack Goody, Literacy in Traditional Societies, Cambridge University Press 1975, p 1

[672] Margaret Spencer, Emergent literacies: a site for analysis, Language Arts, September 1986, Vol 63, No 5, Language Arts in Multicultural Education (September 1986), pp 442-453, p 443

[673] *Ibid*

[674] Literacies can be said to be 'rhizomatic' in the context of the work of Deleuze and Guattari who used this term to illuminate the inherent connectivity and relationships between sub-concepts emanating from one central overarching concept: "A rhizome ceaselessly establishes connections between semiotic chains, organizations of power, and circumstances relative to the arts, sciences, and social struggles" – see Gilles Deleuze and Felix Guattari, A Thousand Plateaus, University of Minnesota Press 1987, p 7

[675] David Buckingham, Defining digital literacy – What do young people need to know about digital media?, Nordic Journal of Digital Literacy 04/2006 (Volume 1), pp 263-277

[676] Brett Freudenberg, Beyond Lawyers: Legal Literacy for the Future, Australian Business Law Review Vol 45 No 5, pp 387-404, p 387

[677] *Ibid*

[678] *Ibid*

> *ensure that people have a fundamental knowledge of the legal system, their legal rights and obligations, as well as where to source assistance when faced with legal problems.*[679]

Legal literacy, according to Bingham, is fundamental to understanding and respecting the rule of law doctrine and the democratic traditions that emanate from it, and its achievement is highly dependent on law being "accessible and so far as possible intelligible, clear and predictable"[680], making legal literacy integral to the success of mainstreaming human rights culture and a key concept in this thesis insofar as individuals must be able to access the law and make sense of it in order to engage meaningfully with it. Simply, "if everyone is bound by the law they must be able without undue difficulty to find out what it is, even if that means taking advice (as it usually will), and the answer when given should be sufficiently clear that a course of action can be based on it"[681]. As Freudenberg rightly points out, the law already "presumes that citizens are legally literate, as ignorance of the law is not a defence"[682]. However, Pleasence observes that the legal profession, law, and "formal legal processes" are still largely considered to be "largely peripheral to the experience of 'everyday' legal problems"[683], with human rights discourse, according to de Burca, still stubbornly centred in 'top down' perspectives that have emphasised the "importance of international laws and institutions and their impact on national governmental, judicial, and bureaucratic elites to secure human rights reform"[684]. De Burca recalls Hopgood's juxtaposition between 'grassroots' human rights and 'elite' Human Rights[685] in which, she writes: "International institutions and their networks seem remote, bureaucratic, and detached from the concerns of communities and populations as well as being focused on their own institutional self-interest and agendas", whereas "it is at the community level where grassroots mobilisation takes place that passion and energy for change is generally to be found, and the level at

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[679] *Ibid*, p 388-389
[680] Lord Bingham, The Rule of Law, The Cambridge Law Journal, Vol 66, No 1 (March 2007), pp 67-85, p 69-70
[681] *Ibid*
[682] Brett Freudenberg, Beyond Lawyers: Legal Literacy for the Future, Australian Business Law Review Vol 45 No 5, pp 387-404, p 387, citing Y Roznai and N Mordechay, Access to Justice 2.0: Access to Legislation and Beyond, Hebrew University of Jerusalem Legal Studies Research Paper Series No 16-12 2015, p 5
[683] Pascoe Pleasence, Nigel J Balmer and Catrina Denvir, How People Understand and Interact with the Law, Cambridge 2015, (Project funded by the Legal Education Foundation), p 3
[684] Grainne de Burca, Reframing Human Rights in a Turbulent Era, Oxford University Press 2021, p 11
[685] *Ibid*, citing Stephen Hopgood, The Endtimes of Human Rights, Cornell University Press 2013

which both the experience of deprivation or repression and the impetus, ideas, and action for reform tend to be situated"[686].

As this chapter will explain, there are well-established difficulties for non-lawyers in accessing human rights information, which brings into focus the significance of making legal information open and accessible to key publics in line with the open justice principle, recalling Bentham's assertion in *Works* that: "[Publicity] is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial"[687]; Lord Hewart's infamous dictum that open and publicised court proceedings ensure that not only is justice done, but that it should also be *seen* to be done[688]; and Hegel's observation that through "publicity of the law and through general customs the state removes … the element of chance"[689]. This, in turn, calls into question the availability and accessibility of 'free' law, and how and where mainstream, 'general public' users[690], those outside of the legal profession or international development circles, should be able to search for, find, and apply legal and human rights information. The obvious go-to for information of any kind in the digital age is, of course, the internet, but a cursory search of 'human rights' yields over 4 billion search results[691], demonstrating extreme 'information overload' which would invariably confuse the curious and inevitably alienate the casual reader of rights information. Here, the chapter explores the need for specialised digital hubs of human rights information, where valuable human rights knowledge can be gathered and presented in one easily navigable, well-organised and well-presented place, and argues that such resources, especially if specialised by right or by region, might prove invaluable to mainstreaming a dialogic,

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[686] *Ibid*, p 12

[687] Jeremy Bentham, The Collected Works of Jeremy Bentham (1789), Vol 4, p 316, also cited in Denise Meyerson, Why Should Justice Be Seen to Be Done?, Criminal Justice Ethics, Vol 34, Issue 1 2015, pp 64-86, p 67

[688] In R v Sussex Justices, ex parte McCarthy [1924] 1 KB, at 259, Lord Hewart infamously said: "It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done".

[689] Georg Wilhelm Friedrich Hegel, Elements of the Philosophy of Right (Grundlinien der Philosophie des Rechts) 1820, p 132-153, p 112, Translated by SW Dyde, Accessed at https://socialsciences.mcmaster.ca/econ/ugcm/3ll3/hegel/right.pdf

[690] General public users as used here refers to "ordinary people, especially all the people who are not members of a particular organization or who do not have any special type of knowledge" – see Cambridge Dictionary, 'the general public', Accessed at https://dictionary.cambridge.org/dictionary/english/general-public

[691] This number reflects the search results for a search conducted on Google of 'human rights', last updated on 26 November 2021.

information-based 'rights consciousness' for the post-Covid era[692]. In my view, mainstreaming of human rights information takes place when the dialogic communication and discourse around that information has reached such a level that it constructively impacts institutional order and inspires institutional and individual change, as evidenced by recent advancements in gender, LGBTQ+ and climate change discourses.

Making information on human rights available and accessible is one matter; quite another is the challenge of being able to make sense of it so that it is useful and can be transformed into applicable knowledge. Here, Ackoff's data-information-knowledge-wisdom hierarchy (or the 'DIKW pyramid') which expands on Shannon's 1948 'communication system'[693] is useful in terms of contextualising the journey of raw data and facts into information, and the process of transforming that information into knowledge and understanding which, when used to influence 'good' (or at least, informed) decision-making, turns into wisdom[694]. In the attainment of such wisdom there are often barriers to being able to understand legal information once accessed because much of it, especially older instruments that pre-date the digital era of machine-readable legal documents, is written in dense, challenging 'legalese'[695]. The movement to 'simplify' legal language becomes especially interesting when considered in the context of rights consciousness, and will be examined in further detail within this chapter to ascertain the value and indeed the necessity of using inclusive, simple language when expressing human rights information, both at the point of drafting human rights instruments, policies and communiques and at the point where this information is received – perhaps digitally on social media or via its analogue ancestor, the printed pamphlet; in media stories, reports, advocacy campaigns, and through public legal education initiatives designed to disseminate

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[692] 'Mainstreaming', in Yeshanew's definition, refers to the "methods of integrating ideals considered disparate or bringing some value from the periphery to the centre" – see Sisay Alemahu Yeshanew, Mainstreaming Human Rights in Development Programmes and Projects: Experience from the Work of a United Nations Agency, Nordic Journal of Human Rights, Vol 32 2014 - Issue 4: Human rights-based change and the institutionalisation of economic and social rights, pp 372-386, p 372

[693] Claude E Shannon and Warren Weaver, A Mathematical Theory of Communication, University of Illinois Press 1964, p 7

[694] Ulf Ehlert, What is useful knowledge?, Understanding Innovation, 20 January 2017, Accessed at https://understandinginnovation.blog/2017/01/20/what-is-useful-knowledge/

[695] 'Legalese' is a term that originates in *The Language of the Law* by David Mellinkoff – see Walter Probert, Reviewed Work(s): The Language of the Law by David Mellinkoff, Stanford Law Review, May 1964, Vol 16, No 3, pp 767-773, p 767

human rights information to key publics in order to improve access to justice and galvanise human rights culture.

Once we move past the barrier of language, another major obstacle to effective public legal education and human rights literacy is the issue of copyright, which continues to limit the ability of users outside of legal academia or the legal professions to access human rights information. When some of law's most important sources, such as historic judgments of the national courts on human rights cases, are tucked away behind copyright-protected paywalls around legal subscription databases, this demonstrably contradicts with the open justice principle. Newer judgments are now, at least in most 'free' or 'partly free' countries in the world, published openly and online, even livestreamed on YouTube or on court websites[696]. These recent advancements do not negate the fact that a significant body of human rights jurisprudence remains buried within commercial database platforms, and that even today, accessing historic human rights cases and documents is, in some cases, extremely problematic and can present a serious access to justice challenge when such information is being sought by unrepresented or self-represented, *pro se* 'Litigants in Person'[697].

Lastly, if one considers legal information as data, ready to be transformed into knowledge that inspires and invites understanding, exciting opportunities begin to emerge for educators, communicators and tech-savvy innovators to reuse that data to disrupt the human rights information environment and challenge the elitism that shrouds its accessibility. The ability to reuse human rights information and data to create platforms, data projects, applications and other interactive tech-based tools is a crucial pathway to rights bearers to critically, proactively and authoritatively counter and correct much of the misinformation that abound about human rights, and helps to reframe human rights conversations and responses to anti-rights rhetoric with positivity and credibility. Improving human rights literacy by making human rights

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[696] Leslie J Moran, Visible Justice: YouTube and the UK Supreme Court, Annual Review of Interdisciplinary Justice Research, Vol 5 2016, CanLIIDocs 4679, p 223

[697] See Matthew WL Yeung and Janny HC Leung, Litigating without speaking legalese: the case of unrepresented litigants in Hong Kong, International Journal of Speech Language and the Law, Vol 26, No (2019); Jennifer Elisa Chapman, Access to Legal Information for Self-Represented Litigants: The Role of the Academic Law Library, (June 30, 2020), Available at http://dx.doi.org/10.2139/ssrn.3639581; Ursula Gorham, Facilitating Access to Legal Information by Self-Represented Litigants: An Exploratory Case Study of the People's Law Library of Maryland, JOAL, Vol 2 No 1 (2014)

information more accessible and digestible and human rights knowledge more freely disseminatable and available for open reuse creates an exciting opportunity to advance human rights culture and mainstream a discourse of civility and healthy, constructive human dialogue, which will be critical to addressing exacerbated and emerging human rights challenges in the post-Covid world and which I see as integral to the R*b*D vision (and with specific relevance to Principle 5 in the RbD Framework, which is that individuals should be supported as innovators, creatives, communicators and programme-makers in advancing and mainstreaming human rights culture).

4.2 Why does access to legal information matter?

'Information' is considered to be an "integral part" of the fundamental human right of freedom of expression[698], which per the human rights organisation Article 19[699] is "central to the realisation of the right to communicate [and] receive information from both State and private sources"[700]. As one of the four freedoms articulated by Roosevelt in his infamous 1941 State of the Union Address[701], freedom of expression was first referenced at the very first session of the UN General Assembly in 1946[702] in Resolution 59(1) in which, Weeramantry writes, it was declared to be "the touchstone of all the freedoms to which the United Nations is consecrated" and

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[698] UN, Freedom of Information, United Nations and the Rule of Law, Accessed at https://www.un.org/ruleoflaw/thematic-areas/governance/freedom-of-information/
[699] Article 19 is an international human rights organisation that works to defend and promote freedom of expression and freedom of information worldwide. It is, per Elkins in his illuminating work on 'human rights branding', an example of 'chapter-verse branding', the trend of organisations naming and branding themselves after sections of treaties and law relevant to their scope of work. See Zachary Elkins, The Mutualism of Human Rights Law and Interest Groups, 2 April 2021, University of Chicago Law Review Online, Accessed at https://lawreviewblog.uchicago.edu/2021/04/05/cv-elkins/
[700] Article 19, Statement on the Right to Communicate, February 2003, p 2, Accessed at https://www.article19.org/data/files/pdfs/publications/right-to-communicate.pdf
[701] In his Annual Message to Congress (State of the Union Address) in January 1941, Franklin D Roosevelt declared that the United States was fighting to protect four fundamental freedoms that all persons possessed - "the first", he wrote, "is freedom of speech and expression everywhere in the world", the second, freedom of worship, the third - freedom from want, and the fourth was freedom from fear. See Franklin D Roosevelt Presidential Library and Museum, FDR and the Four Freedoms Speech, Accessed at https://www.fdrlibrary.org/four-freedoms
[702] Resolution 59 identified freedom of information as a "fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated", also recognising that (even back then) the world was vulnerable to disinformation and propaganda despite the limited media on which to disseminate said propaganda ("understanding and co-operation among nations are impossible without an alert and sound world opinion which, in turn, is wholly dependent upon freedom of information") – see UN General Assembly, Calling of an International Conference on Freedom of Information, 14 December 1946, A/RES/59, available at: https://www.refworld.org/docid/3b00f0975f.html

"an essential factor in any serious effort to promote the peace and progress of the world"[703].

Freedom of expression was duly enshrined in Article 19 of the UDHR, which provides: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"[704] as well as in the ICCPR 1966, which states that this information can be sought or received "orally, in writing or in print, in the form of art, or through any other media of his choice"[705]. There are duties and responsibilities attached that make this a qualified, non-absolute right, with explicit criteria in place that states must adhere to in any restriction of freedom of expression, which can only be used as necessary "to protect the rights or reputations of others, or for the protection of national security, public order, or public health"[706]. Article 20 of the ICCPR, recognising the role that disinformation played in creating the conditions that permitted the Holocaust, attempted to address the problem (albeit in the pre-digital age) of incitement and hate speech by prohibiting all propaganda for war as well as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence[707].

Freedom of expression is also enshrined in the progressive regional human rights treaties, including the European Convention on Human Rights (ECHR) in Article 10, the Inter-American System's American Convention on Human Rights, and the African Charter on Human and Peoples' Rights (in Article 9). The European Court of Human Rights (ECtHR) has consistently stated that the right to freedom of expression "constitutes one of the most essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man"[708]. As a qualified right, it is a freedom "applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of

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[703] CG Weeramantry, Access to Information: A new human right, the right to know, Asian Yearbook of International Law, Volume 4, pp 99-125, p 100
[704] Article 19, Universal Declaration of Human Rights 1948
[705] Article 19, International Covenant on Civil and Political Rights 1966
[706] Article 19, International Covenant on Civil and Political Rights 1966
[707] Article 20, International Covenant on Civil and Political Rights 1966
[708] ECtHR, Handyside v United Kingdom, Judgment of 07 December 1976, 48-49

indifference, but also to those that offend, shock or disturb the State or any sector of the population"[709], and includes "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin"[710].

Freedom of expression, fundamentally, is the right to freely access, receive and communicate information and ideas (which are, per Descartes, "forms of thought")[711]. Freedom of expression is a powerful right because of its use to "promote democracy, uncover abuses, and advance political, artistic, scientific and commercial development", but it can also power expression that is harmful, and can be used to "incite violence, spread hatred, and impinge on individual privacy and safety"[712]. As MacCormick has written, in all jurisdictions, the role of human rights jurisprudence "is to concretise relatively vague and abstract statements of rights into more exactly understood and specified legal relations between individuals and states, and, to some extent, individuals *inter se*"[713], and as a result, human rights are already heavily embedded into law's institutional normative order[714]. This is especially the case in Europe, largely thanks to the proactive role of the ECtHR as the only regional human rights judicial body to permit individuals to directly lodge a complaint against a ratifying Council of Europe state for the violation of a Convention right to the court[715].

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[709] *Ibid*

[710] Recommendation R (97) 20 of the Committee of Ministers to the Member States on "hate speech", adopted by the Committee of Ministers on 30 October 1997, at the 607th meeting of the Ministers' Deputies; ECtHR, Gündüz v Turkey, Judgment of 4 December 2003, 22

[711] To Descartes, Peters writes, ideas were "interposed" between intellect and nature as "something present to the mind, an image, copy, or representation, with a problematic relation to real things in the world ... a veil of illusion, to be pierced by logic and reason" – see JD Peters, Information: Notes toward a critical history, Journal of Communication Inquiry 1988, 12, pp 10-24, p 13, cited by Rafael Capurro and Birger Hjørland, The Concept of Information, Annual Review of Information Science and Technology 2003, p 343-411, p 354

[712] Bernadette Rainey, Elizabeth Wicks, and Clare Ovey, The European Convention on Human Rights, Oxford 2014, p 436; also see the comprehensive but non-exhaustive list of Article 10 cases contained in the ECtHR Guide on Article 10 of the European Convention on Human Rights: Freedom of expression, 30 April 2021, p 115, Accessed at https://www.echr.coe.int/documents/guide_art_10_eng.pdf

[713] Neil MacCormick, Institutions of Law: An Essay in Legal Theory, Oxford University Press 2009, p 201

[714] *Ibid*, p 197

[715] This has resulted in a vast body of human rights information in the form of case law, the judgments for which are openly available on the Court's website (https://www.echr.coe.int/Documents/50Questions_ENG.pdf)

Historically, Bygrave considers that the significance of 'information' has been "underdeveloped, if not poor' in law, and that "while information is in many respects the stuff of law, the law often reflects an underdeveloped, if not poor, understanding of information"[716]. Information has almost certainly always been "the stuff of law", if one delves into the fascinating history of legal codification, or the act of committing information to a constitutional or human rights instrument, protecting the progress made and ensuring the survival of the information (laws) in so doing. In the past, Bygrave writes, "law could usually be sensibly applied without lawmakers having first extensively analysed what is meant by 'information' and closely related concepts, such as 'data' and 'communication'. That approach, however, sits uneasily with key features of present society, most notably the processing of unprecedented amounts of data and the placement of ever greater premiums on the information that the data conveys"[717], which has put rights bearers at a distinct disadvantage and has meant that 'ordinary' citizens are vastly underinformed about law and human rights.

One of the reasons for the lack of engagement of rights bearers with human rights information is the density of the catalogue of law and literature available. Today, international law is contained in a labrythine mass of information, a vast body of literature, instruments and guarantees documented and encapsulated in the form of declarations and conventions, as well as in other treaty instruments, documents, regulations, domestic statutes, and other written expressions of human rights values, obligations, and standards. For this reason, perhaps, human rights are typically associated with information-carrying instruments (such as the International Bill of Rights, the UNDHR), or the information-producing institutions (the UN Human Rights Committee, the OHCHR, the European Court of Human Rights), all "manifestations of our attempts to make human rights relevant for practice", as Wettstein observes[718]. There is certainly no shortage of human rights information, but I would argue that for the most part, such information means nothing to rights bearers without legal qualifications or a specialist professional interest in a particular area of human rights law. The fact that the information exists does not automatically

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[716] Lee A Bygrave, Information Concepts in Law: Generic Dreams and Definitional Daylight, Oxford Journal of Legal Studies, Vol 35 No 1 (2015), pp 91–120, p 91
[717] *Ibid*
[718] Florian Wettstein, CSR and the Debate on Business and Human Rights: Bridging the Great Divide, Business Ethics Quarterly, Vol 22 No 4 (October 2012), pp 739-770, p 740

translate into the information being of value and therefore *useful* in the sense that if the information in question helps the rights bearer to achieve wisdom, or answers the higher order questions on "the totality, the essence or the intrinsic meaning of reality", then it is useful[719].

To have practical, institutional, and cultural effect, human rights information needs to be disseminated[720], broadcast or published (digitally or analogously) for the purpose of making such information available to users of human rights information. In the interest of transparency and in recognition of the vital right to information as a means of realising *other* fundamental rights, human rights information once disseminated is typically archived[721] (now almost always online[722]) by the institution that has produced it for the purpose of making information retrievable, accessible, and referenceable at any time by users of human rights information and by subsequent generations of users of human rights information[723]. At international level, the UN is arguably the most prolific producer and disseminator of human rights information, with new declarations, statements, drafts, proposals, commentaries and various initiatives launched on a daily basis; although, it should be noted, there is no explicit right to access official documents in international human rights law[724]. The UN's *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (1998), Article 6 states:

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[719] Hans Radder, Everything of Value is Useful: How Philosophy Can be Socially Relevant, Social Epistemology Review and Reply Collective 5, No 10 (2016), pp 20-26, p 23-24

[720] 'Dissemination' is a communications term that refers to the broadcast, publication or other sharing of information in a one-way manner in which the recipient of the information does not respond or interact with the issuer of the information.

[721] The word 'archive' derives from the Greek for 'public records' (*archeia*); a definition from King's College Cambridge links archiving with identity, culture, and justice: "Archives are important because they provide evidence of activities and tell us more about individuals and institutions. They tell stories. They also increase our sense of identity and understanding of cultures. They can even ensure justice." – see King's College Cambridge, Definition of 'Archive', Accessed at https://www.kings.cam.ac.uk/archive-centre/introduction-to-archives/a/1

[722] "Users seem more and more inclined to take for granted that archives' information and documents are accessible online." - Ivan Szekely, Do Archives Have a Future in the Digital Age?, Journal of Contemporary Archival Studies, Volume 4, Governance of Digital Memories in the Era of Big Data, 2017, p 1

[723] 'Users of human rights information' refers to human rights defenders as defined in a previous chapter, and includes those who need to use human rights information to contribute to the realisation of the R*b*D Principles (see Chapter 10 – Conclusion) to inspire human rights, to inform people about human rights, and to encourage people to interact with others over human rights – such as academics, journalists, educators, professional human rights advocates, legal professionals, communicators and programme makers.

[724] Mariya Riekkinen and Markku Suksi, Access to information and documents as a human right, Åbo Akademi University Institute for Human Rights 2015, p iii, Accessed at https://www.abo.fi/wp-content/uploads/2018/03/2015-Riekkinen-and-Suksi-Access-to-information.pdf

"Everyone has the right, individually and in association with others ... to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems".[725]

This, according to Riekkinen and Suksi, would point to access to human rights information being considered a right *in its own right*, rather than as an extension of Article 19's freedom of expression[726]. Information, as part of the fundamental right to free expression, falls under the remit of UNESCO and the Office of the High Commissioner for Human Rights (OHCHR), and as a marker of how critical the UN system considers information to be, there is also a Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression[727]. The UN Secretary General maintains a digital 'United Nations Treaty Collection' as a digital archive, providing access to over 560 multilateral treaties, in accordance with Article 102(1) of the Charter which requires: "Every treaty and every international agreement entered into by any Member of the United Nations … shall as soon as possible be registered with the Secretariat and published by it"[728].

At regional level, the Council of Europe, the ECtHR, and the EU are prolific institutional publishers of legislation, case law and other legal documents, made available under open access rules and increasingly digital by default to honour the principle of transparent justice[729]. The ECtHR's Hudoc website routinely publishes judgments as they are passed, legislation as it is enacted, and statements as they released, although Riekkinen and Suksi recognise that despite substantive jurisprudence on access to information, the ECtHR has thus far avoided the "formulation of a general right to access official documents"[730]. The EU's Court of

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[725] Article 6, UN Declaration On the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998

[726] Mariya Riekkinen and Markku Suksi, Access to information and documents as a human right, Åbo Akademi University Institute for Human Rights 2015, p 47, Accessed at https://www.abo.fi/wp-content/uploads/2018/03/2015-Riekkinen-and-Suksi-Access-to-information.pdf

[727] United Nations and the Rule of Law, Treaties and the Development of International Law, Accessed at https://www.un.org/ruleoflaw/thematic-areas/international-law-courts-tribunals/treaties-and-the-development-of-international-law/

[728] Article 102(1) UN Charter, Accessed at https://legal.un.org/repertory/art102.shtml

[729] Nani Jansen Reventlow, The European Court of Human Rights and Access to Information: clarifying the status, with room for improvement, Intlawgrrls, 22 November 2016, Accessed at https://ilg2.org/2016/11/22/the-european-court-of-human-rights-and-access-to-information-clarifying-the-status-with-room-for-improvement/

[730] Please see Riekkinen and Suksi's valuable report for a summary of Article 10 cases heard at the ECtHR which engage the question of whether the right to access official documents is provided in Article 10 of the ECHR, at 40-54: Mariya Riekkinen and Markku Suksi, Access to information and documents as a human right,

Justice similarly publishes judgments under the open access principle enshrined in Article 42 of the EU Charter of Fundamental Rights as a 'right of access to documents'[731], whilst the EU Publications Office provides a world-leading example in the publication of legal information as 'open legal data' to strategically promote the use of public sector information in the development of apps, digital products, platforms and services that use legal datasets for the empowerment of an informed, responsible citizenship to contribute to the growth of the digital economy[732]. At national level, most jurisdictions host websites that publish legislation as enacted, such as legislation.gov.uk in the UK, which has led a growing number of countries moving towards open digitisation of legal information in the last two decades. This movement began – as Greenleaf has explained – with two Cornell academics in 1992 creating the first 'Legal Information Institute' portal (or 'LII') that provided free access to legal resources in a digital environment where government and public sector information was highly commercialised and therefore charged for, making the LII site "the first significant provision of legal information via the internet, free or otherwise", inspiring a global surge of spin-off sites (such as AustLII in Australia and the UK's BAILII)[733].

In the UK and other common law countries, it is a "general principle of our constitutional law that justice is administered by the courts in public and is therefore open to public scrutiny [as] an aspect of the rule of law in democracy", per Lord Reed in *A v BBC (2014)*[734]. It is a well-established principle in our legal institutions and constitutional traditions that primary legal information should be made openly

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Åbo Akademi University Institute for Human Rights 2015, p 49-54, Accessed at https://www.abo.fi/wp-content/uploads/2018/03/2015-Riekkinen-and-Suksi-Access-to-information.pdf

[731] Article 42, Charter of Fundamental Rights of the European Union, states: "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium." See also Article 15 of the Treaty on the Functioning of the European Union; Regulation (EC) No 1049/2001 on Public Access to Documents; and Ian Harden, The Revision of Regulation 1049/2001 on Public Access to Documents, European Public Law, Vol 15, Issue 2 (2009), pp 239-256

[732] See Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information, also known as the Open Data Directive, recognises the economic benefits of allowing open access and resume of public sector information, which includes legal information. The Open Data Directive entered into force on 16 July 2019 to replace the previous Public Sector Information (PSI) Directive) - see European Commission, European legislation on open data, Accessed at https://digital-strategy.ec.europa.eu/en/policies/legislation-open-data

[733] Graham Greenleaf, Andrew Mowbray and Philip Chung, The Meaning of 'Free Access to Legal Information': A Twenty Year Evolution, Vol 1, No 1 (2013), p 4; In April 2022, it was announced that the National Archives will host court judgments from the England and Wales High Court, the Court of Appeal, the Supreme Court and tribunal decisions from the Upper Tribunals "so that they can be preserved and made available to the public" – see National Archives, Case Law, Accessed at https://caselaw.nationalarchives.gov.uk

[734] A v British Broadcasting Corporation (2014) UKSC 25, para 23

available for the media to report on and for individuals to access[735], in order to more effectively follow the law (as Mommers *et al* write, "To be a citizen is to know one's role, rights and duties in a society"[736]); and equip themselves with sufficient knowledge to secure access to justice and remedy. Such information must be authentic, because as Dretske points out, "information is what is capable of yielding knowledge, and since knowledge requires truth, information requires it also"[737].

For this reason, Mommers *et al* have reiterated the need to "translat[e] sources of law into information accessible to persons without a legal education"[738]; as Pleasence *at al* affirm, "citizens of a democratic state cannot be assumed a passive role in their understanding of law. Citizens have a responsibility to inform themselves of laws relevant to their activities"[739], and according to Lord Diplock, "acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal principles which flow from it."[740] In *PNM v Times Newspapers* Sharp LJ elaborated on the 'intrinsic value' of open justice, with reporting that "directly engages the public interest" ensuring "public confidence in the administration of justice" and the promotion of the "values of the rule of law"[741]. And in *R (Guardian News & Media Ltd) v City of Westminster Magistrates' Court (2012)*, Toulson LJ memorably said of 'open justice' that it "lets in the light and allows the public to scrutinise the workings of the law, for better or for worse"[742].

Resnik traces the open justice principle back to Roman law (court proceedings being *res publica*, or a public event[743]). Legal positivist, modern utilitarian, and barrister

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[735] Access to information is the second part of the same right as freedom of expression; Article 19 UDHR includes the right to "seek, receive and impart information".

[736] Laurens Mommers, Wouter Koelewijn, Hugo Kielman, Understanding the law: a method for legal knowledge dissemination, Conference Paper: The Eleventh International Conference on Artificial Intelligence and Law, Proceedings of the Conference, June 4-8, 2007, Stanford Law School, p 1

[737] Fred Dretske, Knowledge and the flow of information, MIT Press 1981, p 45

[738] Laurens Mommers, Wim Voermans, Wouter Koelewijn, Hugo Kielman, Understanding the law: improving legal knowledge dissemination by translating the contents of formal sources of law, Artificial Intelligence Law (2009), Vol 17, pp 51-78, p 51

[739] Pascoe Pleasence, Nigel J Balmer and Catrina Denvir, How People Understand and Interact with the Law, Cambridge 2015, (Project funded by the Legal Education Foundation), p 63

[740] Lord Diplock, Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenberg AG [1975] 591 at 638

[741] PNM v Times Newspapers ([2014] EWCA Civ 1132, para 21: "The ordinary rule is that the press may report everything that takes place in open court".

[742] Toulson LJ in R (Guardian News & Media Ltd) v City of Westminster Magistrates' Court (Article 19 intervening) [2012] EWCA Civ 420; [2013] QB 618, para 1

[743] Judith Resnik, The Democracy in Courts: Jeremy Bentham, 'Publicity', and the Privatization of Process in the Twenty-First Century, No Foundations: An Interdisciplinary Journal of Law & Justice 10, pp 77–119, p 79

Jeremy Bentham[744] was an early advocate for open justice, and saw 'publicity' as "the very soul of justice", for "publicity via direct observation, access to court documents for persons not physically present in proceedings, the provision of official reports and unfettered access to the press"[745]. Inspired by Kant's 'publicity principle'[746], Bentham wrote: "In the darkness of secrecy, sinister interest and evil in every shape have full swing. Where there is no publicity there is no justice"[747]. For Bentham, publicity was "the fittest law for securing the public confidence … the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial", and as Resnick has observed, "[o]pen courts, codification of laws, and a free press were his methods for transferring authority to the public, forming a 'tribunal' whose opinions were to influence ruling powers"[748]. In this view, it is information that powers literacy and literacy that powers social action that can prompt powerful social change; as such, information is a form of 'soft power' and a mechanism for challenging misuses of power, which makes it a fundamental part of the human condition as Freire saw it in his doctrine of 'emancipatory literacy'.

For Freire, literacy was "a creative act that involves the critical comprehension of reality … a vehicle by which the oppressed are equipped with the necessary tools to reappropriate their history, culture, and language practices"[749]. In other words, literacy is a tool of empowerment for the oppressed, the marginalised, the colonised, and the victimised to reclaim their power and redress historically inequal and unjust situations influenced by long-held and deeply rooted imbalances of social power[750]. Literacy, therefore, is a passport to the realisation of social justice, and to the greater

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[744] Per Resnik, Bentham was "a major proponent of structuring encounters in many venues to provide the public with knowledge about and enable scrutiny of various actors and institutions—judges and courts, included"; Resnik also makes the link between Bentham's early theory of publicity with later theoretical development of the concept of the 'public sphere' of Jürgen Habermas – *Ibid*, p 78

[745] Jane Johnston, Three phases of courts' publicity: reconfiguring Bentham's open justice in the twenty-first century, Cambridge University Press, 23 November 2018, Vol 14 Issue 4, pp 525-538, p 526 (Johnston cites Resnik as linking 'publicity' with 'openness' in the context of the functions of the court – see Johnston at 526)

[746] David Luban, The publicity principle, In The Theory of Institutional Design (ed Robert E Goodwin), Cambridge University Press 1998, pp 154–198, p 156; Luban's translation of Kant's publicity principle is as follows: "actions relating to the right of other human beings are wrong if their maxim is incompatible with publicity".

[747] James Taylor, Boardroom Scandal: The Criminalization of Company Fraud in Nineteenth-Century Britain, Oxford University Press 2013, p 77

[748] Judith Resnik, The Democracy in Courts: Jeremy Bentham, 'Publicity', and the Privatization of Process in the Twenty-First Century, No Foundations: An Interdisciplinary Journal of Law & Justice 10, pp 77–119, p 78

[749] Paulo Freire and Donaldo Macedo, Literacy: Reading the Word and the World, Bergin & Garvey 1987, pp 156-159

[750] Social power is defined by van Ham as "the ability to set standards, create norms and values that are deemed legitimate and desirable, without resorting to coercion or payment". – See Peter van Ham, Social Power in International Politics, Routledge 2010, p 3, citing Joseph S Nye, Public Diplomacy and Soft Power, The Annals of the American Academy of Political and Social Science, Vol 616, Issue 1, pp 94-109, p 94

enjoyment of human rights and fundamental freedoms, and as such it is integral to mainstreaming human rights culture and realising the R*b*D vision for a future of human rights that is inclusive, informed and truly interactive.

4.3 Where can users go for rights information?

As Shannon and Weaver presented in their 1949 *Mathematical Theory of Communication*, information can be defined as "that which reduces uncertainty" – and this definition resonates in the context of legal information more generally and human rights information in particular because specificity is a core principle of law[751]. Legal information, defined as "neutral, general and factual … information about the law and the legal process"[752], powers legal literacy, also commonly referred to as 'legal awareness' or 'public legal education'. Ergo, human rights information empowers rights literacy in the human beings who are the subjects of those rights, helping them advance towards 'rights consciousness', or the state of "general awareness of rights to be claimed or asserted against others"[753].

'Authoritative' sources of human rights information include instruments, judgments, data, research, literature, reports, stories, audiovisual material and testimony, *inter alia*, and these traditionally have been accessed via commercial databases, UN websites, regional human rights court or commission portals, websites of data-producing international development and financial institutions such as the World Bank or the ILO[754], as well as the websites of international human rights NGOs such as Amnesty International, Freedom House or Human Rights Watch or digital resources such as the Business & Human Rights Resource Centre. Increasingly, important mediums for the publication and dissemination of human rights information have emerged in the digital space, through interactive online knowledge hubs, mobile and web applications, websites, virtual reality platforms, 'serious' games,

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[751] Scenario Journal, Information Anxiety: Towards Understanding, Winter 2012, Accessed at https://scenariojournal.com/article/richard-wurman/
[752] Law Insider (Legal Dictionary), 'Legal Information' Definition, Accessed at https://www.lawinsider.com/dictionary/legal-information
[753] Meixi Zhuang, Rules Consciousness or Rights Consciousness? A Structural Equation Model of the Relationship between Sociopolitical Values and the Protest Potential among Chinese Citizens, Journal of Chinese Political Science 2020, pp 457-476, p 461
[754] Kate Hodgson, Human Rights Information Sources: Databases and the Internet, Legal Information Management 1 2001, pp 24–26

blogs and citizen journalism, social media, and academic and popular sociology literature[755]. These mediums host various parts and pieces of human rights information amounting to a labyrinthine body of knowledge which has grown exponentially since 1948 when the UN adopted the UDHR and 1966 (when the UN Covenants on Civil and Political Rights and Economic Social and Cultural Rights were proclaimed as binding conventions), through ever more specialised conventions, formal institutions giving legal force to human rights concerns including equality, torture, discrimination, children, migrants' and women's rights, with the effect being to "concretise in greater detail the grand-scale commitments expressed in the Universal Declaration"[756]. Yet as Posner has surmised, a "central problem with human rights law is that it is hopelessly ambiguous" and "overloaded", which he sees not as a result of "sloppy draftsmanship" but of a "deliberate choice to overload the treaties with hundreds of poorly defined obligations", noting that in many countries, individuals have as many as 400 human rights, including "rights to work and leisure, to freedom of expression and religious worship, to non-discrimination, to privacy, to pretty much anything you might think is worth protecting"[757]. In addition, sources of credible legal information on the web are scattered, incomplete and sometimes inconclusive; as Allbon (creator of legal education website *Lawbore*) has observed, "[t]here is a great deal of law available at no cost online, certainly compared to a decade ago. It is however, not always easy to find and sites are not 'joined up' to create any kind of cohesive picture. The one stop shop does not exist"[758].

Fundamentally, the vast plethora of information now widely and digitally available might be emblematic of an age of *information* but it has not necessarily ushered in an age of *knowledge.* Similarly, whilst we may have more access to human rights information than at any other points in history, we remain uninformed about the legal principles that shape much of our day-to-day existence, susceptible to conspiracy

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[755] 'Pop sociology' has successfully brought social justice and human rights concerns into the consciousness of readers and consumers of popular culture who may not have a vested interest in human rights or social justice issues per se. Pop sociologists "see it as an important part of their professional work to make their ideas and findings accessible to a wider social audience than those found in universities and colleges" and "work alongside social movements in an attempt to achieve this, or aim to popularize their work through publishing their writing outside academic journals" – see Oxford Reference, Definition for pop sociology, Accessed at https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100337505.

[756] Neil MacCormick, Institutions of Law: An Essay in Legal Theory, Oxford University Press 2009, p 195-196

[757] Eric Posner, The case against human rights, The Guardian, 04 December 2014, Accessed at https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights

[758] Emily Allbon, The free legal info landscape, The Bureau of Investigative Journalism, 16 October 2012, Accessed at https://www.thebureauinvestigates.com/2012/10/16/the-free-legal-info-landscape/

theories, misinformation and disinformation, and unclear on how information can be meaningfully used to power action and advocacy when our rights are violated or when we care deeply enough about the rights of another being violated. The obvious go-to for information of any kind in the digital age is, of course, the internet, but the scale of data being produced each day is staggering[759]. Extreme information overload, or 'information anxiety'[760], is – according to Dean and Webb – "killing productivity, dampening creativity, and making us unhappy"[761], and there is now so much digital information out there that meaningful messages have become diluted, lost among the white noise, a phenomenon Sloterdijk has termed "mediatic nihilism"[762]. Although we have more data and information to hand than at any other point in history, we are unable to clearly distinguish between information and knowledge (information being limited to the "technical practice surface of knowledge" and only constituting, as Ezrahi called it, 'thin knowledge'[763]). Inundated with 'free' and relatively straightforward access to more information than we could ever possibly consume over many lifetimes, we fail to realise that much of the 'information' stored on and retrievable from the web is actually raw data, which on its own, "unless it can be made to inform … has no inherent value. It must be imbued with form and applied to become meaningful information. Yet, in our information-hungry era, it is often allowed to masquerade as information"[764].

Information begins life as an idea. To Locke, ideas "give a (substantial) form to matter"[765], whereas Peters notes that ideas are "the raw material from which genuine

[759] World Economic Forum, How much data is generated each day?, 17 April 2019, Accessed at https://www.weforum.org/agenda/2019/04/how-much-data-is-generated-each-day-cf4bddf29f/; see also Jeff Desjardins, What Happens in an Internet Minute in 2019?, Visual Capitalist, 13 March 2019, Accessed at https://www.visualcapitalist.com/what-happens-in-an-internet-minute-in-2019 and Stephanie Pappas, How Big Is the Internet, Really?, LiveScience, 18 March 2016, Accessed at https://www.livescience.com/54094-how-big-is-the-internet.html

[760] Scenario Journal, Information Anxiety: Towards Understanding, Winter 2012, Accessed at https://scenariojournal.com/article/richard-wurman/

[761] Peter Gordon Roetzel, Information overload in the information age: a review of the literature from business administration, business psychology, and related disciplines with a bibliometric approach and framework development, Business Research 12 (2019), pp 479–522, p 479, citing Derek Dean and Caroline Webb, Recovering from information overload, McKinsey Quarterly 11 2011, pp 80–88

[762] Rafael Capurro, What is Angeletics?, Accessed at http://www.capurro.de/angeletics.html, citing Peter Sloterdijk, Kantilenen der Zeit, In Lettre International 1997, p 71-77

[763] Yaron Ezrahi, Science and the political imagination in contemporary democracies, In States of Knowledge: The Co-Production of Science and the Social Order (ed Sheila Jasanoff), Routledge 2004, p 257

[764] Scenario Journal, Information Anxiety: Towards Understanding, Winter 2012, Accessed at https://scenariojournal.com/article/richard-wurman/

[765] Rafael Capurro and Birger Hjørland, The Concept of Information, Annual Review of Information Science and Technology 2003, p 343-411, p 354

knowledge [can] be built"[766]. Once captured, recorded, or otherwise given *form* (the verb 'to inform' originates in the Latin *informare*, 'to give form'[767]) the idea becomes data; once that data is imbued with meaning, linked, categorised, and grouped, it becomes information, and once that information is cognitively absorbed, processed, remembered, challenged, critiqued and considered in the application of real world problems, that information graduates to knowledge. To have legal force within a legislative framework, law as information must have meaning, and it gains this meaning through the compliance and endorsement of those who have given their informed consent to be governed by such law.

To expand on this point further, Dretske defines knowledge as "information-based belief"[768], mirroring Plato's definition of knowledge in the Dialogues as "justified true belief" which is based on three conditions that must be met for knowledge to exist: these being *truth* (where knowledge is a "relationship with the truth – to know something is to have a certain kind of access to a fact"; *belief* (held by one who is confident that something is true); and *justification* ("whether a subject has sufficient reason to believe a given proposition")[769]. Here, Ackoff's data-information-knowledge-wisdom hierarchy (or the 'DIKW pyramid') is useful for contextualising the journey of raw data into information, and the process of transforming that information into knowledge and understanding which, when used to influence 'good' (or at least, informed) decision-making, is distilled into wisdom[770]. When knowledge can be used to articulate 'why', it is transformed into understanding; when that understanding is used to inform one's actions and agency, then that individual has attained the nirvana of information-seeking: wisdom.

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[766] John Durham Peters, Information: Notes toward a critical history, Journal of Communication Inquiry 1988, 12, pp 10-24, p 13, cited by Rafael Capurro and Birger Hjørland, The Concept of Information, Annual Review of Information Science and Technology 2003, p 343-411, p 354

[767] Dirk KF Meijer, The Information Universe. On the Missing Link in Concepts on the Architecture of Reality, Syntropy Journal, 1 2012, pp 1-64, p 7

[768] Fred Dretske, Knowledge and the flow of information, MIT Press 1981, p 91-92

[769] See Jonathan Jenkins Ichikawa and Matthias Steup, The Analysis of Knowledge, Stanford Encyclopaedia of Philosophy 2017, Accessed at https://plato.stanford.edu/entries/knowledge-analysis/#KnowJustTrueBeli. However, Gettier famously argued that one could always find justification in a belief even where there was no factual basis for the belief (the so-called 'Gettier Problem', whereby "it is possible for a person to be justified in believing a proposition that is in fact false" - see Timothy Williamson, A note on Gettier cases in epistemic logic, Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition, Vol 172, No 1, Special Issue: The Gettier Problem at 50 (January 2015), pp 129-140, p 130

[770] For Ackoff, information consists of raw data (symbols) that have been processed into usefulness, and can be used to respond to 'who', 'what', 'where' and 'when' questions. See Ulf Ehlert, What is useful knowledge?, Understanding Innovation, 20 January 2017, Accessed at https://understandinginnovation.blog/2017/01/20/what-is-useful-knowledge/

Knowledge and understanding are two distinct stops on the journey towards wisdom, although they are – as Kvanvig notes – "closely related"[771]. Understanding, as Kvanvig writes, involves being able to imagine and reimagine, order and reorder pieces of information and see how they are "connected with each other" and to "grasp the variety of such connections"[772]. Pritchard sees understanding as "a kind of cognitive achievement"[773]; whereas for Grimm, understanding is merely a "species of knowledge"[774]. Kvanvig proposed that there were three types of understanding – understanding 'that', understanding 'why', and understanding 'all'[775]. To illustrate how Kvanvig's three types of understanding can be applied to a human rights context, these are applied to an Article 3 ECHR human rights scenario: propositional understanding ("I understand *that* torture is unlawful"; understanding why ("I understand *why* torture is unlawful"); and objectual or holistic understanding of a body of information[776], as in "I understand *all* there is to know about torture"[777]. The attainment of knowledge and the "cognitive achievement" of processing complex human rights issues across all three types of understanding are integral to inspiring individual and collective action, because knowledge and holistic understanding compel each of the four core elements of agency (identified by Bandura as intentionality, forethought, self-reactiveness, and self-reflectiveness[778]), and agency underpins individual empowerment which Bode has memorably described as "a transient process, rather than a permanent state ... a process in multiple shades of grey, instead of in black and white"[779].

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[771] Jonathan Kvanvig, The value of understanding, in Adrian Haddock, Alan Millar, and Duncan Pritchard (eds), Epistemic Value, Oxford University Press 2009, pp 95 – 112, p 95

[772] *Ibid*, p 96-97

[773] Duncan Pritchard, Knowledge and Understanding, In Virtue Epistemology Naturalized: Bridges Between Virtue Epistemology and Philosophy of Science, Synthese Library (Studies in Epistemology, Logic, Methodology, and Philosophy of Science), Vol 366, Springer 2014, pp 315-327

[774] Stephen R Grimm, Is understanding a species of knowledge? British Journal for the Philosophy of Science 57 2006, pp 515–535

[775] Jonathan Kvanvig, The value of understanding, in Adrian Haddock, Alan Millar, and Duncan Pritchard (eds), Epistemic Value, Oxford University Press 2009, pp 95-112, p 98

[776] Objectual understanding is "understanding of a topic, subject matter, or body of information" – see Catherine Z Elgin, Understanding, Routledge Encyclopedia of Philosophy 2017, Accessed at https://www.rep.routledge.com/articles/thematic/understanding/v-1/sections/objectual-understanding

[777] Jonathan Kvanvig, The Value of Knowledge and the Pursuit of Understanding, Cambridge University Press, 2003; Internet Encyclopaedia of Philosophy, Understanding in Epistemology, Accessed at https://iep.utm.edu/understa/

[778] Albert Bandura, Toward a Psychology of Human Agency, Perspectives on Psychological Science, Vol 1 Issue 2 2006, pp 164–180

[779] Ingvild Bode, Individual Agency and Policy Change at the United Nations: The People of the United Nations, Routledge 2021, p 198

4.4 Barriers to accessing, knowing and understanding human rights information

4.4.1 The complexity of legal language

Legal language, like the legal institution itself, has long been considered "highly technical, inadequate, inaccessible, and seemingly unconnected to everyday life", per Wagner[780], with legal English itself considered hard to understand because it is based on centuries-old legal systems and therefore sprinkled with Old English, Latin and French terminology. As Sir Francis Bacon wrote of our laws in *Laws of England*: "It is true, they are mixt as our language, compounded of British, Roman, Saxon, Danish, Norman Customs. And as our language is so much the richer, so the laws are the more complete"[781].

Wagner identifies early Christianity and Canon Law as a gamechanger for codification, when legal communication (previously, orally delivered) came to be drafted and written down albeit in Latin until the time that French became the *de facto* language of law (around the time of the Magna Carta)[782]. English was not commonly used in legal writing until the 18th century[783], just prior to the "extensive codifications" of the 19th and early 20th century, when there was a clear tendency towards codification so as to provide a "sound basis for a superstructure of judicial decisions"[784]. There was a deliberate tendency in this era to document emerging rights within keystone declarations and charters to safeguard their constitutional position and entrench their provisions and principles as inarguable. This period therefore laid important foundations for the development of 19th century legal positivism, first through Bentham and Austin and later, through key early 20th century theorists including Hans Kelsen, HLA Hart, Joseph Raz, Ronald Dworkin, John Finnis, and others[785]. Codification, in the legal positivist view, ensured

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[780] Anne Wagner, Origins and Use of English Legal Terms through History, Professional Communication, Vol 3, Issue 2, 2003, p 92

[781] *Ibid*, p 93

[782] *Ibid*, p 96

[783] Deborah do Carmo, A brief history of legalese (without the jargon), Dotted & Crossed, 1 September 2020, Accessed at https://dottedandcrossed.eu/a-brief-history-of-legalese-without-the-jargon/

[784] Sigmund Samuel, The Codification of Law, The University of Toronto Law Journal, Vol 5, No 1 1943, pp 148-160, p 158

[785] See Chapter 2 of this thesis on further analysis of the significance of codifying human rights in order to preserve them for future generations and protect them from political manipulation or subversion.

specificity, precision, certainty and what Samuel has called "everlasting justice"[786], and offered more concrete protection for the rights and laws enshrined within them from being lost to oral or symbolic folklore or subjected to misinterpretation, misinformation, or manipulation from the powerful whose interests might be compromised by the promulgation of laws advancing human freedom, rights and dignity[787]. As Samuel has written, "the impulse toward codification sprang from the fear that the contrary system, of a free finding of law, was bound to favour those social classes from whom the judges were recruited"[788].

Largely because of the multilingual history of law, legal language has become a "complex and interesting melting pot of intrinsic and extrinsic influences", writes Wagner, "coming from cultural practices which evolve within the space-time of modernity"[789]. As an evolutionary, dynamic, living process that generates a 'life of its own' distinct from the individual actions and events that power the process, history presents each generation with opportunities to learn about, represent, reinforce and reinterpret moral responsibilities (whilst avoiding the repetition of moral catastrophes) created by the previous generation[790].

Similarly, in human rights law, codification enshrines, protects and builds upon historic efforts to advance human freedom in our social institutions, and in so doing, helps to ensure its survival. Codification has enabled the makers, advocates for, and subjects of human rights law to, at some of history's most turbulent points, to "build up on rational grounds a workable code that should be able to foresee and provide for all possible legal problems that might thereafter arise"[791]. The rituals attached to constitutionalism and codification – the debates, the drafting, proclamations and the

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[786] Sigmund Samuel, The Codification of Law, The University of Toronto Law Journal, Vol 5, No 1 1943, pp 148-160, p 149

[787] Resnick notes that Bentham "had a passion for codification … deployed in service of public knowledge" (and indeed, has been credited with inventing the word 'codification'); he also objected to the common law and believed that by "replacing the common law with codes, legal parameters would become plain and truly derived from the 'consent of the whole'" - see Judith Resnik, The Democracy in Courts: Jeremy Bentham, 'Publicity', and the Privatization of Process in the Twenty-First Century, No Foundations: An Interdisciplinary Journal of Law & Justice 10, pp 77–119, p 82

[788] Sigmund Samuel, The Codification of Law, The University of Toronto Law Journal, Vol 5, No 1 1943, pp 148-160, p 150

[789] Anne Wagner, Origins and Use of English Legal Terms through History, Professional Communication, Vol 3, Issue 2, 2003, p 93

[790] Stanford Encyclopaedia of Philosophy, Philosophy of History, 24 November 2020, Accessed at https://plato.stanford.edu/entries/history/

[791] Sigmund Samuel, The Codification of Law, The University of Toronto Law Journal, Vol 5, No 1 1943, pp 148-160, p 150

passing or ratification of laws in accordance with constitutional tradition – provide certainty to those who are subjects of the law and have consented to be governed by it. Legal rituals are closely connected to language (to both the spoken and the written word), designed to both promote reverence for legal process and engender respect for (and compliance with) the laws that such processes produce; per Winn, this is because "ritual characterises nearly all human social institutions, especially legal institutions charged with resolving social conflict"[792].

The clear prize of centuries of codification of legal texts and communications is the existence of a vast and rich body of legal information, presented in multiple languages (both current and extinct) and in a range of formats more diffused now in the digital age than at any other point in history. Where the early Christian clergy innovated legal communication by moving away from oral conveyances of legal rules to drafting them and writing them down, legal information can now be presented in digital formats or in virtual, artificially intelligent information environments that would have been inconceivable half a decade ago, much less a generation ago. Yet, as this chapter has repeatedly stated, the mere existence and perceived availability of legal information has little bearing on its practical accessibility, nor on its digestibility into knowledge. This is because legal language, still stiflingly complex and incomprehensible in many legal texts, still prevents those without a professional legal background from being able to process legal information and develop legal knowledge and understanding on the basis of this information.

For at least the last two centuries, the overcomplexity of legal language has been, according to Zodi, "the subject of a longstanding discourse in the legal literature and an important element in access to justice"[793]. Legal information presented in complex language and rooted in grammatical gymnastics has little value to those key publics who are neither fluent in legalese nor invested enough in the subject matter to achieve fluency for the express purpose of being able to engage casually with legal information. This presents a serious barrier in accessing justice and is potentially inhibiting the relevance of human rights law in the future, in that achieving even the

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[792] Peter A Winn, Law and Ritual, Law and Critique 1991, Vol II No 2, p 207
[793] Zsolt Ződi, The limits of plain legal language: understanding the comprehensible style in law, International Journal of Law in Context 2019, pp 246–262, p 246

most basic version of a 'mainstream' legal literacy could reinvigorate human rights culture in an age of what could be called 'superficial superliteracy', a state in which we are all so impressed by our own ability to access knowledge produced by other people that we forget that the mere ability to source others' knowledge does not equate to being in possession of this knowledge ourselves.

There is consensus that legal language has not been used so successfully in the past; Melinkoff, in his 1963 *Language of Law*, coined a new term for the verbosity and complexity of legal language, 'legalese'[794]. In the 1975 Renton Report, which delivered over 120 recommendations to "improve the form and drafting of legislation"[795], legal language was criticised as "obscure and complex, its meaning elusive and its effect uncertain", excessively elaborate because of the desire for 'certainty', and structurally illogical, non-sequential and confusing[796], and Bhatia, writing in the 1980s, observed that "legislative writing was designed to avoid litigation, rather than to communicate the law of the land to the general public"[797].

"Law is not something separate from human behaviour," wrote Probert in his review of Mellinkoff's *Language of the Law*, and "neither is language. Nor is law something separate from language"[798]. As language has softened over the centuries to become more attuned to multipolar cultural nuances and to meet the changing needs of speakers in line with the changing technologies available to them[799], the significance of Kimble's definition of 'plain language' is brought into focus for law and legal language, plain language being simply "to do with clear and effective communication – nothing more or less"[800]. A communication is clear and effective if it is in plain

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[794] David Melinkoff, The Language of the Law, Little Brown 1963, also cited in Zsolt Ződi, The limits of plain legal language: understanding the comprehensible style in law, International Journal of Law in Context 2019, pp 246–262, p 246

[795] Also see the UK government's excellent summary of the challenges of 'simplifying' legislation at Gov.uk, When laws become too complex, 16 April 2013, Accessed at https://www.gov.uk/government/publications/when-laws-become-too-complex/when-laws-become-too-complex

[796] As summarised by Anne Wagner, Origins and Use of English Legal Terms through History, Professional Communication, Vol 3, Issue 2, 2003, p 93; for the 1975 Report of the Committee on the Preparation of Legislation (the 'Renton Report') see JH Farrar, Report of the Committee on the Preparation of Legislation, The Modern Law Review, Vol 38, No 5 (September 1975), pp 553-556

[797] V Bhatia, The Language of the Law in Language Teaching 1987, 20 Vol 4, pp 227-234

[798] Walter Probert, Reviewed Work(s): The Language of the Law by David Mellinkoff, Stanford Law Review, May 1964, Vol 16, No 3, pp 767-773, p 767

[799] Linguistic Society of America, Is English Changing?, Accessed at https://www.linguisticsociety.org/content/english-changing

[800] Joseph Kimble, Answering the critics of plain language, The Scribes Journal of Legal Writing, 5 1994-1995, pp 51-87, p 52

language, and if those who need to receive or engage with the communication are able to "quickly and easily *find* what they need; *understand* what they find; and *act* appropriately on that understanding", per Adler[801]. Where the difficulty comes in is where the 'over-complicatedness' of legal language creates what Zodi calls a "comprehensibility problem" (and he uses 'comprehension', simply, to mean "the successful use of language")[802], although as Eagleson points out, some legal texts will always be incomprehensible to those without legal training because the subject matter and ideas being conveyed are by their nature conceptually complex and highly specialised[803] and as such, as Adler notes, they have been invariably and unavoidably written in "complicated, convoluted language"[804].

In the last two decades in particular, the unavoidable circle [between] language and information"[805] has taken on a life of its own in the legal sphere with the 'plain legal language movement', which refers to a growing call for legal information (including legislation, court judgments and other legal texts) to be presented in simplified language so they are inclusive and easier for non-professional users to engage with (the movement being one among many other such 'plain' movements – plain science, plain government information, and plain medicine among them[806]). 'Plain legal language' is not a recent phenomenon; Mattila traces the practice of using plain language in legal texts back to Prussia in the Enlightenment era, in which "new laws were to be drawn up in simple language, using words that everyone could understand, and concisely"[807]. In more recent times, states have ramped up support for an international standard or set of rules that incorporates plain legal language into the drafting of all domestic legislation[808], and there has been a surge of professional accreditation schemes advanced by organisations like Clarity and PLAIN to 'teach' drafters and lawyers to write in simplified legal language[809]. However, as Williams notes, the influence of the movement within the legal sphere beyond the drafting of

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[801] Mark Adler, The Plain Language Movement, in The Oxford Handbook of Language and Law 2012, p 68
[802] Zsolt Ződi, The limits of plain legal language: understanding the comprehensible style in law, International Journal of Law in Context 2019, pp 246–262, p 246
[803] Mark Adler, The Plain Language Movement, in The Oxford Handbook of Language and Law 2012, p 68
[804] *Ibid*
[805] Rafael Capurro and Birger Hjørland, The Concept of Information, Annual Review of Information Science and Technology 2003, p 343-411, p 363, citing Weizsacker (1974, p 60)
[806] Mark Adler, The Plain Language Movement, in The Oxford Handbook of Language and Law 2012, p 67
[807] *Ibid*, p 69
[808] Anne Wagner, Origins and Use of English Legal Terms through History, Professional Communication, Vol 3, Issue 2, 2003, p 103
[809] *Ibid*

legislation has been limited, with most of the drafting that takes place in the private sphere (ie contracts or wills) is still in the "outmoded, verbose style"[810], and this inevitably "circles back" to legal education and to the way that legal research and writing skills is taught and assessed in law schools, per Blasie[811].

4.4.2 Legal Information Design

Zodi is quite correct in identifying that the issue within overly complicated legal texts is not so much the words used but the ability of those outside of the legal profession to understand their meaning in the context of the problem they need to resolve[812]. As Goodrich put it: "To know the law is not to know the words of the law, but the force and property of the words"[813]. The point of using plain language, according to Blasie, is to "maximise the chance the reader will understand the … intended message", which requires the drafter to "consider how every feature … affects the reader", these features being vocabulary, brevity, the inclusion or omission of selected pieces of information over others, the use of 'everyday language' over more obscure word choices, structural considerations ("the order of information and use of headers"), and the use of design features, "visual aids"[814] which might include, as Tufte identified in *Envisioning Information*, "charts, diagrams, graphs, tables, guides, instructions, directories and maps"[815], and even colour as a carrier of information[816].

What Blasie is describing here is essentially 'information design', the "newest of the design disciplines" per Jacobsen[817]. Information design is a close relative of the 'human-centred design thinking' framework, quickly summarised here as the deliberate design of a research project or initiative plan that puts the human user at

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[810] Christopher Williams, Changing with the Times: The Evolution of Plain Language in the Legal Sphere, Alicante Journal of English Studies 28 2015, pp 183-203, p 191

[811] Michael Blasie, The Rise of Plain Language Laws, University of Miami Law Review 2022, p 9, Accessed at http://dx.doi.org/10.2139/ssrn.3941564; see the next section for analysis on the need to integrate communication skills within formal legal training and Chapters 6, 7 and 8 on human rights education and training for analysis of human rights education in the law school.

[812] Zsolt Zödi, The limits of plain legal language: understanding the comprehensible style in law, International Journal of Law in Context 2019, pp 246–262

[813] Peter Goodrich, Languages of Law: From Logics of Memory to Nomadic Masks, Cambridge University Press 1990, p 115

[814] Michael Blasie, The Rise of Plain Language Laws, University of Miami Law Review 2022, p 13, Accessed at http://dx.doi.org/10.2139/ssrn.3941564

[815] Edward Tufte, Envisioning Information, Graphics Press 1990, p 9

[816] *Ibid*, p 63

[817] Robert Jacobson, Information Design, MIT Press 2000

the heart of the design process and which emphasises that "all problems, even the seemingly intractable ones like poverty, gender equality, and clean water, are solvable"[818]. Like human-centred design thinking, according to the Cornell Legal Information Institute, legal information design "focuses on the needs of the users and the context in which they need to find and apply information"[819]. Information design is broadly perceived to be an intuitive, inclusive, and intelligent approach to design, the practice of applying an empathic, iterative, and highly visual design process to information so that it can be used effectively, efficiently, and clearly.

Within the growing body of research on information design and how it can support the plain language movement through simplified information design and data visualisations that can cut across disciplinary and skills-based barriers, 'legal information design' has emerged as a sub-discipline with great significance for the law school of the future and also for the future of legal services overall given the surging popularity of 'legal tech' and legal entrepreneurship. As lawyers and legal educators have not traditionally perceived themselves to be 'communications' professionals, law schools have arguably thus far failed to equip law students with the advanced (and increasingly digitised) communication and soft 'human skills' needed to help students convey legal research and present legal arguments in an empathic, emotionally intelligent, and intuitively ordered manner, using plain legal language and uncomplicated visual structures to support the argument being made. Beyond moot court debate, poster competitions, group presentation PowerPoints, and coursework-style essay writing, law schools rarely offer formal training that specifically addresses the 'information design deficit' among law graduates and equips them with the communications skills to present their research, legal

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[818] Design thinking is "inherently optimistic, constructive, and experiential", and it entails Inspiration, Ideation and Implementation. The term was first used by Stanford University's d.school founder David Kelley, and in 2009 the Bill & Melinda Gates Foundation commissioned IDEO to create a Human Centered Design Toolkit to make the process more accessible to non-profits (see https://www.ideo.com/post/design-kit). Per IDEO: Human-centered design is all about building a deep empathy with the people you're designing for; generating tons of ideas; building a bunch of prototypes; sharing what you've made with the people you're designing for; and eventually putting your innovative new solution out in the world." – See DesignKit, What is Human-Centered Design? , Accessed at https://www.designkit.org/human-centered-design. Also: "Design thinkers look for work-arounds and improvise solutions and find ways to incorporate those into the offerings they create. They consider what we call the edges, the places where "extreme" people live differently, think differently, and consume differently." - See Tim Brown & Jocelyn Wyatt, Design Thinking for Social Innovation, Stanford Social Innovation Review Winter 2010, pg 32, Accessed at https://ojs.unbc.ca/index.php/design/article/viewFile/1272/1089.
[819] Legal Information Institute, Visual Law: What lawyers need to learn from information designers, Cornell University Law School, 15 May 2013, Accessed at https://blog.law.cornell.edu/voxpop/2013/05/15/visual-law-what-lawyers-need-to-learn-from-information-designers/

arguments, or other advocacy work effectively as new lawyers and other legally-trained professionals. It is important to acknowledge here, as the later chapter examining human rights education in the law school outlines, that not all law graduates go on to enter or indeed graduate with the intention of entering into legal practice, but as yet law schools have failed to take this into account when designing extracurricular skills building programmes, which remain largely focused on mooting, client interviewing, and dispute resolutions and fail to deliver opportunities for building practical skills that jobs of the future will demand, such as public speaking, effective communication, legal writing in plain language, coding, entrepreneurship education, design thinking, cross-cultural competency, pitching skills, emotional and social intelligence, resilience and mindfulness, and advocacy and campaigning skills. It is worth considering the following recommendation from Cornell's Legal Information Institute (LII), which calls for lawyers to start thinking of themselves as 'communicators':

> *"Lawyers are communication professionals, even though we do not tend to think about ourselves in these terms. Most of us give advice and produce content and documents to deliver a specific message. In many cases a document – such as a piece of legislation or a contract – in itself is not the goal; its successful implementation is. Implementation, in turn, means adoption and action, often a change of behaviour, on the part of the intended individuals and organisations"*[820].

Legal information design, by this measure, is equally relevant to all of us who handle legal information for a living – from academics and educators to development professionals or humanitarian and NGO workers. As McFaul notes, there is growing adoption among civil society organisations of technologies and tools such as websites and mobile apps to "develop and provide legal information that can be targeted at particular audiences", although there is "considerable variation in the extent and range of engagement"[821]. And there is a rapidly expanding catalogue of tech-based innovations designed to disseminate legal information outside of the legal profession, which have greatly expanded the scope and breadth of data

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[820] Legal Information Institute, Visual Law: What lawyers need to learn from information designers, Cornell University Law School, 15 May 2013, Accessed at https://blog.law.cornell.edu/voxpop/2013/05/15/visual-law-what-lawyers-need-to-learn-from-information-designers/

[821] Hugh McFaula, Elizabeth FitzGerald, David Byrne and Francine Ryan, A mobile app for public legal education: a case study of co-designing with students, Research in Learning Technology, Vol 28 2020

available to human rights educators, communicators, and defenders alike and demonstrate how technology is helping them to make better informed decisions that ultimately benefit human rights advocacy in new and exciting ways[822].

For information-based platforms open to public audiences, web technology is now advanced enough for websites to better incorporate different models of presenting information, rather than merely signposting to other resources or documents, and information design gives designers more creative leeway to present web-based information to non-lawyers in increasingly creative and interactive ways. These might cognitively engage the user in logic-based decision-tree models to resolve queries rather than simply disseminate information, and may, as Pleasence suggests, be "tailored towards problem-solving, but … also be aimed at helping individuals to better contextualise or define their problem without necessarily providing problem-solving advice"[823]. Artificial intelligence (AI) makes this an altogether even more exciting proposition; as Mommers et al find, as yet "within AI & law, it has hardly ever been tried to make the contents of sources of law, and the relations among them, more accessible to those without a legal education"[824] – as such, the role of AI in human rights advocacy, education and culture is identified as a key area for future research.

4.4.3 Copyright in legal information

Legal technology both relies upon and creates "structured legal information", per Wyner, and so the ability of legaltech entrepreneurs, innovators, developers, creatives, communicators and educators to access legal information openly and to reuse, repurpose and republish it without restriction in commercial application development projects is critically important to nurturing a culture of 'inclusive innovation' that could "open up" legal information more generally, and human rights

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[822] Ruth Hickin, How are today's biggest tech trends affecting our human rights?, World Economic Forum, 11 Dec 2017, Accessed at https://www.weforum.org/agenda/2017/12/how-are-today-s-biggest-tech-trends-affecting-human-rights/

[823] Pascoe Pleasence, Nigel J Balmer and Catrina Denvir, How People Understand and Interact with the Law, Cambridge 2015, (Project funded by the Legal Education Foundation), p 142-143

[824] Laurens Mommers, Wim Voermans, Wouter Koelewijn & Hugo Kielman, Understanding the law: improving legal knowledge dissemination by translating the contents of formal sources of law, Artificial Intelligence and Law, Volume 17 2009, pp 51–78, p 25

information in particular, to wider publics of rights bearers[825]. However, the issue of copyright ownership in legal information – significantly underexplored in existing literature – warrants closer analysis because it represents a significant barrier to innovation and entrepreneurship in the creation of new tools and technologies which may rely on historic judgments and other authoritative materials, some of which can only be sourced reliably from the commercial legal databases where strict terms of service explicitly prohibit commercial reuse of proprietary data contained within them[826]. This in turn represents a major challenge for the mainstreaming of human rights information, education, and culture and also to the ability of disruptors to disrupt traditional approaches to human rights information, communication, and education, presenting a potentially major barrier to the realisation of the R*b*D vision and specifically to Principle 5 in the R*b*D Framework, which calls for innovators, creatives, communicators and programme-makers to be supported in their efforts to renew and mainstream human rights culture.

Copyright limits the ability of legal information users outside of law firms and law schools (who can access subscription-based legal libraries containing legislation, judgments, and journal articles, such as LexisNexis, Westlaw and HeinOnline) to access significant sources of law – which is especially problematic in common law jurisdictions where the decisions of the national courts are guided by precedent. New judgments are now, at least in most 'free' or 'partly free' countries in the world, published openly and online, with their delivery even livestreamed on YouTube and made available on-demand on court websites[827]. Although the norm is now very much in favour of 'open access' publication of judgments of the domestic courts, especially in cases that are heard in the Supreme or Appeals Courts, a vast and valuable body of human rights information remains buried within the commercial database platforms. It is little known that copyright in judgments is held precariously between publishers, transcription companies, law reporters and the Crown, which makes it impossible for legal information entrepreneurs to curate legal data,

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[825] The term 'inclusive innovation' is used here as "the means by which new goods and services are developed for and/or by those who have been excluded from the development mainstream; particularly the billions living on lowest incomes". – See Richard Heeks, Mirta Amalia, Robert Kintu, and Nishant Shah, Inclusive Innovation: Definition, Conceptualisation and Future Research Priorities, Development Informatics Working Paper No 53 2013, p 1

[826] See (for example) 2.1, Terms of Use Lexis Nexis UK: https://www.lexisnexis.co.uk/terms

[827] Leslie J Moran, Visible Justice: YouTube and the UK Supreme Court, Annual Review of Interdisciplinary Justice Research, Vol 5 2016, CanLIIDocs 4679, p 223

information, and judgments to be repurposed or reused in tech-based public legal education projects without running the significant risk of inadvertently infringing the commercial copyright claimed in judicial transcripts.

This not only creates a significant barrier to access to justice for those needing to access historic human rights cases and documents, and can, in some cases, "prevent people from acting to protect their rights"[828] when such information is being sought by unrepresented or self-represented, *pro se* 'Litigants in Person'[829], but also inhibits entrepreneurs from being able to access, reuse and republish legal information. This makes copyright a key barrier to the flourishment of a culture of legal tech entrepreneurship and a detriment to innovation in legal education technology in particular. The limited engagement of entrepreneurs with legal information due to copyright has had the effect of limiting the flow of legal information to anyone other than those who work or study in an environment that can meet the extraordinarily high subscription fees for databases where terms of service expressly prohibit reuse in a commercial or entrepreneurial project and are limited to personal use only. Even in educational settings, the 'fair dealing' exception of use for private study does not apply if the project is destined for general public audiences outside of the law school[830]. Leith and Fellows agree that it is "actually very difficult to resolve questions of ownership in the available text of judgments"[831], and as I warned in an undergraduate dissertation in 2016 on how copyright inhibits innovation in legal education technology, "[i]n any use of data that did not originate with the user, whether commercial or personal use, it is always worth remembering that open does not always mean free"[832].

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[828] Pascoe Pleasence, Nigel J Balmer and Catrina Denvir, How People Understand and Interact with the Law, Cambridge 2015, (Project funded by the Legal Education Foundation), p 25-26

[829] See Matthew WL Yeung and Janny HC Leung, Litigating without speaking legalese: the case of unrepresented litigants in Hong Kong, International Journal of Speech Language and the Law, Vol 26, No (2019); Jennifer Elisa Chapman, Access to Legal Information for Self-Represented Litigants: The Role of the Academic Law Library, 30 June 2020, Available at http://dx.doi.org/10.2139/ssrn.3639581; Ursula Gorham, Facilitating Access to Legal Information by Self-Represented Litigants: An Exploratory Case Study of the People's Law Library of Maryland, Journal of Open Access to Law, Vol 2 No 1 (2014)

[830] In the UK, the 'fair dealing' exception that permits use of copyright-protected material is found in Section 16 of the Copyright, Designs and Patents Act 1988.

[831] Philip Leith and Cynthia Fellows, Enabling Free Online Access to UK Law Reports: The Copyright Problem, International Journal of Law & Information Technology 2010, Vol 18 Issue 1, pp 83-84

[832] Louise Loder, Access and reuse of primary UK and EU legal materials in the development of legal education technology, Undergraduate dissertation submitted to the University of the West of England towards the fulfilment of my Qualifying Law Degree (2016).

4.5 Conclusion

This chapter has critically assessed several challenges and issues related to mainstreaming human rights information. It is well established that information is a human right, yet there are numerous issues with individuals outside of the legal profession and legal academia being able to access, understand or reuse human rights information to promote human rights literacy as a tool of self-empowerment. Human rights literacy is a central goal in the R*b*D vision because, in my view, it can help to preserve human rights history and protect human rights legacies, creating regenerative forms of human rights consciousness in the process.

Human rights information, as the next chapter will explore, is increasingly under unprecedented existential threat due to the culture of human rights misinformation that has contaminated corporate media reporting, diminished human rights narratives, and has ultimately eroded the respect and reverence that human rights was held to in the pre-9/11 human rights environment. As this chapter has demonstrated, creating a positive, lasting, and impactful human rights culture relies greatly upon giving individuals the opportunities and skills to access, make sense of and freely disseminate and repurpose human rights information. Therefore, as the next chapter will argue, we can choose to deliberately counter human rights misinformation with human rights information presented simply, in the most innovative and intuitive of ways, and with the benefit of technologies that could not have even been imagined just a generation ago. In doing so, we empower and encourage innovative educators, creatives, and civil society to combine openly accessible legal information with inclusive, human-centred thinking and intuitive technologies, to revive human rights culture with information and to rewrite the emotional contract that inherently exists between human beings and their rights[833].

This chapter concludes with two final thoughts which warrant further research in the context of human rights law and information, or rather – human rights law *as*

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[833] Emotional contract is used in this context to refer to the pre-existing emotional and psychological connection between human rights and the human beings who are the subjects of and beneficiaries of those rights. It builds upon the definition for 'psychological contract' offered by Denise Rousseau, which is based on "individual beliefs ... regarding terms of an exchange agreement between individuals and their organisation" which are "self-fulfilling prophecies: they create the future" – see Denise Rousseau, Psychological Contracts in Organizations: Understanding Written and Unwritten Agreements, SAGE Publications, 18 May 1995, p 9

information. Firstly, the Foucauldian knowledge-power paradigm offers an interesting prism through which to view the arguments made within this chapter, knowledge-power referring to "how knowledge is put to work through discursive practices in specific institutional settings to regulate the conduct of others" with emphasis on the "relationship between knowledge and power"[834]. For Foucault, "production of knowledge is always crossed with questions of power"[835], and power *over* legal information as a product of knowledge has traditionally been vested in the formal institutions which have essentially commoditised legal knowledge[836] – in government, in the legislature, the courts, the legal profession – and in the hands of legislators, lawyers, publishers, and information professionals or specialists[837], or those with the power *to* ensure that access to legal information is limited only to those with the means to pay for it and the 'multiliteracy' skills required to make sense of it[838]. In her exploration of the trichotomy of 'power over' (as a form of coercive power over a person, group or institution), 'power to' (a more empowering form of power that can be defined simply as "being able to", which links back to Hobbesian interpretations of power as one's "means to obtain some future apparent Good"[839]), and 'power with' ("coactive", collective action towards a common outcome or goal[840]), Pansardi identifies a fourth, emerging 'power from within', which is the "individual's awareness of her own capacities which motivate … action"[841]. If power *over* legal information is held by the institutions with access to such information limited to those with professional privilege, then the capability of legal information to

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[834] Simeon J Yates, Foucault: Power, Knowledge and Discourse, in Discourse Theory and Practice: A Reader, edited by Margaret Wetherell and Stephanie Taylor, SAGE 2001, p 75
[835] *Ibid*, p 78
[836] Pansardi's analysis of the concepts of power *over,* power *to,* power *with*, and the emerging power *from within*, defines 'power *over*' as a form of coercion, as "power of some person or group over some other person or group" – see Pamela Pansardi & Marianna Bindi, The new concepts of power? Power-over, power-to and power-with, Journal of Political Power, Vol 14, Issue 1 2021: The Changing Faces of Power 1979-2019, pp 51-71, p 51
[837] Information professionals "apply their special knowledge about information and information technology with one basic purpose in mind: to get the right information from the right source to the right client at the right time in the form most suitable for the use to which it is to be put and at a cost that is justified by its use"; these professionals might include archivists, librarians, museum curators, records / database managers, or data analysts – see Richard O Mason, What Is an Information Professional?, Journal of Education for Library and Information Science, Vol 31, No 2, 1990 Conference Issue (Fall, 1990), pp 122-138, p 122
[838] Multiliteracy is "the ability to identify, interpret, create, and communicate meaning across a variety of visual, oral, corporal, musical and alphabetical forms of communication. Beyond a linguistic notion of literacy, multiliteracy involves an awareness of the social, economic and wider cultural factors that frame communication" – see Jörg Müller, Juana M Sancho and Fernando Hernández, New Media Literacy and the Digital Divide, in Handbook of Research on New Media Literacy at the K-12 Level: Issues and Challenges, eds Leo Tan Wee Hin and R Subramaniam, IGI Global, 2009, pp 72-88
[839] Pamela Pansardi & Marianna Bindi, The new concepts of power? Power-over, power-to and power-with, Journal of Political Power, Vol 14, Issue 1 2021: The Changing Faces of Power 1979-2019, pp 51-71, p 52
[840] *Ibid*, p 51
[841] *Ibid*, p 52-53

inspire an individual's awareness of their own capacity to motivate action and create lasting, meaningful change is diminished. To redesign the power imbalance over legal information, we need to emancipate such information from commoditisation and commercialisation, and restore power *to* the individual, empowering them to access, absorb, reuse and redesign such information for the 'apparent Good'. In so doing, the individual can realise their power *with* others in all the vital "spaces of action"[842], as Arendt called it, and through their solidarity and the self-realisation and self-fulfilment that arises from coactive, collective action, power is internalised as power *from within.*

And finally, a further and no less complex challenge to mainstreaming human rights information and knowledge, which threatens the R*b*D vision for creating a healthy and flourishing human rights information environment as a foundation for lasting human rights culture, is state censorship, which describes the state-led suppression of documentation, publication or dissemination of human rights information, evidence, and reporting of human rights stories, testimonies, and violations, and criminalises public or academic discourse on human rights and social justice issues. Rights bearers living in these environments, where a "ruler tries to manage information transmission to citizens to mitigate the likelihood of revolution"[843], are immersed in a culture that is systemically and deeply hostile to the existence or implementation of human rights and the understanding that the promulgation of human rights information or pro-rights 'propaganda' that may open up the eyes of key publics to how their rights are being withheld from them or others, is tantamount to serious persecution and in some cases, death[844].

In these environments, arguments about copyright and simplification of language are purely academic, as rights bearers live with the constant threat of swift and brutal crackdowns that 'chill' free expression and limit the accessibility of voters to public information, for example, during elections in dictatorships masquerading as pseudo-

[842] Leo J Penta, Hannah Arendt: On Power, The Journal of Speculative Philosophy, New Series, Vol 10, No 3 (1996), pp 210-229, p 212

[843] Mehdi Shadmehr and Dan Bernhardt, A Theory of State Censorship, Berkeley Haas, p 1, Accessed at https://www.haas.berkeley.edu/wp-content/uploads/Shadmehr.pdf

[844] Frontline Defenders' Global Analysis 2020 Report found that 331 human rights defenders were killed in 2020 alone - see Front Line Defenders, Global Analysis 2020, 9 February 2021, Accessed at https://www.frontlinedefenders.org/sites/default/files/fld_global_analysis_2020.pdf

democratic states[845]. In states throughout the MENA region (including Turkey, Saudi Arabia, the UAE, Iraq, Syria, or Libya), in many parts of Asia such as India, Sri Lanka, Myanmar, China, and Hong Kong, or in Russia and Belarus, to give just a few examples, human rights defenders, educators, lawyers, journalists, academics, bloggers and other advocates are routinely persecuted, arrested, forcibly disappeared, tortured, and murdered for 'proselytising' about human rights, the 'chilling effect' of censorship[846], often enforced by state security agencies, breeds a culture of justified fear that, in many cases, compels self-censorship. Self-censorship in the Benthamite sense, where "individuals restrain their expressive attitudes in response to public censors"[847], impacts the "proper functioning of a democratic society, because it prevents free access to information, freedom of expression, and the flow of information", according to Bar-Tal[848]. Self-censorship has serious implications for the expression and dissemination of human rights information because it invariably involves giving diluted or limited information to key publics[849] and compels the erasure from personal social media accounts of any statements or symbols of support for peaceful protests or activist groups[850].

Additionally, there is a tendency of witnesses to and victims of serious human rights violations to self-censor evidence and conceal emotional responses to avoid "negative sanctions" from other individuals in their familial, social or military environments[851]. Self-censorship is a place of terrified silence, and human rights have throughout history come to great harm in places where information, evidence,

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[845] Mehdi Shadmehr and Dan Bernhardt, A Theory of State Censorship, Berkeley Haas, p 24-25, Accessed at https://www.haas.berkeley.edu/wp-content/uploads/Shadmehr.pdf

[846] 'Chilling effect' in the context of freedom of expression and censorship describes "overt censorship such as a government banning publication of a book, as well as more subtle controls such as ambiguous legislation and high legal costs that provoke uncertainty and fear among writers and journalists". – see Judith Rownend, Chapter 7: Freedom of Expression and the Chilling Effect, The Routledge Companion to Media and Human Rights, eds Howard Tumber, Silvio Waisbord, Routledge 2017, p 73-82

[847] Philip Cook and Conrad Heilmann, Censorship and two types of self-censorship, LSE Choice Group Working Paper Series, Vol 6, No 2, The Centre for Philosophy of Natural and Social Science (CPNSS), London School of Economics 2010, p 1

[848] Daniel Bar-Tal, Self-Censorship as a Socio-Political-Psychological Phenomenon: Conception and Research, Advances in Political Psychology, February 2017, Vol 38, Issue 1, pp 37-65, p 37

[849] Gerald Walulya and Goretti L Nassanga, Democracy at Stake: Self-Censorship as a Self-Defence Strategy for Journalists, Media and Communication 2020, Vol 8, Issue 1, pp 5–14

[850] Natasha Khan and Joyu Wang, Hong Kong's Security Law Scares Citizens Into Scrubbing Social Media, Self-Censorship, The Wall Street Journal, 2 July 2020, Accessed at https://www.wsj.com/articles/hong-kongers-self-censor-as-security-law-bites-11593696720; see also Chang Ping, Self-censorship is Beijing's most effective gag on truth, South China Morning Post, 10 December 2013, Accessed at https://www.scmp.com/comment/insight-opinion/article/1377510/self-censorship-beijings-most-effective-gag-truth

[851] Daniel Bar-Tal, Self-Censorship as a Socio-Political-Psychological Phenomenon: Conception and Research, Advances in Political Psychology, February 2017, Vol 38, Issue 1, pp 37-65, p 46

and the testimonies of those with lived experience have been suppressed. Self-censorship ultimately offers tacit acceptance of human rights violations in situations where good people stay quiet so as not to put themselves and their family members at risk of serious bodily or reputational harm, and in this way it represents a kind of forced complicity which, for some, is based on the inherent human instinct to survive. "Under conditions of terror, most people will comply," Arendt wrote, "but some people will not"[852]. Those who will, often under excruciating pressure and fear, deserve our compassion and support, however subversively delivered; and those who will not deserve international protection of the highest reliability. In the following chapter, the issues of human rights misinformation and strategies to mitigate threats to human rights narratives, discourse and reporting will be discussed in more nuanced detail, but here I conclude this chapter by reiterating my firm belief that the value and significance of information in the creation of human rights culture cannot be understated – it is, in the 'Age of Alternative Facts'[853], our best hope for restoring human rights discourse to its pre-9/11 state, one more based in truth, decency and importantly, in dignity.

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[852] Hannah Arendt, Eichmann in Jerusalem (Part V), The New Yorker, 16 March 1963, p 53, Accessed at https://www.newyorker.com/magazine/1963/03/16/eichmann-in-jerusalem-v

[853] 'Alternative facts' refers to the bizarre but now iconic statement of former aide to President Trump, Kellyanne Conway, who when questioned about the size of the Trump inauguration crowd and after supporting a false figure promoted by the President's Press Secretary Sean Spicer, insisted that Spicer had used 'alternative facts' in his first statement to the press - which arguably was the very first indication that the truth, in President Trump's presidency, was in deep trouble. NBC News, Conway: Press Secretary Gave 'Alternative Facts', 22 January 2017, Accessed at https://www.nbcnews.com/meet-the-press/video/conway-press-secretary-gave-alternative-facts-860142147643

Chapter Five
Human Rights and the Infosphere II: Correcting Misinformation and the 'Monstering' of Human Rights Towards a New Era of Human Rights Thoughtfulness

5.1 Chapter Introduction

Following on from the previous chapter in which I articulated my vision for an information- and knowledge-based culture of human rights where the ordinary rights bearer's level of legal and human rights awareness can be nurtured, this chapter argues that in order to promote and defend human rights from authoritarian and populist attacks, we must be able to authoritatively correct misinformation about human rights and coherently counter common, deep-rooted misperceptions and false narratives around human rights. By combatting human rights misinformation in our personal, local and economic discursive interactions, we give ourselves the best possible chance of achieving an era of human rights thought*ful*ness and neutralising the re-emergence of Arendtian thought*less*ness, defined by Neubacher as how "an individual in bureaucratic structures can participate in such criminality, unable or unwilling to confront the logical consequences of their own actions"[854], which is based on Arendt's assessment in *The Banality of Evil* that Eichmann "never realised what he was doing" because he lacked the empathy, cognitive ability or emotional intelligence "to think from the standpoint of somebody else"[855].

As I define it, human rights thoughtfulness is a new state of engaging with human rights ideas, conversations, and problems, one that demands an informed view and strengthened awareness among users of social media or consumers of news to address the significant threats that misinformation, disinformation, digital manipulation, data privacy, hate speech, and fake news present to both the spirit and the system of human rights. This brand of human rights thoughtlessness is, in my view, responsible for the normative entrenchment of human rights indifference and

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[854] Frank Neubacher, How Can it Happen that Horrendous State Crimes are Perpetrated? An Overview of Criminological Theories, Journal of International Criminal Justice (2006) Vol 4 Issue 4, pp 787-799, p 787
[855] Thomas White, What did Hannah Arendt really mean by the banality of evil?, Aeon, 23 April 2018, Accessed at https://aeon.co/ideas/what-did-hannah-arendt-really-mean-by-the-banality-of-evil

the social media-fuelled solipsism[856] in which hostilities to human rights and democratic traditions have furiously simmered and have occasionally, as we saw throughout and especially in the final days of the 'post-truth presidency' of Donald Trump[857], been detonated with the intent of causing maximum damage to the institutions and the rules-based order which protect them. Consciously correcting misinformation and countering any 'monstering' of human rights in the media and in localised or national discourses is, I believe, crucial if we are to have any hope of nourishing the indifferent 'persuadables'[858] with the knowledge and information to recognise human rights misinformation and decisively correct misleading human rights narratives. Supporting key publics with the skills to construct inclusive, discursive defences of human rights is also crucial to the R*b*D Framework (specifically, Principles 1, 2 and 5), especially as we move to recover from the Trump / Brexit / Covid trifecta of misinformation and disinformation, the scale of which has been described (in the context of Covid) as an 'infodemic'[859].

The challenge for individuals is to pragmatically navigate the anti-rights rhetoric that has insidiously embedded itself in our media and culture industries, but also within the hostile digital world that incubates and amplifies them. Human rights discourse has become almost irrevocably corroded in recent years by hate speech, which once found a comfortable host in the "dark corners of the internet" but now, per Siegel,

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[856] The Oxford Dictionary of Philosophy defines solipsism as the belief that "only oneself and one's experience exists. Solipsism is the extreme consequence of believing that knowledge must be founded on inner, personal states of experience, and then failing to find a bridge whereby they can inform us of anything beyond themselves". - See Oxford Dictionary of Philosophy, Solipsism, Accessed at https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100517247

[857] BBC News, Capitol riots timeline: What happened on 6 Jan one year ago?, 06 January 2022, Accessed at https://www.bbc.co.uk/news/world-us-canada-56004916

[858] In the documentary *The Great Hack* on Cambridge Analytica's voter interference psyops strategy on Facebook, 'persuadables' were defined as "those whose minds they thought they could change" – here it is used to refer to those who may have misunderstood or been disinterested in human rights in the past but are open to being convinced otherwise. See Mike Butcher, 'The Great Hack': Netflix doc unpacks Cambridge Analytica, Trump, Brexit and democracy's death, TechCrunch, 24 July 2019, Accessed at https://techcrunch.com/2019/07/23/the-great-hack-netflix-doc-unpacks-cambridge-analytica-trump-brexit-and-democracys-death/; also see Karim Amer and Jehane Noujaim, The Great Hack, 26 January 2019, Netflix (Documentary)

[859] Abrusci et al distinguish misinformation and disinformation as follows: "While both involve the spread of false or misleading information, misinformation is typically spread by people who do not realise that the information is false. By contrast, with disinformation, the person sharing the information knows it is fake and usually shares it with the intent to cause harm" - see Elena Abrusci, Sam Dubberley and Lorna McGregor, An 'Infodemic' in the Pandemic: Human Rights and Covid-19 Misinformation, In Carla Ferstman, and Andrew Fagan, (eds) Covid-19, Law and Human Rights: Essex Dialogues (A Project of the School of Law and Human Rights Centre), University of Essex 2020, pp 287 - 296, p 287, citing Claire Wardle and Hossein Derakhshan, Information Disorder: Towards an interdisciplinary framework for research and policymaking, Council of Europe Report DGI 09-2017, 27 September 2017, p 20-22

has become "increasingly visible on mainstream social media platforms"[860] and normalised as part of our political rhetoric. Negative and extreme imagery of human rights abuses and the sensationalism of human rights issues through entertainment and media reporting, far from raising awareness of such abuses and issues, is in Ligouri's view responsible for 'normalising' brutality, desensitising human suffering and indifference to human rights abuses on a grand and global scale[861]. As Freedom House notes: "Disinformation and propaganda disseminated online have poisoned the public sphere"; further, recent events demonstrate clearly that "the internet can be used to disrupt democracies as surely as it can destabilise dictatorships"[862].

As the previous chapter has argued, human rights have evolved into one of the most important and widely discussed ideas in the global political milieu[863], and debate over human rights has reached what Langford calls a "crescendo" amidst "claims of irrelevance and predictions of demise"[864]. As Drywood et al point out, "the value of human rights law is highly contested in politics and in practice. In academic scholarship, human rights law has long been – and continues to be – the subject of intense critical scrutiny"[865]. As this chapter will argue, postmodernism long ago cancelled out the concept of universal truth that underpins and legitimises the international human rights framework, and more recently, populism has quashed respect among key publics for human rights and democracy[866], the 'post-truth'

[860] Alexandra A Siegel, Chapter Four: Online Hate Speech, Social Media and Democracy, eds Nathaniel Persily and Joshua A Tucker, Cambridge Core, Accessed at https://www.cambridge.org/core/services/aop-cambridge-core/content/view/28D1CF2E6D81712A6F1409ED32808BF1/9781108835558c4_56-88.pdf/online_hate_speech.pdf - see also Kiran Garimella, Aristides Gionis, Gianmarco De Francisci, Michael Mathioudakis, Political Discourse on Social Media: Echo Chambers, Gatekeepers, and the Price of Bipartisanship, Proceeding of the World Wide Web Conference 2018, April 23-27, 2018, Lyon, France (Accessed at: https://dl.acm.org/citation.cfm?id=3186139); Seth Flaxman, Sharad Goel, Justin M. Rao, Filter Bubbles, Echo Chambers, and Online News Consumption, Public Opinion Quarterly, Volume 80, Issue S1, 2016, pp 298–320; Dr Gavan Titley, Ellie Keen, László Földi, Starting points for combatting hate speech online, Council of Europe (2015); Special Rapporteur's 2018 report to the United Nations Human Rights Council on the promotion and protection of the right to freedom of opinion and expression (A/HRC/38/35 2018)
[861] Laura Ligouri, Brain research suggests emphasizing human rights abuses may perpetuate them, OpenGlobalRights 18 June 2019, Accessed at https://www.openglobalrights.org/brain-research-suggests-emphasizing-human-rights-abuses-may-perpetuate-them/
[862] Adrian Shahbaz, Freedom on the Net 2018: The Rise of Digital Authoritarianism, Accessed at https://freedomhouse.org/report/freedom-net/2018/rise-digital-authoritarianism
[863] Sarbani Guha Ghosal, Human Rights: Concept and Contestation, The Indian Journal of Political Science, Oct - Dec 2010, Vol 71, No 4 (Oct - Dec 2010), pp 1103-1125, p 1103
[864] Malcolm Langford, Critiques of Human Rights, Annual Review of Law and Social Science 2018, Vol 14, pp 69–89, p 69; many of these critiques have been comprehensively covered in the first two chapters of this thesis.
[865] Eleanor Drywood, Michelle Farrell, Edel Hughes, Introduction, In Human Rights in the Media: Fear and Fetish, Routledge 2019, p 1
[866] Philip Alston, The Populist Challenge to Human Rights, Journal of Human Rights Practice, Volume 9, Issue 1, February 2017, pp 1–15; Jane Suiter, Post-truth Politics, Political Insight 2016, Vol 7 Issue 3, pp 25–27; Matthew D'Ancona, Post-truth: The new war on truth and how to fight back, Ebury 2017; Michael A Peters, Sharon Rider, Mats Hyvönen, and Tina Besley, Post-Truth, Fake News: Viral Modernity & Higher Education, Springer 2017;

phenomenon having arisen from both postmodernism *and* populism to render it entirely unnecessary to be truthful *about* human rights in the information environment. "Given the elevated prominence of Post-Truth and Fake-News in today's political discourse, one could be forgiven for thinking that these are new, original concepts, symptoms of an unprecedented, hazardous, current political pandemic", writes Bafucchi[867], but as the chapter reveals, the 'post-truth' phenomenon which has proven to be so harmful to human rights predates Trump-style politics by decades, and has largely been made possible by a complicit, corporate-owned tabloid media that has opportunistically peddled nonsensical myths and misconceptions to subvert the *spirit* of human rights (if one is generous about it) and just as many misrepresentations, untruths, and disingenuous lies designed to seriously undermine the *system* of human rights (if one is to take a more cynical view).

Challenges to the universality of human rights in academic scholarship can be traced back to utilitarian Jeremy Bentham who, in *Anarchical Fallacies*, attacked the notion of governments being responsible for human rights, famously declaring: "Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense – nonsense upon stilts"[868]. Bentham's rejection of natural rights was vivid and vehement; to him, natural rights were "the mortal enemies of law, the subverters of government, and the assassins of security"[869]. He resented the concept of 'Rights of Man' because, in Arslan's analysis, "it stimulated revolutionary sentiments in the common people, leading to "inexpiable war with all establishments"[870]. Burke labelled the rights provided within the French Declaration as "metaphysically true" but "morally and politically false" and he argued (with validity, on balance) that "abstract rights" have no meaning without the infrastructure to enforce them and that the "pretended rights of men" were "nothing but 'metaphysical abstraction' defying

Ruth Wodak and Michal Krzyżanowski, Right-wing populism in Europe & USA: Contesting politics & discourse beyond 'Orbanism' and 'Trumpism', Journal of Language and Politics, Vol 16, Issue 4, Jan 2017, p 471-484; Silvio Waisbord, Why Populism is Troubling for Democratic Communication, Communication, Culture and Critique, Vol 11 Issue 1, March 2018, pp 21–34; Kenneth Roth, The Dangerous Rise of Populism: Global Attacks on Human Rights Values, Journal of International Affairs 2017, pp 79-84

[867] Vittorio Bufacchi, Truth, lies and tweets: A Consensus Theory of Post-Truth, Philosophy and Social Criticism 2021, Vol 47 Issue 3, pp 347-361, p 347

[868] Jeremy Bentham, Anarchical Fallacies, in Jeremy Waldron, Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Man, Routledge 1987, p 53-69

[869] *Ibid*, p 69

[870] Zühtü Arslan, Taking Rights Less Seriously: Postmodernism and Human Rights, Res Publica, December 1999, Vol 5, Issue 2, pp 195–215, p197

circumstantial evaluation"[871]. Karl Marx criticised the "so-called rights of man" as appealing to the egotism of the "individual withdrawn behind his private interests and whims and separated from the community"[872]. For Rawls, human rights did not "depend on any particular comprehensive moral doctrine or philosophical conception of human nature" but instead set a "minimum standard of well-ordered political institutions for all peoples who belong, as members of good standing, to just political society of peoples"[873].

The rejection of natural rights theory and of any morality-based universalism to human rights has continued into contemporary scholarship. For Habermas, whom Ghosal identifies as "an important contributor in separating the idea of universality from natural law", a human right "does not have its origins in morality, but rather bears the imprint of the modern concept of individual liberties, hence of a specifically juridical concept … integrated into the process of globalisation"[874]. Foucault believed that it was entirely possible to have human rights without the need to root them in any "universal or transhistorical human nature"[875], whereas in Baudrillard's *Cool Memories*, human rights were nothing more than "soft, easy post-coitum historicum ideologies"[876], largely because of the issue of universality, which as Ghosal writes has "drawn huge debates and discourses in both the developed and developing world together"[877].

All of this is to illustrate that criticism of the foundational principles of human rights is neither a new nor unreasonable phenomenon, and it is quite right that human rights should be subjected to criticism and healthy debate, and expected to withstand intellectual, academic, and political scrutiny. Such scrutiny – which translates as the power to engage in human rights discourse, to disseminate it, to advocate for, to

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[871] Russell Kirk, Burke and Natural Rights, The Review of Politics, Vol 13, No 4, Oct 1951, pp 441-456, p 445-447
[872] Karl Marx, On the Jewish Question, in Robert Tucker (ed), The Marx-Engels Reader, Norton 1978, pp 26–46
[873] John Rawls, The Law of Peoples, in The Politics of Human Rights, Verso 2002, pp 31-33; also cited in Sarbani Guha Ghosal, Human Rights: Concept and Contestation, The Indian Journal of Political Science, Oct - Dec 2010, Vol 71, No 4 (Oct - Dec 2010), pp 1103-1125, p 1108
[874] Sarbani Guha Ghosal, Human Rights: Concept and Contestation, The Indian Journal of Political Science, Oct - Dec 2010, Vol 71, No 4 (Oct - Dec 2010), pp 1103-1125, p 1108
[875] Ladelle McWhorter (2017) Human rights without human nature: Foucault's transformative retrieval of liberal rights discourse, Journal of Political Power, Vol 10 Issue 1, pp 119-122, p 119
[876] Jean Baudrillard, Cool Memories IV: 1995-2000, Verso 1990, p 23
[877] Sarbani Guha Ghosal, Human Rights: Concept and Contestation, The Indian Journal of Political Science , Oct - Dec 2010, Vol 71, No 4 (Oct - Dec 2010), pp 1103-1125, p 1110

counter and to challenge it – is utterly essential to the integrity of human rights discourse, integral to the realisation of free expression, thought and conscience, and pivotal to closing what Ghosal identifies as an "enormous gap" between the "ideological proposition and practical implementation" of human rights[878]. Human rights discourse itself is, as Higgins asserts, "perhaps one of the most important discourses of our times … at a national level and at a global level"[879], and it is meant to be "a space of contestation with such questions as to how we are to source such rights, how universality might be achieved, the importance of the inclusivity and the indivisibility of human rights"[880]. Yet human rights discourse in the pre-digital age of Bentham, Burke, Marx, Habermas and even Baudrillard was discernibly a more civilised and respectful affair; per Wypych, philosophical critique in the time of Bentham and Burke was generally "conducted on a completely different level than it is today"[881]. Alves identifies that human rights have always faced significant existential threats and criticisms "[a]rising from power politics, arbitrary authority, deep-rooted prejudices, and economic exploitation", noting that "such threats are neither old nor new [but] virtually eternal, having changed only in intensity and shape"[882]. However, as Alves notes: "More difficult to face than the traditional challenges, the new factors that oppose human rights are insidious and effective … found both in the side-effects of economic globalization and in the prevailing anti-universalistic stance of postmodernity"[883]. This mirrors Grayling's view that it is inequality borne of neoliberal politics and postmodernist relativism that have together "opened the door" to a type of post-truth populist politics "untroubled by evidence"[884]. Contemporary politics, he writes, has been shaped by an increasingly toxic growth in income inequality, a deepening gap between rich and poor, which has engendered a deep sense of grievance among low- and middle-income families[885]. This, ultimately, has made it easy for opportunistic nationalist political leaders to inflame emotions

[878] *Ibid*

[879] Michael Higgins, The Human Rights Discourse: Its Importance and Its Challenges, The Human Rights Commission's Annual Lecture on International Human Rights Day, 10 December 2012, Accessed at: https://www.ihrec.ie/app/uploads/download/pdf/ihrc_6th_annual_lecture_by_president_of_ireland_michael_d_higgins_10_december_2012.pdf

[880] *Ibid*

[881] Bartosz Wypych, Discrimination, Democracy and Postmodern Human Rights, Polish Political Science, Vol XLII, p 163-184, p 163

[882] José A Lindgren Alves, The Declaration of Human Rights in Postmodernity, Human Rights Quarterly, Vol 22 2000, pp 478-500, p 479

[883] *Ibid*, p 479

[884] Sean Coughlan, What does post-truth mean for a philosopher?, BBC, 12 January 2017, Accessed at http://www.bbc.co.uk/news/education-38557838

[885] *Ibid*

over divisive issues such as immigration and to dismiss mainstream politicians who are more observant of liberal political traditions as 'elites'[886], to denounce human rights as posing a threat to sovereignty, and to accuse the media of disseminating 'fake news' when the news in question proves inconvenient to a populist or austere agenda[887].

This division has been exploited by politicians' rhetoric and 'language games'[888], which have opened doors to an increasingly nationalistic and potentially fatal backlash against the human rights agenda and its keystone institutions of post-war liberal democracy. Anti-rights discourse has decimated the authority and credibility of our international institutions through an insular anti-globalism and an insidious protectionism that has wounded the respect of key publics for democracy and human rights at home, and emboldened authoritarianism abroad. This can be clearly seen in developments in China, India, Turkey, Saudi Arabia, Belarus, and Venezuela, among many other countries in the early 2020s with democracy declining deeply and rapidly enough to be felt, as Repucci writes, both "by those living under the cruellest dictatorships, as well as by citizens of long-standing democracies"[889]. Mead has pointed to the "skewed and partial approach often taken by the mainstream media to the reporting of human rights" whereby "misreporting, and the misconception and misconstruction of reality offer us slanted interpretations and an unbalanced diet"[890]. This is especially true in the areas where human rights most fiercely conflict with neoliberal (market-oriented) political and economic ideologies and inspire incredibly polarised views on everything from refugee rights and welfare and social / economic rights to the rights of those in the criminal justice or immigration systems.

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[886] Sean Coughlan, What does post-truth mean for a philosopher?, BBC, 12 January 2017, Accessed at

[887] Anne Schulz, Werner Wirth, and Philipp Müller, We Are the People and You Are Fake News: A Social Identity Approach to Populist Citizens' False Consensus and Hostile Media Perceptions, Communication Research 2018, https://doi.org/10.1177/0093650218794854

[888] Ludwig Wittgenstein in *The Philosophical Investigations* coined the term 'language-game' to "bring into prominence the fact that the speaking of language is part of an activity, or a form of life", and it is used here to refer to the merging of language and action, or the use of language to compel action. See Michael A Peters, Language-games philosophy: Language-games as rationality and method, Educational Philosophy and Theory 2020, pp 1-7, p 2

[889] Sarah Repucci and Amy Slipowitz, Freedom in the World 2021: Democracy under Siege, Freedom House, p 1, Accessed at https://freedomhouse.org/sites/default/files/2021-02/FIW2021_World_02252021_FINAL-web-upload.pdf

[890] Eleanor Drywood, Michelle Farrell, Edel Hughes, Introduction, In Human Rights in the Media: Fear and Fetish, Routledge 2019, p 1-5

In the US, UK and many other countries, human rights defenders have struggled to correct the commonly held and deeply erroneous myth that human rights law constitutes a "charter for criminals and terrorists"[891], or that human rights provide refugees with luxury hotel accommodation, free housing, and other taxpayer-funded perks. This misconception has been masterfully stoked over several decades by career politicians and (in the UK especially) the notoriously right-leaning tabloid media, "largely run by a very small group of very right-wing media moguls who defend the status quo of which they are part"[892]. Many of the most popular newspapers in the UK, at different times and on various human rights issues over the course of decades, have 'monstered' human rights, to borrow Wagner's famous phrase[893], when it has been politically, ideologically, or commercially expedient for media corporations to do so. In a market where the shrinking plurality of traditional media has been upended by an ever-widening landscape of unregulated media conglomerates, 24/7 digital news providers, and the rise of citizen journalism, an "important outlet for marginalised voices"[894], the misrepresentation of human rights in the media has gone largely unchallenged.

Because human rights have over the decades become so heavily politicised and linked with competing and highly partisan 'socialism vs capitalism' ideologies, career politicians have become distinctly averse to engaging with or being seen to support human rights issues for fear of alienating the significant number of voters who reject human rights as an elite globalist construct, too "controversial, abstract and biased" to be taught in schools[895], too politically partisan, and too aligned with left-wing liberalism. This in turn has diluted the influence of human rights in policy discourse and has made it easier for many in the political sphere and in the international community, where geopolitical power is held and abused, to turn a blind eye to human rights abuses when they are committed by major players in the world economy such as China, Saudi Arabia, India, or the United States. As Drywood et al

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[891] Full Fact, Human rights: a criminals' charter?, 21 April 2015, Accessed at https://fullfact.org/law/human-rights-criminals-charter/
[892] Matthew Smith, How left or right-wing are the UK's newspapers?, The Times, 06 March 2017, Accessed at https://www.thetimes.co.uk/article/how-left-or-right-wing-are-britain-s-newspapers-8vmlr27tm
[893] Adam Wagner, The Monstering of Human Rights, University of Liverpool Conference on Human Rights in the UK Media: Representation and Reality, 19 September 2014
[894] Nicolas P Suzor, Lawless: The Secret Rules That Govern Our Digital Lives, Cambridge University Press 2019, p 22
[895] Alison EC Struthers, Human Rights: A Topic Too Controversial for Mainstream Education?, Human Rights Law Review, Vol 16, Issue 1, March 2016, pp 131-162, p 136

note: "On the one hand, human rights are utterly denigrated; on the other hand, human rights are uncritically celebrated. The media plays a decisive role in constructing this polarity through its representation of political and ideological view – points and its, arguably, significant influence on public perception of rights"[896].

This is an interesting time to consider the role of the media in shaping public perceptions and the vastness of the digital platforms they could use to educate key publics on human rights law and issues[897], and to recognise that irresponsible media entities have perpetuated harmful myths and misinformation about human rights for too long which have found their way into our digital lives via misinformation and hate speech. The word 'myth', as used in this chapter and as it relates to 'human rights myths'[898], is used with a nod to Reinbold's fascinating assertion in *Seeing the myth in human rights* that in theology, 'myth' refers not to "erroneous or deceptive discourse", but to "a form of human labour that serves the function of generating meaning, solidarity, and order within all manner of human communities"[899], in rather the same way that folklore might be both reflected by and deeply rooted in indigenous cultural historical narratives. Reinbold writes:

> *"Far from being characterised by their inaccuracy or duplicity, myths are characterized within the study of religion by the particular authority they wield and the particular strategies their creators use to imbue them with this authority. In short, instead of offering arguments or strictures, myths are narratives that assert their descriptions of the world, and the moral imperatives stemming from these descriptions, in a way that makes them appear beyond dispute"[900].*

Whilst it is right that human rights should be disputed, scrutinised, queried, studied, and discursively challenged in the public sphere and by a responsible media, which

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[896] Eleanor Drywood, Michelle Farrell, Edel Hughes, Introduction, In Human Rights in the Media: Fear and Fetish, Routledge 2019, p 2

[897] *Ibid*, p 3

[898] See Each Other's '14 Worst Human Rights Myths' for a visualisation of what negative narratives around human rights issues and stories - among them, 'Criminals received ... taxpayers' money in human rights compensation'; 'Terrorists can get asylum under the Human Rights Act'; and famously, 'A man was allowed to stay in the UK because he had a pet cat'. See Adam Wagner and Hayley Chapman, The 14 Worst Human Rights Myths, Each Other, Accessed at https://eachother.org.uk/the-14-worst-human-rights-myths/

[899] Jenna Reinbold, Seeing the myth in human rights, Open Democracy, 29 March 2017, Accessed at https://www.opendemocracy.net/en/openglobalrights-openpage/seeing-myth-in-human-rights/

[900] *Ibid*

is the 'fourth estate' or the fourth pillar of democracy[901], it is *not* right that the 'myths' surrounding human rights have been so insidiously hijacked. Human right myths, writes Reinbold, are meant to narrate "feats of exemplary figures from earlier times" and to act as a bridge "between the present and a paradigmatic moment in the past"[902]. Yet rather than narrating the rich and diverse historiography of human rights or memorialising human rights heroes, human rights myths have become linked with malicious, cynical, controversial takedowns of both the spirit and the system of human rights. For too long these myths and misrepresentations have largely gone unchallenged by key publics who have been on the receiving end of fractured, incongruent reporting and narratives around human rights, without a clear sense of whether these stories have any basis in truth and how to most effectively counter them with honesty, objectivity and integrity. As we look ahead to a post-COVID future, following Leibniz's imagining of "the best of all possible worlds" being one where good far outbalances "the problem of evil"[903], the 'ideal' situation is a future for human rights where informed rights bearers themselves demand – and see to it – that credible information and responsible reporting counteracts misinformation, disinformation and the rhetorical desecration of human rights values, which is essential to the realisation of Principle 1 of the R*b*D Framework on access to human rights information and to Principle 5, empowering individuals to use that information to disrupt, innovate, create and communicate human rights values.

5.2 A brief history of human rights misinformation

After the end of the Second World War, human rights had engendered enough respect and reverence among nations to be considered an ideological cornerstone of post-WWII and post-UDHR 'superpower diplomacy', when the state duty to protect human rights was considered – however superficially – a precondition of state acceptance into the fledgling international community. Thanks to the expanding influence of multilateralism, a post-WWII peacekeeping and multi-state economic co-

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[901] 'Fourth estate' refers to the role of a free press as the guardian or watchdog for democracy, alongside the other three pillars of the legislative, judicial and executive bodies, with the "primary duty" being, per Krönig, "to keep the public properly informed". See Jürgen Krönig, A crisis in the fourth estate, The Guardian, 16 August 2004, Accessed at https://www.theguardian.com/media/2004/aug/16/mondaymediasection.politicsandthemedia
[902] Jenna Reinbold, Seeing the myth in human rights, Open Democracy, 29 March 2017, Accessed at https://www.opendemocracy.net/en/openglobalrights-openpage/seeing-myth-in-human-rights/
[903] Michael J Murray, Leibniz on the Problem of Evil, Stanford Encyclopaedia of Philosophy, February 2013, Accessed at https://plato.stanford.edu/entries/leibniz-evil/

operation strategy (which on the whole has been a highly successful one[904]), the human rights framework accumulated significant political authority and unprecedented legitimacy in global affairs throughout the last few decades of the last century, which Spiermann notes, "saw the transformation of international law into a legal discipline concerned with the practical application of law"[905]. During this time, Ignatieff writes, the language of human rights had become the "dominant moral vocabulary in foreign affairs"[906], and to this day, asserts Alves, "human rights language is … part and parcel of legitimate international political discourse"[907].

Although human rights have always been controversial, there was a time when, according to Philip Alston, identifying a right as a human right would "elevate it above the rank and file of competing societal goals" and lend it an "aura of timelessness, absoluteness and universal validity"[908]. Louis Henkin proclaimed the post-WWII era the 'Age of Rights', calling human rights "the idea of our time, the only political moral idea that has received universal acceptance"[909]. Human rights, by the end of the second half of the 20th century, had "conquered vast territories of the globe", with the UN well established and "buttressed by regional human rights systems in Africa, Europe, and the Americas", making the 'human rights idea', as Mutua describes it, "phenomenally successful"[910].

This exalted status of human rights in international diplomacy became derailed, however, by the rise of postmodernity in the 1970s and its hallmark cynicism, irony, relativism, and adversity to any form of universality or any singular, objective truth in

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[904] Desmond McNeill and Morten Bøås, Multilateral Institutions: A Critical Introduction, Pluto Press 2003, p 1-15
[905] Spiermann cites as key 20th century events that transformed international law "into a legal discipline concerned with the practical application of law": the establishment of the United Nations; the Nuremberg Trials; decolonisation; the European Convention on Human Rights and the European Court of Human Rights; and later in the century, the establishment of the International Criminal Court. See Ole Spiermann, Twentieth Century Internationalism in Law, European Journal of International Law, Volume 18, Issue 5, November 2007, pp 785–814, p 787
[906] Michael Ignatieff, Is the Human Rights Era Ending?, The New York Times, 5 February 2002, Accessed at https://www.nytimes.com/2002/02/05/opinion/is-the-human-rights-era-ending.html
[907] José A Lindgren Alves, The Declaration of Human Rights in Postmodernity, Human Rights Quarterly, Vol 22 2000, pp 478-500, p 483
[908] Philip Alston, Making Space for New Human Rights: The Case for the Right to Development, Harvard Human Rights Yearbook 1988, as cited in Makau W Mutua, Is the Age of Human Rights Over? In Routledge Companion to Literature and Human Rights, Routledge 2016, pp 450-458, p 450
[909] Louis Henkin, The Age of Rights, Columbia University Press 1990, alsi cited in Makau W Mutua, Is the Age of Human Rights Over?, p 450
[910] Makau W Mutua, Is the Age of Human Rights Over? Routledge Companion to Literature and Human Rights, Routledge 2016, pp 450-458, p 450

favour of multiple subjective truths or narratives[911]. Postmodernism, an "ambiguous and elusive conception"[912], is in its simplest form a rejection of universality, one of the most central modernist concepts[913]. Postmodernism has been called a "deliberate repudiation" of the modernist values which birthed the construct of civil and political rights, which Alves calls "one of the most outstanding achievements of modernity"[914], and of liberal democracy and human rights[915]; or as Wang notes, "a cultural, intellectual, or artistic state lacking a clear central hierarchy or organising principle … embodying extreme complexity, contradiction, ambiguity, diversity, and interconnectedness"[916].

Lyotard's 1979 manifesto, *The Postmodern Condition: A Report on Knowledge,* defined the postmodern as "incredulity towards the metanarratives"[917] of modernity (the grand values derived from modern philosophy and Enlightenment thinking), which had in the postmodern age, become "bankrupt"[918]. In doing so, Lyotard set the stage for "an age of fragmentation and pluralism"[919], mainstreaming an "incredulity" towards any overarching or universally accepted human history or narrative. Postmodern thinking fundamentally rejected any "foundational or universalist account of our condition"[920], including, according to Blackburn, that "human nature or objective reality exists or that there are any objective moral values"[921]. This departure from any common or shared moral experience is a defining characteristic of postmodernism, which compelled the rejection of any "shared objectively knowable world to a world in which we're all situated by our identities", per

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[911] Jean-Francois Lyotard, The Postmodern Condition: A Report on Knowledge, Manchester University Press, 1984, xxiv; Alves defines 'postmodernity' as "a term that implies a temporal overcoming or a conceptual superseding of modernity (quite often both)" – see José A Lindgren Alves, The Declaration of Human Rights in Postmodernity, Human Rights Quarterly, Vol 22 2000, pp 478-500, p 487
[912] Zühtü Arslan, Taking Rights Less Seriously: Postmodernism and Human Rights, Res Publica, December 1999, Vol 5, Issue 2, pp 195–215, p196
[913] *Ibid*
[914] José A Lindgren Alves, The Declaration of Human Rights in Postmodernity, Human Rights Quarterly, Vol 22 2000, pp 478-500, p 486
[915] Simon Blackburn, Postmodernism, The Oxford Dictionary of Philosophy, Oxford University Press 2005
[916] Zhihe Wang, Toward a postmodern notion of human rights, Educational Philosophy and Theory, Vol 34 Issue 2, pp 171–183
[917] Jean-Francois Lyotard, The Postmodern Condition: A Report on Knowledge, Manchester University Press 1984, p xxiv
[918] Metanarratives are "totalising stories about history and the goals of the human race that ground and legitimise knowledges and cultural practises" - see Internet Encyclopaedia of Philosophy, Jean-François Lyotard (1924—1998), Accessed at https://iep.utm.edu/lyotard/
[919] *Ibid*
[920] Zühtü Arslan, Taking Rights Less Seriously: Postmodernism and Human Rights, Res Publica, December 1999, Vol 5, Issue 2, pp 195–215, p 205
[921] Simon Blackburn, Postmodernism, The Oxford Dictionary of Philosophy, Oxford University Press 2005

Pluckrose; our identity in turn "determines what we can know" and ultimately, what we are prepared to believe and accept as 'truth'[922]. Tipu describes the incredulity towards any grand, overarching narratives as follows:

"… not only is there no ultimate truth to be discovered, there is absolutely no concept of universal reason even. In fact there is no objective reality. And since there is no objective criterion to be used as a benchmark, there exists no universal reality; all reality is relative. In other words, every human concept is a social construct and every human thought has contextual meaning."[923]

Herein lies the problem for human rights in the postmodernist view. Universality is an intrinsically modern value upon which the very foundations of human rights are based, a core principle of the international human rights framework. It is also the concept that postmodernism most thoroughly rejects[924], on account of the conflict between two opposing ideologies – on the one hand, modernity's acceptance of universal human rights; and on the other, the postmodern doctrine of relativity, which rejects any form of transcendent or universal truth and has been the key underpinning concept in postmodern thinking since it emerged in the 1970s, when facts became 'debatable', "individual perspectives mattered most", "shared meaning was an illusion and … universal truth was a myth"[925]. Postmodernity has, for Alves, fundamentally "weakened" the UDHR[926], and – per Arslan – seriously wounded the modern "foundational or universalist account of our condition"[927], and the concepts of human nature, human dignity, objective reality, truth, or moral values because simply, as Arslan surmises, the "postmodern hymn of relativity rules out the possibility of any universal claim to human rights … irrespective of nationality or geography", with the "inevitable consequence" being to "undercut any universal, principled, normative basis for claiming that human rights simply exist"[928].

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[922] Helen Pluckrose, The Academic Roots of Post-Truth Society, 4 January 2018, Accessed at https://uncommongroundmedia.com/academic-roots-post-truth-society/

[923] Makhdoom Tipu, Human Rights Evolution: From Natural Rights to Postmodernism, PLD Journal Vol 76, 2015, p 15

[924] Zühtü Arslan, Taking Rights Less Seriously: Postmodernism and Human Rights, Res Publica, December 1999, Vol 5, Issue 2, pp 195–215

[925] Aaron Hanlon, Postmodernism didn't cause Trump. It explains him, The Washington Post, 31 August 2018, Accessed at https://www.washingtonpost.com/outlook/postmodernism-didnt-cause-trump-it-explains-him/2018/08/30/0939f7c4-9b12-11e8-843b-36e177f3081c_story.html

[926] José A Lindgren Alves, The Declaration of Human Rights in Postmodernity, Human Rights Quarterly, Vol 22 2000, pp 478-500, p 487

[927] Zühtü Arslan, Taking Rights Less Seriously: Postmodernism and Human Rights, Res Publica, December 1999, Vol 5, Issue 2, pp 195–215, p 205

[928] *Ibid*, p 209, citing M Salter, The Impossibility of Human Rights within a Postmodern Account of Law and Justice, Journal of Civil Liberties 1996, pp 29-66, p 56

This all creates a monumental problem for international human rights law and culture. Because universality is a central tenet of the human rights framework, human rights are incompatible with the postmodern view and the doctrine of relativism, which emphasises cultural autonomy and the right of one culture not to have the ideals of another imposed upon it and rejects outright any concept of universal truth being applicable to all human beings regardless of context. As Tharoor notes, in postmodernism, "all rights and values are defined and limited by cultural perceptions. If there is no universal culture," he writes, "there can be no universal human rights"[929]. In fact, Laclau and Mouffe saw the idea of universal human rights as a form of oppression, and firmly rejected any "anthropological assumption of 'human nature' and of a unified subject with an essence knowable *a priori*"[930].

By definition, relativism ("both one of the most popular and most reviled philosophical doctrines of our time" according to Baghramian[931]) is the view that there is no absolute truth, that "truth and falsity, right and wrong, standards of reasoning, and procedures of justification are products of differing conventions and frameworks of assessment and that their authority is confined to the context giving rise to them"[932]. Relativism, simply, holds that "knowledge, truth, and morality exist in relation to culture, society, or historical context, and are not absolute"[933]. In the context of human rights, Donnelly concedes that cultural relativity is "an undeniable fact; moral rules and social institutions evidence an astonishing cultural and historical variability" on human rights-related issues[934]. Plainly, cultural relativism is at odds with the concept of universal human rights because it emphasises cultural 'flexibility'

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[929] Shashi Tharoor, Are Human Rights Universal?, World Policy Journal, World Policy Institute, Volume XVI, No4, 1999/2000, Accessed at http://www.worldpolicy.org/tharoor.html
[930] Michael Freeman, The Philosophical Foundations of Human Rights, Human Rights Quarterly, Vol 16, No 3 (Aug 1994), pp 491-514, 496, citing Ernesto Laclau and Chantal Mouffe, Hegemony and Socialist Strategy: Towards a Radical Democratic Politics, Verso 1985, p 153-154
[931] Maria Baghramian, Relativism, Stanford Encyclopaedia of Philosophy, Accessed at https://plato.stanford.edu/entries/relativism/
[932] *Ibid*
[933] Oxford Lexico, Relativism, Accessed at https://en.oxforddictionaries.com/definition/relativism
[934] Jack Donnelly, Cultural Relativism and Universal Human Rights, Human Rights Quarterly, Vol 6, No 4 (Nov 1984), pp 400-419, p 400

on human rights issues and undermines human rights as a universal code of "common moral judgement"[935].

So whilst postmodernism effectively challenged the modern view of human rights as universal, its doctrine of relativism effectively downgraded the international human rights order to a post-colonial construct "peculiar to the West and therefore inherently alien to the non-Western traditions of countries", per Selebi, imposed on lesser developed countries and cultures by economically powerful colonialist and Eurocentric liberal democracies[936]. Selebi's position mirrors Deleuze's point that human rights fail to consider the realities of the "immanent modes of existence" of those that human rights are meant to protect[937], especially failing – as Chowdhury notes – to account for the lived hardship and realities of the half of the world's population who live on less than $2.50 per day[938]. Simply, Selebi states, human rights cannot be binding on everyone simply because "[human rights] standards were conceived and formulated largely by Westerners, and they reflect cultural values that are foreign to non-Western traditions"[939]. However, Selebi warns against allowing authoritarian states to justify the rejection of universal standards on cultural grounds or using relativist arguments as a "pretext for violating international humanitarian and human rights standards", pointing out that "it is never the victims, but the violators of human rights principles and their advocates who invoke the relativist argument against the principle of universality"[940].

5.3 Human rights in the 'Age of Alternative Facts'

This century so far has been one of fear, distrust, and distortion; of prolonged, unwinnable wars on foreign soil, of brutal war crimes livestreamed on YouTube, of unceasing news coverage of terrorism plots, and of hypervigilance to the threat of terrorist attacks in public spaces. Since at least the 1980s, on both sides of the

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[935] Leila Nasr, Are Human Rights Really 'Universal, Inalienable, and Indivisible'?, LSE Human Rights, Accessed at http://blogs.lse.ac.uk/humanrights/2016/09/14/are-human-rights-really-universal-inalienable-and-indivisible/
[936] Jacob Selebi, Towards the End of the Universality Debate: How Universal are Human Rights?, IPG 4/98, Debatte / Debate, p 429
[937] Paul Patton, Immanence, Transcendence, and the Creation of Rights, in Laurent de Sutter and Kyle McGee, Deleuze and Law, Edinburgh University Press 2012, p 15-31, p 17
[938] Kanishka Chowdhury, Human Rights Discourse in the Post-9/11 Age, Palgrave Macmillan 2019, p 2-3
[939] Jacob Selebi, Towards the End of the Universality Debate: How Universal are Human Rights?, IPG 4/98, Debatte / Debate, p 429
[940] *Ibid*, p 429-430

Atlantic, and on every continent of this world, opportunistic politicians have exploited our fear to conjure Nietzschean *ressentiment* towards the refugee, the migrant, the elite, the intellectual, the 'Other'[941]. Rising inequality and fear and envy of the other (*ressentiment*) has contributed to, as Arendt called it, a "tremendous increase in mutual hatred and a somewhat universal irritability of everybody against everybody else"[942]. Pankaj Mishra, in his work *The Age of Anger*, takes this further: "The new horizons of individual desire and fear opened up by the neoliberal world economy do not favour democracy or human rights"[943] and even in advanced Western democracies, "a managerial form of politics and neoliberal economics has torn up the social contract"[944]. As Roth has warned:

> *"In this cauldron of discontent, a certain breed of politician is flourishing by portraying rights as protecting only the terrorist suspect or the asylum-seeker at the expense of the safety, economic welfare, and cultural preferences of the presumed majority. They scapegoat refugees, immigrant communities, and minorities. Truth is a frequent casualty. Nativism, xenophobia, racism, Islamophobia, and misogyny are on the rise. But if these voices of intolerance prevail, the world risks entering a dark era"[945].*

This psychological state of envy and hatred pinned onto an external or imaginary scapegoat, which Nietzsche likened in *Genealogy of Morals* to "lambs [that] bear a grudge against the great birds of prey"[946], was masterfully stoked post-9/11 as an "emotional response", per Brighi, "to different kinds of failure: failure of justice and failure of recognition, respectively", in a contemporary, global political landscape that is "awash with failure"[947]:

> *"… failure of a liberal post-Cold War 'New World Order', the failure of financial and monetary systems, the failure of climate change governance, the failure of the Global War on Terror, the failure of the Arab Spring, the failure of*

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[941] Friedrich Nietzsche, On the Genealogy of Morals: A Polemic (1887); Tobin Siebers, Resentment and the Genealogy of Morals: From Nietzsche to Girard, In The Ethics of Criticism, Cornell University Press 1988, p 124-158; Guy Elgat, Nietzsche's Psychology of Ressentiment: Revenge and Justice in On the Geneaology of Morals, Routledge 2017

[942] Matthew J Hayden, Arendt and cosmopolitanism: the human conditions of cosmopolitan teacher education, Ethics & Global Politics, Vol 5 Issue 4 2013, pp 239-258, p 254

[943] Pankaj Mishra, The Age of Anger, Penguin 2017, p 271

[944] *Ibid*, p 328

[945] Kenneth Roth, We Are on the Verge of Darkness, 12 January 2017, Accessed at https://foreignpolicy.com/2017/01/12/we-are-on-the-verge-of-darkness-populism-human-rights-democracy/

[946] Friedrich Nietzsche, On the Genealogy of Morals: A Polemic (1887)

[947] Elisabetta Brighi, The Globalisation of Resentment: Failure, Denial, and Violence in World Politics, Millennium: Journal of International Studies, Vol 44, Issue 3, pp 411-432, p 412

> *democratisation processes, the failure of EU migration policies – the list goes on"*[948].

Brighi identifies further that failure is the catalyst for a host of negative emotions, including "shame, humiliation, anger, and resentment, that are ordinarily considered not only corrosive of human relationships, but detrimental, on a collective and political scale, to civic compassion and social order"[949]. As human rights discourse of the post-war 'Age of Human Rights' disintegrated post-9/11 and the language of terror and national security contaminated the human rights lexicon, it began to look very much like rights discourse had become displaced by something toxic, insidious, and corrosively confusing – the rhetoric of populism[950], and the so-called 'post-truth' phenomenon which, by the close of the 2010s, seemed to have turned human rights discourse on its head.

In 2016, UNHCR reported that global forced displacement had reached a record high with the 'population of concern' at an unprecedented 65.3 million people, "forcibly displaced around the world as a direct result of persecution, conflict, generalised violence, or human rights violations"[951]. As refugees and migrants drowned in their thousands in the Mediterranean and dead children washed up on the shores of Turkey and Greece[952], politicians and media outlets that supported a view of the migrant crisis that distinctly flirted with far-right ideologies, such as *The Daily Mail* in the UK or Fox News in the US, ramped up a new, toxic and increasingly volatile anti-refugee rhetoric rooted in a broader contempt for human rights and the entire

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[948] *Ibid*, p 412

[949] Elisabetta Brighi, The Globalisation of Resentment: Failure, Denial, and Violence in World Politics, Millennium: Journal of International Studies, Vol 44, Issue 3, pp 411-432, p 413

[950] In this thesis, 'populism' refers to Mueller's definition of the ideology and the movement, as a "contemporary political discourse to stand for a kind of platform or politician who engages in confrontational anti-establishment politics aimed at displacing the governing elites in representative liberal constitutional democracies and everything that politically enabled them"; it is the "promise to 'take back control' or to 'take our country back' from power-wielding elites and to do away with the politics-as-usual that empowers them". See Axel Mueller, The meaning of 'populism', Philosophy and Social Criticism 2019, Vol 45 Issue 9-10, pp 1025–1057, p 1026

[951] UNHCR, Global Trends: Forced Displacement In 2015, Accessed at https://s3.amazonaws.com/unhcrsharedmedia/2016/2016-06-20-global-trends/2016-06-14-Global-Trends-2015.pdf

[952] Between 2014 and 2018, data shows that nearly 12000 migrants drowned in the Mediterranean Sea, over 5000 losing their lives in 2016 alone. See Simona Varrella, Number of recorded deaths of migrants in the Mediterranean Sea from 2014 to 2021, Statista, 17 September 2021, Accessed at https://www.statista.com/statistics/1082077/deaths-of-migrants-in-the-mediterranean-sea/; also Helena Smith, Shocking images of drowned Syrian boy show tragic plight of refugees, The Guardian, 2 September 2015, Accessed at https://www.theguardian.com/world/2015/sep/02/shocking-image-of-drowned-syrian-boy-shows-tragic-plight-of-refugees

international human rights and rules-based order, doubling down on flagrant lies or half-truths with perceived impunity.

The refugee crisis, a culmination of the combined effects of the War on Terror and the 2011 Arab Spring uprisings which sparked political and economic crises throughout the MENA region, arrived at an opportune time for US, UK and European politicians with a far-right agenda, who both promulgated and profited tremendously from what has been called a "global wave of populism that turned 2016 upside down"[953]. On the back of the financial crash of 2008 which widened the income inequality gap worldwide, by the mid-2010s we were in the peak of what Mishra has called the 'Age of Anger', in which "the old Western-dominated world order [wa]s giving way to an apparent global disorder" marked by "endemic and uncontrollable" violence, hatred for others ("immigrants, minorities and various designated others"), a "global turn to authoritarianism and toxic forms of chauvinism", as well as "cultural supremacism, populism and rancorous brutality"[954]. Populist leaders like Erdoğan, Modi, Netanyahu, Trump, and Bolsonaro all capitalised on this global discontent, implementing sweeping policy measures and laws, and issuing hyperbolic, wildly discriminatory statements designed to mock, undermine, and challenge long-established democratic inventions, principles and frameworks – including and especially human rights, through the use of populist language and the cynical deployment of messaging designed to resonate with raging, resentful populaces.

Some of the key 'populist' events of the second decade of this century which have had an impact on democracy and human rights included (in no order): the election of Duterte, the 'death squad president', in the Philippines[955]; Erdoğan's "capture" of Turkish democracy, prompting "populist-driven democratic decay" which has seen Turkey become "the biggest jailer of journalists in the world"[956]; and the rise of the Hindutva "religio-nationalistic" ideology in India, the world's largest democracy, under

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[953] See Adam Taylor, The global wave of populism that turned 2016 upside down, 19 December 2016, Accessed at https://www.washingtonpost.com/news/worldviews/wp/2016/12/19/the-global-wave-of-populism-that-turned-2016-upside-down/; Freedom House, Populists and Autocrats: The Dual Threat to Global Democracy, 2017, p1
[954] Pankaj Mishra, The Age of Anger, Penguin 2017
[955] Kate Lamb, Thousands dead: the Philippine president, the death squad allegations and a brutal drugs war, The Guardian, 2 April 2017, Accessed at https://www.theguardian.com/world/2017/apr/02/philippines-president-duterte-drugs-war-death-squads
[956] Julius Maximilian Rogenhofer & Ayala Panievsky, Antidemocratic populism in power: comparing Erdoğan's Turkey with Modi's India and Netanyahu's Israel, Democratization 2020, Vol 27, Issue 8, pp 1394-1412, p 1394

Modi[957]. Across Europe, a continent that has grappled for decades with the trauma and 'moral guilt' of the Holocaust[958], the anti-democratic actions and rhetoric of Viktor Obran in Hungary and Jaroslaw Kaczynski in Poland rang alarm bells among those who feared a neo-Nazi resurgence in the highest chambers of political power across key EU democracies, after alarming gains were made at the polls by xenophobic, far-right, nationalistic party figureheads across Europe, including Marine Le Pen in France, and Geert Wilders in the Netherlands. Yet the two politically seismic events of 2016 which would propel the term 'populism' into mainstream political discourse – the highly divisive EU referendum in the United Kingdom in June 2016, largely won on the basis of misinformation and nationalistic, anti-rights, anti-immigration political rhetoric and reported Russian interference[959]; and the landslide election of Donald Trump to the White House in November of the same year, following a campaign rooted in anti-democracy, anti-rights, anti-globalist, anti-refugee, Islamophobic, discriminatory and misogynistic messaging[960].

As populist campaigns tend to do, both the 'Leave' and Trump campaigns reminisced wistfully back to "distant, even fanciful, times of perceived national ethnic purity"[961], painstakingly designed to resonate with angry, desperate, disenchanted and resentful voters looking for a scapegoat and an outlet of blame for growing income inequality, 'broken' social mobility[962] and the rolling back of social welfare protections in the 'age of austerity' after the financial crash of 2008[963]. The rise of the use of populist language in mainstream political discourse normalised anti-rights rhetoric in this period, and it catapulted populist leaders strongly opposed to basic democratic values and human rights into political office, many of them securing

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[957] *Ibid*
[958] Raphael Gross, Relegating Nazism to the Past: Expressions of German Guilt in 1945 and Beyond, German History, Vol 25, Issue 2, April 2007, pp 219–238, p 220
[959] Mark McLaughlin, Independence referendum 'meddling' court challenge, The Times, 29 March 2022, Accessed at https://www.thetimes.co.uk/article/independence-referendum-meddling-court-challenge-gdd6hw6pp; Jamie Grierson, MPs take Russian election interference case to human rights court, The Guardian, 29 March 2022, Accessed at https://www.theguardian.com/law/2022/mar/29/european-court-urged-to-challenge-uk-failure-to-investigate-russia-interference
[960] Nishikawa Masaru, Presidency of Donald Trump and American Democracy: Populist Messages, Political Sectarianism, and Negative Partisanship, Asia Pacific Review, Vol 28, Issue 1 2021, pp 80-97
[961] Kenneth Roth, We Are on the Verge of Darkness, Foreign Policy, 12 January 2017, Accessed at https://foreignpolicy.com/2017/01/12/we-are-on-the-verge-of-darkness-populism-human-rights-democracy/
[962] OECD, A Broken Social Elevator? How to Promote Social Mobility, 15 June 2018, Accessed at https://www.oecd.org/social/soc/Social-mobility-2018-Overview-MainFindings.pdf
[963] Isabel Ortiz and Matthew Cummins, The Age of Austerity: A Review of Public Expenditures and Adjustment Measures in 181 Countries, Initiative for Policy Dialogue at Columbia University, p 37, Accessed at http://policydialogue.org/files/publications/Age_of_Austerity_Ortiz_and_Cummins.pdf

landslide wins on manifestos constructed almost entirely upon lies about human rights, attacks on human dignity, unashamed intolerance for human rights values, as well as the outright rejection of the established international rules-based order, in countries which have long been or at least previously been recognised as 'Free' or 'Mostly Free' in various international democracy indices. In Mueller's analysis, populist platforms "promise an authoritarian exercise of democracy … to undermine ideals and selectively remove institutions of democracy as we know it"[964]. This is textbook populist 'normative ambivalence towards democracy', as Mueller calls it, in which the dismantling of core institutions of democracy becomes a populist leader's first move after the exhilaration of a landslide election win, to circumvent constitutional and democratic safeguards and undermine democratic powers[965].

The 'normative ambivalence' of populism towards democracy jars with Laclau and Mouffe's majoritarian view that democracy in fact *relies* on populism to ensure that the voices of 'the people' are heard[966]. There is merit to this, of course, in that the primary beneficiaries of democracy, ostensibly, are 'the people'. However, populism is Manichean in nature because it pits, as Mudde wrote, the 'pure people' and 'the corrupt elite'[967] or the 'left' vs the 'right'[968] against each other, with no middle ground rooted in rationality nor respect for objectivity. The most significant expansion in populist rhetoric has been seen in the last five years with the ascent of Donald Trump, Vladimir Putin, India's Narendra Modi, Hungary's Viktor Orbán, Turkey's Erdoğan, and Brazil's Jair Bolsonaro, leaders of some of the world's most populated countries[969] who all used populist language to pit "ordinary working people" against the "self-serving elite", which Mueller identifies as a core characteristic of populism[970]. This form of 'Othering', as Mueller finds, is "mainly directed against

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[964] Axel Mueller, The meaning of 'populism', Philosophy and Social Criticism 2019, Vol 45(9-10), pp 1025–1057, p 1031
[965] *Ibid*
[966] *Ibid*, p 1026; also see Ernesto Laclau, Populism: What's in a Name?, in Empire & Terror: Nationalism/Postnationalism in the New Millennium, eds Begoña Aretxaga, Dennis Dworkin, Joseba Gabilondo, & Joseba Zulaika, Center for Basque Studies University of Nevada 2004, pp 103-114
[967] Axel Mueller, The meaning of 'populism', Philosophy and Social Criticism 2019, Vol 45(9-10), pp 1025–1057, p 1029
[968] Populism opposition of elites is not necessarily just a conservative versus progressive issue as it can exist on both sides of the left-right political spectrum and can also be based on class or economy. See Axel Mueller, The meaning of 'populism', Philosophy and Social Criticism 2019, Vol 45 Issue 9-10, pp 1025–1057, p 1029
[969] Paul Lewis, Caelainn Barr, Seán Clarke, Antonio Voce, Cath Levett and Pablo Gutiérrez, Revealed: the rise and rise of populist rhetoric, 6 March 2019, Accessed at https://www.theguardian.com/world/ng-interactive/2019/mar/06/revealed-the-rise-and-rise-of-populist-rhetoric
[970] Axel Mueller, The meaning of 'populism', Philosophy and Social Criticism 2019, Vol 45(9-10), pp 1025–1057, p 1030

foreign or global actors and their domestic representatives (global corporate and financial actors, migrants)", deeply rooted in "massive global and domestic inequality and injustice"[971] and the social tensions that arise from such inequality and injustice which impact on the individual enjoyment of human rights and affect, according to the UN's World Social Report 2020, approximately two-thirds of the world's population[972].

As Arendt wrote: "No one has ever doubted that truth and politics are on rather bad terms with each other"[973]. In the wake of the Trump presidency and in the aftermath of the populist wave of far-right support that swept across key liberal democracies in the 2010s, it would almost appear that there is no longer any expectation that our politicians be truthful, provided that they are saying what we want to hear. The willingness of voters to believe a leader even though they know they are lying is reminiscent of Arendt's surmising in *The Origins of Totalitarianism*: "The ideal subject of totalitarian rule is not the convinced Nazi or the convinced Communist, but people for whom the distinction between fact and fiction (the reality of experience) and the distinction between true and false (the standards of thought) no longer exist"[974]. In other words, it matters more to a populist leaders' supporters that the leader in question agree with their worldview and less that that worldview is based on any discernible truth or objective fact, if the leader is on the right side (ie one's own).

This has had important ramifications for human rights discourse because those who would attack and degrade the spirit and the system of human rights, rather than constructively and rationally consider how it can be improved, may do so even when they know that the promulgation of negative or controversial statements or positions about human rights are not based in any fact or truth and in fact may even be harmful, if such statements or positions corroborate their own political bias or if there is conviction that, had the statement been true, that it would have given credence to

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[971] *Ibid*

[972] UNDESA World Social Report 2020, 21 January 2020, Accessed at https://www.un.org/development/desa/dspd/world-social-report/2020-2.html

[973] Hannah Arendt, Truth and Politics, The New Yorker, 25 February 1967, Accessed at https://www.newyorker.com/magazine/1967/02/25/truth-and-politics

[974] Michiko Kakutani, The death of truth: how we gave up on facts and ended up with Trump, The Guardian, 14 July 2018, Accessed at https://www.theguardian.com/books/2018/jul/14/the-death-of-truth-how-we-gave-up-on-facts-and-ended-up-with-trump

their view (a phenomenon known as 'counterfactual thinking'[975]). Significantly, Effron's research on the impact of counterfactual thinking on political judgment, bias and belief confirms that people are less likely to judge a falsehood or its conveyor as unethical if the falsehood confirms their political view[976], and affirms that in order to inspire counterfactual acceptance in a false statement (the construction of an alternative reality in which the receiver is motivated to accept a statement or supposition that is factually incorrect), anti-rights populist rhetoric must be carefully crafted in its use of language, repetition and vocabulary so that even if the statement is factually untrue or only partially true, it is perceived as 'true enough' by the receiver of the message if it confirms their religious, political or world view.

Taggart identifies three defining features of populism, and these are specifically mentioned here for their similarities to the defining features of anti-rights rhetoric which underpins human rights misinformation[977]. Firstly, populism demonstrates "an antagonism to the forms and practices of representative politics" and latches on to a "fundamental ambivalence towards politics in general, eschewing established forms of political parties and opting instead for the new and spectacular and celebrating its difference from the established forms of politics"[978]. This sort of contrarian anti-establishmentarianism and anti-essentialism is an opposition to the conventional norms that govern our political, social, and economic structures for the sake of opposing *something*, is a hallmark of anti-rights rhetoric, which frames human rights as a globalist, elitist construct, far out of reach or intellectual wavelength of the 'ordinary' person, and only of real interest to greedy lawyers, lefty academics and overindulged diplomats in Geneva. Therefore, by lambasting and deriding human rights and everything about the international human rights system, those who feel that human rights are unreachable and irrelevant assert their 'difference' (or freedom) from accepted, conventional human rights principles (such as universality, inalienability, and the indivisibility of human rights).

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[975] Byrne identifies 'counterfactual thought' as "an imagined alternative to reality about the past, sometimes expressed as "if only..." – see Ruth MJ Byrne, Counterfactual Thought, Annual Review of Psychology, Vol 67 January 2016, pp 135-157, p 136

[976] Daniel A Effron, It Could Have Been True: How Counterfactual Thoughts Reduce Condemnation of Falsehoods and Increase Political Polarization, Personality and Social Psychology Bulletin 2018, Vol 44 Issue 5, pp 729–745

[977] Paul Taggart, Populism has the potential to damage European democracy, but demonising populist parties is self-defeating, LSE Blogs, 13 December 2012

[978] *Ibid*

Secondly, populist rhetoric relies on the harking back to a rose-tinted version of the past that no longer exists, a time before globalisation and free movement and mass immigration[979]. In right-wing populism, "exclusionary" and "stigmatising" narratives are used to target minority groups such as refugees, immigrants, and religious groups[980], and as has been evidenced in the last half decade especially and most recently during the attempted insurrection at the Capitol Building incited by the outgoing President Trump, rhetorical words have real world consequences[981]. Post-truth political messaging is carefully designed to provoke fury amongst those in the electorate who are already desperate, who feel unjustly maligned and discarded from the global economy, and who keenly feel the 'loss' of jobs to immigrants, the 'loss' of public resources to refugees, asylum seekers and international aid, and most of all, fear the erosion of their national identity.

Thirdly, Taggart says, populism displays a "Manichean tendency [to view] the world as divided between good and evil, and as 'us' and 'them'". This feature has been central to populism's rise in that it has normalised the tendency to distinguish only between 'us and them', 'the people vs the elite'[982]. The signalling value of divisive populist messaging that pits 'us against them' lies not only in what is said but more so in what is not said, the underlying, unspoken sentiments subtly hinted at to play up to confirmation bias ("the tendency to process information by looking for, or interpreting, information that is consistent with one's existing beliefs"[983]), and validates pre-existing racial prejudice, fear of and anger towards the 'other'[984], of Nietzchean *ressentiment*[985]. According to Huang's analysis of propaganda signalling

[979] *Ibid*

[980] Karen Sanders, María Jesús Molina Hurtado, Jessica Zoragastua, Populism and exclusionary narratives: The 'other' in Podemos' 2014 European Union election campaign, European Journal of Communication 2017, Vol 32 Issue 6, pp 552–567, p 552

[981] One example of how harmful political rhetoric can have real, lasting, deadly and disruptive consequences was the attempted insurrection by outgoing President Donald Trump and his supporters in Washington DC in January 2021 – see Darrell M West, The role of misinformation in Trump's insurrection, Brookings, 11 January 2021, Accessed at https://www.brookings.edu/blog/techtank/2021/01/11/the-role-of-misinformation-in-trumps-insurrection/

[982] Karen Sanders, María Jesús Molina Hurtado, Jessica Zoragastua, Populism and exclusionary narratives: The 'other' in Podemos' 2014 European Union election campaign, European Journal of Communication 2017, Vol 32 Issue 6, pp 552–567, p 553

[983] Britannica, Confirmation Bias, Accessed at https://www.britannica.com/science/confirmation-bias

[984] F Diane Barth, How Can We Understand Our Fear of the Other?, Psychology Today, 11 March 2016, Accessed at https://www.psychologytoday.com/gb/blog/the-couch/201603/how-can-we-understand-our-fear-the-other

[985] Friedrich Nietzche, On the Genealogy of Morals (1887), p 10-11

in China, the theory behind signalling is that although "citizens may dislike and remain unpersuaded [by propaganda] … its continual existence and the fact that the government can easily bombard the nation with [it] demonstrates its strength and capacity"[986]. Signalling is a form of power, then, exerted by the state, by politicians and ideologues who likely know themselves that what they are saying is untrue but are assured that people who want their worldview validated will believe it if it aligns with their political view or a perceived injustice or grievance.

Human rights defenders have also had to counter accusations of 'virtue signalling', the writing or saying of things to make others believe that the sayer is virtuous[987], a charge that is often deployed to frustrate and undermine the concerns of human and civil rights defenders who have legitimate concerns over a highly charged political issue with real concern for the human beings at the centre of it. Post-truth populists have deployed the well-used tactic of accusing the opposition – whether that be a political opponent or those who defend human or civil rights – of virtue signalling, a charge that is in itself a "devious piece of political propaganda … designed to stigmatise empathy"[988], and ambush those who stand up against rights infractions and abuses. The charge of 'virtue signalling' was disingenuously lobbied against protestors of Trump's Muslim ban in January 2017, intended as a "devastating put down"[989]; and it was implied by Theresa May when she mocked those who declared themselves to be global citizens as "citizens of nowhere"[990]. It is not coincidental that the term 'snowflake' entered the mainstream popular consciousness in 2016, used to convey "generic disdain" of the older generation towards the younger[991], which "verbalises an intergenerational divide" per Alyeksyeyeva[992], and has had the effect

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[986] Haifeng Huang, Propaganda as Signaling, Comparative Politics, Vol 47, No 4 (July 2015), pp 419-437, p 420

[987] Sam Bowman, Stop saying 'virtue signalling', Adam Smith Institute, 27 May 2016, Accessed at https://www.adamsmith.org/blog/stop-saying-virtue-signalling

[988] Tanya Gold, People who accuse others of "virtue signalling" are trying to stigmatise empathy, 15 February 2017, The New Statesman, Accessed at https://www.newstatesman.com/politics/2017/02/people-who-accuse-others-virtue-signalling-are-trying-stigmatise-empathy

[989] Basit Mahmood, Yes, I am guilty of 'virtue signalling' over Trump's 'Muslim ban' – but that's something to be proud of, The Independent, 6 February 2017, Accessed at https://www.independent.co.uk/voices/trump-protests-virtue-signalling-right-wing-populism-refugees-social-media-a7564736.html

[990] Rob Merrick, Theresa May speech 'could have been taken out of Mein Kampf', Vince Cable says, The Independent, 5 July 2017, Accessed at https://www.independent.co.uk/news/uk/politics/theresa-may-mein-kampf-adolf-hitler-nazi-vince-cable-liberal-democrat-conservatives-a7825381.html

[991] Rebecca Nicholson, 'Poor little snowflake' – the defining insult of 2016, The Guardian, 28 November 2016, Accessed at https://www.theguardian.com/science/2016/nov/28/snowflake-insult-disdain-young-people

[992] IO Alyeksyeyeva, Defining snowflake in British post-Brexit and US post-election public discourse, Science and Education a New Dimension, Philology, Vol 39, Issue 143, 2017, pp 7-10, p 7

of dismissing democracy, human rights, and liberalism as "something effeminate, and also infantile"[993].

The use of inflammatory language and labelling, with dual meaning and murky connotations, is significant because masterful use of political language, "designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind"[994], has contributed greatly to the post-truth distortion of human rights discourse and the corruption of long-held human rights myths, all of which have politicised and distorted human rights discourse and narratives, especially when coupled with the expert deployment of 'doublethink'[995]. Prevalent distrust of experts and intellectuals is nuanced by the growing anti-science, anti-expert, anti-rights rhetoric that has infiltrated our mainstream political discourse, from populist leaders' rejection of climate change to the distorted 'dog whistle' narratives of political campaign messaging or cynical attempts to undermine longstanding democratic institutions (such as the *Daily Mail*'s incredibly dangerous 'Enemies of the People' headline aimed at three High Court judges at the time of heightened tensions around Brexit[996]). Some factions of the media have been largely complicit, giving sound and a stage to political rhetoric that borders on hate speech and messaging that seems to be meticulously constructed to be harmful to the "constancy of respect" that the international human rights framework requires in order to be effective[997], flying the flag for a false type of pragmatism (defined by De Laurentiis as "necessity trump[ing] principle"[998]) that has compromised the integrity of academia, journalism and even the language of international relations over the decades[999].

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[993] Dana Schwartz, Why Trump Supporters Love Calling People "Snowflakes", GQ, 01 February 2017, Accessed at https://www.gq.com/story/why-trump-supporters-love-calling-people-snowflakes
[994] George Orwell, Politics and the English Language (1946), 1950 Secker and Warburg, Accessed at: http://www.orwell.ru/library/essays/politics/english/e_polit
[995] Mike W Martin, Demystifying Doublethink: Self-Deception, Truth, and Freedom in 1984, Social Theory and Practice, Vol 10, No 3, A Special Issue: Orwell's 1984 (Fall 1984), pp 319-331
[996] James Slack, Enemies of the people: Fury over 'out of touch' judges who have 'declared war on democracy' by defying 17.4m Brexit voters and who could trigger constitutional crisis, The Daily Mail, 3 November 2016, Accessed at https://www.dailymail.co.uk/news/article-3903436/Enemies-people-Fury-touch-judges-defied-17-4m-Brexit-voters-trigger-constitutional-crisis.html
[997] Eric Thomas Weber, On Pragmatism and International Relations, in Philosophical Pragmatism and International Relations: Essays for a Bold New World, ed Shane J Ralston, Lexington Books 2013, p 27-34
[998] Allegra De Laurentiis, Rights-Pragmatism and the Right of Humanity: International Politics in Kant's and Hegel's Perspectives, Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy, Vol 102, No 1 (2016), pp 22-39, p 28
[999] Pragmatism, in Rorty's characterisation, is focusing "the pattern of all inquiry [in] the deliberation concerning the "relative attractions of various concrete alternatives". See Richard Rorty, Pragmatism, Relativism, and

False pragmatism occurs when, in an effort to appear entirely and unnaturally neutral and impartial, the academic or journalist in question plays 'devil's advocate' and essentially seeks to validate *both* sides of an argument, no matter the topic and no matter the consequences for truth, human dignity and fundamental human rights. Equivalence, per Zulaika, is a type of false pragmatism, and "the key relationship for the understanding of hegemonic articulations and subversions" because what it does is to "dissolve the specificity of each position"[1000], giving equal weight to the justification of the torturer to torture, for example, and the right of the victim not to be tortured. Zulaika gives the example of political repression, in which "the repressive power's various institutions (military, law, media, education, and the like) lose their differential contents"; in other words, the positions of the repressed and that of the repressor are to be regarded as having equivalent validity[1001]. Per Laclau and Mouffe: "[T]he differences cancel one other out insofar as they are used to express something identical underlying them all"[1002]. False pragmatism has equivalised and falsely legitimised opinion as being *equal to* or more valuable than fact, or anti-rights sentiments as being legitimately as valid as pro-rights sentiments no matter the overall impact on human dignity, democracy, and civil stability, permitting 'alternative' truths and facts to untether professional ethics from respect for facts, truth and universal human rights.

Beyond domestic politics or journalism, false pragmatism in international relations has arguably had a devastating effect on human rights in that it has allowed rights-violating states to enjoy the same legitimacy on the world stage as rights-respecting nations, which has invalidated the credibility of the whole rights- and rules-based order and plunged the UN Human Rights Council into a state of crisis[1003]. Although rights-pragmatism in international relations is outside of the scope of this chapter, it is mentioned here as a concluding point to this section because of its tremendous

Irrationalism, Proceedings and Addresses of the American Philosophical Association, Vol 53, No 6 (Aug 1980), pp 719-738, p 724

[1000] Joseba Zulaika, Nourishment by the Negative: National Subalternity, Antagonism, and Radical Democracy, in Empire & Terror: Nationalism/Postnationalism in the New Millennium, eds Begoña Aretxaga, Dennis Dworkin, Joseba Gabilondo, & Joseba Zulaika, Center for Basque Studies University of Nevada 2004, pp 115-136, p 119

[1001] *Ibid*

[1002] Ernesto Laclau and Chantal Mouffe, Hegemony and Socialist Strategy: Towards a Radical Democratic Politics, Verso 1985, p 127

[1003] Jeanne Delhay, The Human Right Council: in a crisis of legitimacy?, GrowThinkTank, 09 December 2020, Accessed at https://www.growthinktank.org/en/the-human-right-council-in-a-crisis-of-legitimacy/

influence at the level of the state and its inherent link with the creation of human rights culture in national and local contexts, in that pragmatism in international relations must focus on "the growth of individuals and the environment in which they live"[1004]. Regardless of whichever view one approaches human rights, Weber notes, the end goal of human rights discourse in any paradigm of power must be the same: "the alleviat[ion] of profound human suffering"[1005].

5.4 Reviving and restoring human rights discourse

Jürgen Habermas warned that liberal democracies stripped of their democratic values by political ideology and institutions were "in danger of becoming a mere façade"[1006], and this prediction rings uncomfortably true when one considers that 'alternative', fringe ideologies have become mainstream in a matter of a decade, and by mastering manipulation and misinformation, they have successfully contaminated respect for human rights values and liberal democratic principles such as the Rule of Law, universality, equality, and multilateralism. Even the most cursory analysis of anti- rights sentiment from the US, the UK, parts of Europe and Asia demonstrates clearly that misinformation and disinformation both deliberately target core human rights institutions and the complex system of multilateral global governance within which they have been embedded since the Second World War, with catastrophic effects on human rights defenders. There is an enduring tendency among populist leaders to advance the "dangerous belief" in their rhetoric that people will "never need their rights against an overreaching government claiming to act in their name"[1007]. By claiming to speak for 'the people' when using language that challenges democracy, the Rule of Law and human rights, populist movements and demagoguery – arguably more than any other factor in this century – have diminished human rights to little more than an "impediment to majority will, a needless obstacle to defending the nation from perceived threats and evils"[1008].

[1004] Eric Thomas Weber, On Pragmatism and International Relations, in Philosophical Pragmatism and International Relations: Essays for a Bold New World, ed Shane J Ralston, Lexington Books 2013, p 33
[1005] *Ibid*, p 34
[1006] Jürgen Habermas, "The Political": The Rational Meaning of a Questionable Inheritance of Political Theology, in Judith Butler, Jürgen Habermas, Charles Taylor, and Cornel West, The Power of Religion in the Public Sphere, ed Eduardo Mendieta Jonathan VanAntwerpen, Columbia University Press 2011, pp 15-33, p 15
[1007] Kenneth Roth, We Are on the Verge of Darkness, 12 January 2017, Accessed at https://foreignpolicy.com/2017/01/12/we-are-on-the-verge-of-darkness-populism-human-rights-democracy/
[1008] *Ibid*

One reason that human rights information is so disordered in these times is that the traditional producers of human rights information in nearly all parts of the world now operate under extremely limiting conditions and under the constant threat of persecution. China, India, Russia and several Arab states either ban NGOs outright or enforce strict laws to restrain the activities, funding and 'proselytisation' of human rights organisations[1009]. There has also been a serious escalation in the number of attacks on journalists and on press freedom, with the Committee to Protect Journalists (CPJ) documenting the deaths of more than 130 journalists (and other members of the press) between 2018-2020[1010], including Saudi dissident Jamal Khashoggi, murdered in an extrajudicial, extraterritorial execution organised and sanctioned by the Saudi state, a horrific and chilling event which resulted in limited sanctions or any real consequences being enforced by the international community[1011]. In 2019, according to the CPJ, a further 250 journalists were persecuted globally for their work, including for allegedly promulgating 'fake news'[1012].

Worldwide, journalists continue to be imprisoned on manufactured, false charges, and subjected to lengthy imprisonment with no regard to due process in their trials, as Amal Clooney's 2020 *Report on the Use of Targeted Sanctions to Protect Journalists* has found[1013]. In many parts of the world, journalists and editors have no choice but to be part of the system of misinformation; in most of the Middle East, and in Turkey, Russia, North Korea, and China (to give just a handful of examples), the

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[1009] Sebastian Strangio, Welcome to the Post-Human Rights World, Foreign Policy, 07 March 2017, Accessed at https://foreignpolicy.com/2017/03/07/welcome-to-the-post-human-rights-world/

[1010] International Bar Association, New report urges nations to use targeted sanctions to protect journalists, 13 February 2020, Accessed at https://www.ibanet.org/article/77561BF1-EF89-4DF1-97E5-549F5929DDB3

[1011] Amal Clooney, Report on the Use of Targeted Sanctions to Protect Journalists, First Report by the High Level Panel of Legal Experts on Media Freedom, 13 February 2020, p 5, Accessed at https://www.ibanet.org/Media-Freedom-Sanctions-report-launch-2020; in concluding a UN Human Rights Council investigation into the murder of Jamal Khashoggi, Dr Agnes Callamard (UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings) has said: "By insisting that no one, not even a power as influential a State as Saudi Arabia, should ever get away with murder, we are also standing up against any and all authorities that would seek to do the same – to kill with impunity journalists, human rights defenders and dissidents and then audaciously rely upon the indifference of the world to provide them crude cover." See Dr Agnes Callamard, Jamal Khashoggi: A Moment of Unsilence, 2 October 2019, Speech delivered in Istanbul, Accessed at https://www.ohchr.org/sites/default/files/Documents/Issues/Executions/EventIstanbulOctober2AcallamardFinal.pdf

[1012] International Bar Association, New report urges nations to use targeted sanctions to protect journalists, 13 February 2020

[1013] Amal Clooney, Report on the Use of Targeted Sanctions to Protect Journalists, First Report by the High-Level Panel of Legal Experts on Media Freedom, 13 February 2020, p 6

press is mercilessly controlled and national titles are used for sycophantic, unquestioning cheerleading for government policy, with chilling implications including torture, imprisonment and the disappearing of members of the press who defy state censorship or resist state demands for misinformation to be promulgated through the press[1014].

The global media freedom crisis has important ramifications for human rights discourse. The use of targeted sanctions is a wholly underutilised but appropriate and innovative state-level strategy to the crisis of media freedom, one that has "significant potential … to become a human rights enforcement tool with 'real teeth'"[1015] as Clooney has argued. This is especially the case when sanctions are economic (noting Özdamar and Shahin's point that sanctions are a highly targeted and largely successful tool for signalling a strong message to a third party, coercing behaviour change, and for constraining harmful behaviours[1016]). Clooney writes that "sanctions by just one powerful state that has a national 'Magnitsky' regime can be instrumental in changing the behaviour of individuals who are violating human rights norms, particularly if that state is a key travel destination and occupies a central position in the global financial system"[1017], which makes sanctions an optimum response in the international relations toolkit for handling human rights violations perpetrated towards members of the free press, especially if those sanctions are extended to human rights defenders more broadly, to include members of the judicial

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[1014] Middle East Monitor, 'We are in crisis': Middle East journalists on censorship, imprisonment and exile, 13 February 2022, Accessed at https://www.middleeastmonitor.com/20220213-we-are-in-crisis-middle-east-journalists-on-censorship-imprisonment-and-exile/; Chan Ho-Him, Hong Kong's young journalists decry the 'death of free press', Financial Times, 9 February 2022, Accessed at https://www.ft.com/content/5d388472-dd25-4869-af54-4051bfa0b634; Anton Troianovski, Russia Takes Censorship to New Extremes, Stifling War Coverage, The New York Times, 04 March 2022, Accessed at https://www.nytimes.com/2022/03/04/world/europe/russia-censorship-media-crackdown.html; Gülçin Balamir Coşkun, Media capture strategies in new authoritarian states: the case of Turkey, Publizistik, Vol 65 2020, pp 637–654
[1015] Amal Clooney, Report on the Use of Targeted Sanctions to Protect Journalists, First Report by the High-Level Panel of Legal Experts on Media Freedom, 13 February 2020, p 7
[1016] Özgür Özdamar and Evgeniia Shahin, Consequences of Economic Sanctions: The State of the Art and Paths Forward, International Studies Review, Volume 23, Issue 4, December 2021, pp 1646–1671, p 1648
[1017] Amal Clooney, Report on the Use of Targeted Sanctions to Protect Journalists, First Report by the High Level Panel of Legal Experts on Media Freedom, 13 February 2020, p 6; 'Magnitsky' sanctions, to use the House of Lords' definition, "target those responsible for human rights violations or corruption", and are named after Sergei Magnitsky, a Russian lawyer who died in custody after being subjected to human rights violations in detention - see Nicola Newson, Magnitsky sanctions, House of Lords Library, 18 June 2021, Accessed at https://lordslibrary.parliament.uk/magnitsky-sanctions/

and legal professions and all those who are involved in human rights communications, creativity-as-advocacy and in campaign or programme design[1018].

At community and local levels, reviving human rights discourse remains the best individual-led hope for countering, targeting, and correcting human rights misinformation, at source and as it spreads through our own personal infospheres[1019] – from the personal conversations we have to the social media posts we share and our interactions with others in our worlds of work. Human rights discourse ("perhaps one of the most important discourses of our times" per Higgins[1020]) is ripe for revival as an individual-led response to human rights misinformation. As this chapter has demonstrated, human rights discourse has been a clear casualty of postmodern discourse theory (in which the "discourse of the universal" has been replaced by a diluted and determinedly relativist approach to knowledge and truth[1021], essentially cheapening human rights to the value of whatever one believes them to be worth). Human rights discourse is (or rather, is *meant* to be) "a space of contestation with such questions as to how we are to source such rights, how universality might be achieved [and] the importance of the inclusivity and the indivisibility of human rights"[1022]. Because the "traditional lens" through which human rights are typically considered is rooted in legal practice, jurisprudence and philosophy, human rights discourse has long been dominated by theoretical and academic questions which have alienated these vital questions and conversations from the social and community actors who are the faces and voices of rights consciousness on the ground. The limited engagement of the individual with human rights discourse has arguably made it more susceptible to attack by those who might want to use the 'language of terror' to contaminate the integrity of global

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[1018] Creative advocacy in the context of human rights culture involves using the creative process and creative mediums (commonly, through entrepreneurship) to convey a human rights story, message or narrative, and is an approach that places the individual firmly at the heart of advocacy. See Amelia M Kraehe, Entrepreneurship as Creative Advocacy, Art Education, Vol 72, Issue 6 2019, pp 4-6

[1019] See the following chapter on information and human rights for more thorough analysis of the infosphere in the context of rights consciousness, but for this footnote, Floridi defines the 'infosphere' as "the whole informational environment constituted by all informational entities, their properties, interactions, processes and mutual relations". See Luciano Floridi, The Fourth Revolution: How the Infosphere is Reshaping Human Reality, Oxford University Press 2014, p 41

[1020] Professor Michael Higgins, The Human Rights Discourse: Its Importance and Its Challenges, The Human Rights Commission's Annual Lecture on International Human Rights Day, 10 December 2012

[1021] Geoff Boucher, Hegel and Postmodern Discourse Theory, Lecture delivered at the Hegel-Marx-Derrida Seminar, 18 February 2000, Melbourne, Accessed at:
https://www.marxists.org/reference/archive/hegel/txt/gb2000_2.htm

[1022] Professor Michael Higgins, The Human Rights Discourse: Its Importance and Its Challenges, The Human Rights Commission's Annual Lecture on International Human Rights Day, 10 December 2012

human rights conversations and subvert the ability of individuals to critique, protect and promote human rights in their everyday lives.

With the world still reeling from the impact of the pandemic that exposed and exacerbated deep-rooted social, economic and human rights realities (a global public health crisis which has engendered the worst misinformation crisis in living memory – an 'infodemic', as the UN calls it[1023]), and escalating concern about rising and increasingly insidious hijackings of human rights discourse through censorship and digital authoritarianism[1024], it is hardly surprising that human rights discourse seems to have splintered, despite us living in a world of near unlimited information making us, per Kammerzelt, "the most opinionated but least informed culture in history"[1025]. Healthy democracy and a free, open, public discourse relies upon the integrity of the information that powers that discourse. Without credible, objective, unbiased information, "a free culture forfeits its power to the disinformation of mass media and positive social change becomes impossible"[1026]. Further, Kammerzelt notes: "Group-think, filter bubbles, and echo chambers abound. Logical fallacies and cognitive biases go unrecognized and unchecked"[1027]. So what can be done to restore integrity to human rights discourse, and correct course at this pivotal juncture, given that we have "lost the ability to talk to each other about ideas"[1028], much less engage in any form of discourse which will be useful to restoring and preserving democracy and fundamental rights?

As a starting point, the language of human rights needs to be liberated from the politico-legal domain to engage social and community agents of change who are the

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[1023] UN, UN tackles 'infodemic' of misinformation and cybercrime in COVID-19 crisis, 31 March 2020, Accessed at https://www.un.org/en/un-coronavirus-communications-team/un-tackling-'infodemic'-misinformation-and-cybercrime-covid-19
[1024] 'Digital authoritarianism', per Freedom House's Shahbaz, refers to a "model of extensive censorship and automated surveillance systems … promoted as a way for governments to control their citizens through technology, inverting the concept of the internet as an engine of human liberation". This model, which originated in China and has been adopted by quasi- and semi-authoritarian states as well as non-state actors around the world, has resulted in real world human rights infractions including Facebook's Cambridge Analytica scandal, alleged Russian hacking of the US election in 2016, and disinformation and propaganda in Bangladesh, India, Sri Lanka, and Myanmar which incited real life violence against ethnic and religious minorities. See Adrian Shahbaz, Freedom on the Net 2018: The Rise of Digital Authoritarianism, Accessed at https://freedomhouse.org/report/freedom-net/2018/rise-digital-authoritarianism
[1025] Prof Kammerzelt, How to Engage in Discourse: A Crash Course in Basic Debate, Critique by Creating, 27 October 2017, Accessed at https://critiquebycreating.com/how-to-engage-in-discourse-93676dc4e246
[1026] *Ibid*
[1027] *Ibid*
[1028] *Ibid*

most important stakeholders in "the social life of human rights"[1029], and empower them with opportunities to ask meaningful questions and engage in human rights conversations that can open up avenues for a more human-centred approach to human rights systems, traditions and culture. As Dudai observes, the questions that we should be asking include: "What do human rights do? Why do people use them? What do people actually do when they use them? Why do they use them and not another political or moral framework? What are the effects, implications and drawbacks of relying on human rights in political struggles?", and he emphasises the importance of prioritising social, grassroots perspectives over institutional ones (as he puts it, "due attention must be paid to the social actors involved in the creation of rights if we are to fully understand rights regimes" which includes "examining elite and popular conceptions of specific rights and how human rights are refracted, re-envisioned and put into practice"[1030]).

As Hopgood identified in *The Endtimes for Human Rights*, institution-led, hyper-professionalised (and capitalised) 'Human Rights' have overpowered and distorted individual activism, civil society-led (non-capitalised) 'human rights' advocacy[1031]. The weight of power in human rights discourse leans disproportionately in favour of the institutions, which has created resentment among grassroots human rights defenders, further diluting and dividing rights discourse and its impact or ability to promote positive change. As Sarelin has observed: "When human rights are seen as discursively constructed, it is assumed that human rights are given context and meaning not only by legislators and courts ('from above') but also by actors within social movements and community development ('from below')"[1032]. Yet the dominance of the institutions over human rights discourse and the diminished role of social and community actors has weakened the influence of grassroots human rights culture at the local and national levels, effectively breaking the link between regional, culturally palatable approaches to integrating human rights into indigenous culture. Human rights may be 'discursively constructed', but the international human rights

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[1029] Richard Ashby Wilson, Afterword to 'Anthropology and Human Rights in a New Key': The Social Life of Human Rights, American Anthropologist 2006, Vol 108 Issue 1, pp 77–83
[1030] Ron Dudai, The Study of Human Rights Practice: State of the Art, Journal of Human Rights Practice, Volume 11, Issue 2, July 2019, pp 273–295, p 274
[1031] Stephen Hopgood, The Endtimes of Human Rights, Cornell University Press 2013
[1032] Alessandra Sarelin, Giving Meaning to Human Rights: An Analysis of Human Rights Discourse in Malawi, Journal of Human Rights Practice, Volume 6, Issue 2, July 2014, pp 259–280

framework operates – or is seen to operate – almost exclusively at the global institutional level. And when the global institutional order is in disarray, human rights discourse will also go awry.

The trouble with the hyper-institutionalisation of human rights culture is that it alienates those vital actors in the social movement and community development levels and engenders apathy and indifference to human rights concerns. With the horrors of the Second World War all but forgotten by this and the last generation, neither of which have lived through global conflict of such scale, the people who power our institutions are simply not speaking the language that those outside of the 'human rights bubble' would be interested in engaging with. Arguably, the rigidity of institutional communication has failed human rights, social justice, and democracy (all still 'essentially contested concepts' as Gallie has described them[1033]), given that seven decades into the 'global human rights project', human rights norms, laws, conventions, values, and concepts are still misunderstood as abstract notions for world leaders and career human rights practitioners in Geneva to grapple with and not for 'ordinary people' to worry themselves over. The language of human rights has become so couched in diplomatic, politico-legal institutions, culture, and norms that it have, over time, become misconstrued as a strictly politico-legal and predominantly institutional, rather than individual, concern.

In the current environment, as Jahren points out, if human rights are "indeed an essentially contested concept, it follows that prospects for constructing a universal language of human rights are bleak"[1034]. Distrust of the international institutions has further emboldened anti-rights rhetoric and the gradual diminishment of knowledgeable, facts-based, objective human rights discourse, as ultimately, as Ignatieff observes, "power invites challenge. These challenges have raised important questions about whether human rights norms deserve the authority they have acquired: whether their claims to universality are justified, or whether they are just another cunning exercise in Western moral imperialism"[1035]. That power has at times

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[1033] WB Gallie, Essentially Contested Concepts, Proceedings of the Aristotelian Society, New Series, Vol 56 (1955 - 1956), pp 167-198
[1034] Anne Karine Jahren, Use and Abuse of Human Rights Discourse, E-International Relations, 27 October 2013, Accessed at https://www.e-ir.info/2013/10/27/use-and-abuse-of-human-rights-discourse/
[1035] Michael Ignatieff, The Attack on Human Rights, Foreign Affairs, Vol 80, No 6 (Nov - Dec 2001), pp 102-116; Michael Ignatieff, Human Rights: Politics and Idolatory, Princeton University Press 2001

been abused: both by rogue states hostile to human rights culture and by non-state actors, but it lies with civil society and the NGOs that engage directly with those institutions to keep important human rights conversations going.

Ignatieff has observed that "since 1945, human rights language has become a source of power and authority"[1036]. It is possible, as Djajic suggests, that the power, authority, and dominance of the international institutions in shaping and to an extent controlling human rights discourse has been by design, because such a monopoly on discourse, information, communication, and education enables those (predominantly Western) states privileged with the power to "define reality"[1037] to "use, misuse, and abuse human rights rhetoric"[1038]. Here, Gramsci's theory of hegemony (hegemony by ideas and not force alone, or 'predominance by consent') bears relevance and, as an area of future research, should be critically considered in the context of global human rights discourse and the "mechanisms through which dominant groups in society succeed in persuading subordinate groups to accept their values"[1039]. If human rights defenders in many parts of the world are unable to use the language of human rights to defend it, it is because human rights discourse is subjected to competing powers and is therefore limited by what Foucault called "systems of exclusion" which amount to censorship – both imposed and self-imposed. In *The Order of Discourse*, Foucault identified the problem of 'forbidden speech' or censorship, which underpins one of the most serious challenges to a global culture of respectful, constructive human rights discourse:

> "In every society, the production of discourse is at once controlled, selected, organised and redistributed by a certain number of procedures whose role is to ward off its powers and dangers, to gain mastery over its chance events, to evade its ponderous, formidable materiality. In a society like ours, the procedures of exclusion are well known. The most obvious and familiar is the prohibition. We know quite well that we do not have the right to say everything, that we cannot speak of just anything in any circumstances

[1036] *Ibid*

[1037] Anne Karine Jahren, Use and Abuse of Human Rights Discourse, E-International Relations, 27 October 2013, Accessed at https://www.e-ir.info/2013/10/27/use-and-abuse-of-human-rights-discourse/

[1038] *Ibid*; Sanja Djajic, Use, Misuse and Abuse of Human Rights Rhetoric: The Case of Serbia, LSE Discussion Paper, 41 (2006), pp1-25

[1039] Anne Karine Jahren, Use and Abuse of Human Rights Discourse, E-International Relations, 27 October 2013, Accessed at https://www.e-ir.info/2013/10/27/use-and-abuse-of-human-rights-discourse/; Thomas R Bates, Gramsci and the Theory of Hegemony, Journal of the History of Ideas, Vol 36, No 2 (Apr – Jun 1975), pp 351-366

whatever, and that not everyone has the right to speak of anything whatever"[1040].

One of the more obvious solutions to the challenge of misinformation on human rights is to ensure that credible, fact-based, objective human rights information is openly and easily accessible to publics seeking out that information in order to participate confidently and credibly in human rights discourse. As Salvi et al note: "In times of uncertainty, people often seek out information to help alleviate fear, possibly leaving them vulnerable to false information"[1041]. The appetite for information at this time in history might be high, but it is assumed that this information is being sought for the purpose of educating oneself, rather than the weaponization of fact; as Marx pointed out in *Capital*, Kant assumed that those willing to participate in discourse would each be "a reader who is willing to learn something new and therefore to think for himself"[1042]. Technology facilitates ease of access to information for privileged populations with the digital skills, hardware and internet connectivity, but this does not help the human rights mission if human rights information is hard to find, hidden behind paywalls, densely presented, non-machine readable, or obscured by copyright, and it certainly does not help the half of the world's population with no digital access at all or those who are information illiterate[1043].

As the previous chapter argued, it does not help that the information that abounds in the digital space is untrue, inaccessible, and too complex for the 'ordinary' person to make sense of, which inhibits them from moving beyond Kantian 'immaturity' on the subject towards an informed, and enlightened, point of view that contributes to discourse in a responsible, and constructive, manner[1044]. Beyond consumption of

[1040] Michel Foucault, The Order of Discourse, in Robert Young, Untying the Text: A Post-Structuralist Reader, Routledge 1981, p 53-54

[1041] Carola Salvi, Paola Iannello, Alice Cancer, Mason McClay, Sabrina Rago, Joseph E Dunsmoor and Alessandro Antonietti, Going Viral: How Fear, Socio-Cognitive Polarization and Problem-Solving Influence Fake News Detection and Proliferation During COVID-19 Pandemic, Frontiers in Communication, 12 January 2021, https://doi.org/10.3389/fcomm.2020.562588

[1042] Karl Marx, Capital, translated by E Aveling and S Moore, Foreign Languages Publishing House 1954, p 19, as cited by Riccardo Baldissone, Human rights: a lingua franca for the multiverse, The International Journal of Human Rights, Vol 14, 2010 - Issue 7, p 1117-1137, p 1118

[1043] Information literacy, per Welsh and Wright, can be defined as "a set of abilities requiring individuals to recognise when information is needed and have the ability to locate, evaluate, and use effectively the needed information. Information literacy forms the basis for lifelong learning and is common to all disciplines, to all learning environments, and to all levels of education" – see Teresa S Welsh and Melissa S Wright, Chapter 1 - What is information literacy?, Information-Literacy in the Digital Age: An Evidence-Based Approach, Chandos 2010, p 1-11, p 1

[1044] Kant defined 'immaturity' as being "the inability to use one's understanding without guidance from another" - see Immanuel Kant, Political Writings, translated by HB Nisbet, Cambridge University Press 1991, p 54, as cited

news media, it would be helpful to understand how different people engage with and construct human rights dialogues, as those who live and work outside of the professionalised international human rights community or from within conflicted human rights environments, such as a war or reconstruction zone, or within the borders of an authoritarian state, are unlikely to discursively engage in meetings or interventions in institutional or academic human rights conferences or in the design and delivery of educational or training experiences on human rights-related subjects. To the 'ordinary' person, therefore, participating in human rights discourse might take more informal and certainly more casual forms. These might be through social media interactions (the liking / sharing of or commenting on an article, meme, or other users' posts); a discussion about or the retelling of a human rights news story to others in personal conversations, perhaps socially or in the workplace; or in local level volunteerism where there is powerful proximity to human rights problems in the community and close to home, such as economic deprivation among minorities, or social inequality arising from and resulting in poverty or homelessness. Therefore, it is a core (and decidedly ambitious) recommendation of this work that a global study be conducted to measure human rights attitudes and biases among key publics in the different regions of the world, to reach data-driven understandings of how deeply human rights information disorders have affected mainstream perspectives on the value and relevance of human rights, and to determine just how amenable key publics are to engaging more meaningfully with human rights information and discourses in the future.

5.5 Conclusion

As this chapter has argued, human rights thoughtfulness calls not only for being able to confidently correct inaccurate or untruthful statements, rhetoric, or representations of human rights that arise in our day-to-day discourses and social interactions, but for the wholesale rejection of the false equivalence awarded to the advancement of any narrative that is detrimental to the underlying, fundamental, and non-negotiable principle of human dignity. This statement should not be taken to mean that any criticism of human rights should be attacked, as it would be entirely wrong and

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by Riccardo Baldissone, Human rights: a lingua franca for the multiverse, The International Journal of Human Rights 2010, Vol 14 Issue 7, p 1117-1137, p 1117

indeed, undemocratic and antithetical to human rights culture to argue that *everyone* must believe in human rights absolutely and without any question or criticism (as Justice Sedley has said, "free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative provided it does not tend to provoke violence. Freedom only to speak inoffensively is not worth having"[1045]). However, it is entirely correct to protect the integrity of human rights information and to actively use such information to counter the insidious weaponisation of rights information that, if left unchallenged, will continue to leave human rights environments and their information ecosystems vulnerable to violent, prejudiced, divisive, and manipulative narratives that contaminate and corrode human rights conversations at every level. We should also not forget that information does not necessarily have to be false in order to be weaponised, if one considers the phenomenon of 'malinformation'[1046], where information that is private or substantively true is used for insidious purposes, to inflict harm on an individual, cause or country (a prime example of malinformation in the context of attacks against human rights being revenge porn and its insidious use against female human rights defenders in the digital space[1047]).

Fundamentally, we need to de-institutionalise and de-politicise human rights discourse so that it doesn't just happen in Geneva, or in Parliament, or in the digital world where it can be anonymised and abused but in our real worlds, in our personal conversations and our social interactions. This is essential to sustain the "social life" of human rights discourse, or "language as social action", following Austin, Searle, and Grice[1048]. As Roberts-Miller has written: "For democracy to work, people have to talk", and "the ability of the general public to make appropriate decisions depends to a large degree on the quality of public discourse"[1049]. As Hogan and Tell suggest, "[i]f democratic deliberation is to produce sound collective judgments, people must look

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[1045] Redmond-Bate v Director of Public Prosecutions [1999] EWHC Admin 733, para 20

[1046] UNESCO, Journalism, Fake News and Disinformation: Handbook for Journalism Education and Training, UNESCO Handbook 2018, Accessed at https://unesdoc.unesco.org/ark:/48223/pf0000265552

[1047] Sandra Amankaviciute, Dr Helen Pringle, Dr Monika Zalnieriute, Freedom of Expression of Women in the Public Sphere: From Objectification to Technology Facilitated Sexual Violence, Submission to the Thematic Report on the Right to Freedom of Opinion and Expression and Gender Justice for the 76th session of the General Assembly, 14 June 2021, Accessed at https://www.ohchr.org/sites/default/files/2021-11/Sandra-Amankaviciute-Helen-Pringle-and-Monika.pdf

[1048] Srikant Sarangi and Malcolm Coulthard, Discourse and Social Life, Routledge 2000, p xvii

[1049] Patricia Roberts-Miller, "Democracy, Demagoguery, and Critical Rhetoric', Rhetoric & Public Affairs 8 (2005), p 459-460, cited by J Michael Hogan and Dave Tell, Demagoguery and Democratic Deliberation: The Search for Rules of Discursive Engagement, Rhetoric and Public Affairs, Vol 9, No 3 (Fall 2006), pp 479-487, p 479

beyond their own 'self-interest and limited points of view' and join with others in determining the 'general interest' or the 'common good'. Moreover, there must be "rules" to guide our deliberations, lest they degenerate into name-calling, confrontation, or even coercion and violence"[1050]. This must be done in such a way that ensures the inclusion of marginalised groups, lest "the very kind of rhetoric most likely to effect social change by or on behalf of the oppressed" should become oppressive in itself[1051]. As Boateng has written, this approach will "give a 'voice' to the civil society, which can be exercised in such a way that differences which are ubiquitous among people can be resolved through discursive engagement rather than resorting to conflict with all its horrendous consequences"[1052]. We should also be mindful of the similarities between populist rhetoric that is harmful to human rights and the language of human rights activism, both typically impassioned and imbued with what Hogan and Tell call "emotion, passion, and open political commitment"[1053]. Conveying pro-rights narratives with the same distinctive passion that is infused with hope, and never hate, may very well compel those who are indifferent about human rights to *listen* and *think*, and this above all else, will do much to mainstream human rights language, ideas, and facts-based information into our localised discourses and the day-to-day of our human experience.

[1050] J Michael Hogan and Dave Tell, Demagoguery and Democratic Deliberation: The Search for Rules of Discursive Engagement, Rhetoric and Public Affairs, Vol 9, No 3 (Fall 2006), pp 479-487, p 479
[1051] *Ibid*
[1052] William Boating, Social Integration and Conflict Prevention: The Role of Discursive Engagement, International Affairs and Global Strategy, Vol.25, 2014, pp 59-64
[1053] J Michael Hogan and Dave Tell, Demagoguery and Democratic Deliberation: The Search for Rules of Discursive Engagement, Rhetoric and Public Affairs, Vol 9, No 3 (Fall 2006), pp 479-487, p 479

Chapter Six
Human Rights Education and Training I: Learning About, Through and For Human Rights

6.1 Chapter Introduction

This chapter, the first of three within this thesis devoted to human rights education and training (HRET), establishes the basis for HRET in international law and recognises the central role that the UN has played in embedding the concepts and values essential to HRET within numerous international human rights instruments over the decades, in declarations, covenants, and conventions, which Reardon identifies as making up "a body of standards through which the achievement of the values of human dignity and social justice can be assessed"[1054]. HRET is the subject of a rich and growing body of literature that confirms a correlation between higher levels of human rights awareness and "greater democratisation"[1055], with HRET widely celebrated as a "political and pedagogical strategy to facilitate democratisation and active citizenship"[1056] and, more recently, to address the many social and economic challenges "thrown into sharp relief" by the pandemic[1057].

Education, in the years of Covid-19, has undergone such rapid transformation that it is, according to the World Economic Forum, "changed … forever"[1058]. In 2020, the year that marked the 60th anniversary of the UNESCO Convention against Discrimination in Education, "the first international legally binding instrument covering this very right to education extensively"[1059], 1.2 billion children in 188 countries were out of school due to the global shutdowns of schools and universities, impacting

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[1054] Betty A Reardon, A Developmental Sequence for Presentation of the Core Concepts, in Educating for Human Dignity: Learning About Rights and Responsibilities, University of Pennsylvania Press 1995, p 13-14
[1055] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26, No 4 (Oct 2005), pp 363-379, p 366
[1056] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp 481-508, p 484
[1057] Abraham Magendzo and Audrey Osler, The COVID-19 pandemic: a challenge and an opportunity for human rights educators, Human Rights Education Review, Vol 3 No 2 (2020), p 1
[1058] Cathy Li and Farah Lalani, The COVID-19 pandemic has changed education forever. This is how, World Economic Forum, 29 April 2020, Accessed at https://www.weforum.org/agenda/2020/04/coronavirus-education-global-covid19-online-digital-learning/
[1059] Leila Choukroune, Out of School: How the COVID-19 Pandemic Gravely Endangers the Right to Education, 21 January 2021, Accessed at https://blogs.lse.ac.uk/humanrights/2021/01/21/out-of-school-how-the-covid-19-pandemic-gravely-endangers-the-right-to-education/

some 91% of the world's students according to UNESCO[1060]. Traditional pedagogical norms and classroom-based teaching methods were rapidly replaced with remote instruction on digital platforms that both educators and learners were largely unfamiliar with and had to quickly acclimatise and adapt to the 'new normal' of online lessons and fully virtual flipped classrooms. For millions of learners, as Human Rights Watch found, "school closures [were not] temporary interference with their education, but the abrupt end of it"[1061]. The pandemic "gravely endangered" the fundamental human right to education, at a time when the world was already confronting a global learning crisis and had derailed significantly from progress towards SDG4[1062]. In all regions, Covid-19 both accelerated a digitisation revolution[1063] and exacerbated a "new and massive crisis"[1064] of inequality. The challenge for those in the Global North, as Subedi points out, rested in the *use* of technology for education, whereas for those in the Global South, it was related to *access* of technology for education[1065]. Primary and secondary school teachers and students had to rapidly embrace live learning via virtual video conferencing platforms such as Zoom, Teams, and Google Hangouts[1066]. University teaching also migrated online, with the use of videoconferencing as a tool for teaching already well established in some STEM disciplines well before the pandemic[1067] and law schools that had previously adopted a wary stance towards online learning suddenly having

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[1060] Khe Foon Hew, Chengyuan Jia, Donn Emmanuel Gonda & Shurui Bai, Transitioning to the "new normal" of learning in unpredictable times: pedagogical practices and learning performance in fully online flipped classrooms, International Journal of Educational Technology in Higher Education Volume 17, Article 57 (2020), p 2 of 22

[1061] Human Rights Watch, Pandemic's Dire Global Impact on Education: Remedy Lost Learning; Make School Free, Accessible; Expand Internet Access, 17 May 2021, Accessed at https://www.hrw.org/news/2021/05/17/pandemics-dire-global-impact-education

[1062] Leila Choukroune, Out of School: How the COVID-19 Pandemic Gravely Endangers the Right to Education, 21 January 2021, Accessed at https://blogs.lse.ac.uk/humanrights/2021/01/21/out-of-school-how-the-covid-19-pandemic-gravely-endangers-the-right-to-education/; Hans d'Orville, COVID-19 causes unprecedented education disruption: Is there a road towards a new normal? Prospects (2020) 49, p 11-15, p 11; SDG4 calls for ensuring "inclusive and equitable quality education and … lifelong learning opportunities for all" – see https://sdgs.un.org/goals/goal4

[1063] UNCTAD, The Covid-19 Crisis: Accentuating the Need to Bridge Digital Divides, April 2020, pg 3, Accessed at https://unctad.org/system/files/official-document/dtlinf2020d1_en.pdf

[1064] Hans d'Orville, COVID-19 causes unprecedented education disruption: Is there a road towards a new normal? Prospects (2020) 49, p 11-15, p 11; SDG4 calls for ensuring "inclusive and equitable quality education and promote lifelong learning opportunities for all" – see https://sdgs.un.org/goals/goal4

[1065] Sushant Subedi, The digital divide in education: Policy lessons from the pandemic, 26 August 2020, LSE, Accessed at https://blogs.lse.ac.uk/socialpolicy/2020/08/26/the-digital-divide-in-education-policy-lessons-from-the-pandemic/

[1066] Jai Sidpra, Celia Gaier, Nihaal Reddy, Neetu Kumar, David Mirsky, and Kshitij Mankad, Sustaining education in the age of COVID-19: a survey of synchronous web-based platforms, Quantitative Imaging in Medicine and Surgery July 2020, Vol 10 Issue 7, pp 1422–1427, p 1422

[1067] Sidpra et al note that the first use of videoconferencing in medical education in 1962 was for an open-heart surgery procedure performed in Texas and simultaneously viewed in Geneva – *Ibid*, p 1424

to reckon with it out of necessity[1068]. Before Covid-19, technology was largely considered the "second trend in the legal education debate", whereas under Covid-19, "technology as a teaching tool [became] a priority"[1069].

Rogoff sees Covid-19 as triggering a "long-overdue technological disruption of higher education" if it succeeds in democratising education and bringing about "better education for more people at lower cost"[1070]. This is echoed by d'Orville, who sees the pandemic as "an opportunity for investments in education at all levels, to transform education and 'leave no one behind', as envisaged in the SDGs"[1071]. Certainly, the turbulence of the past few years to traditional learning in general and to legal learning in particular poses a number of interesting challenges and intriguing opportunities for HRET, noting that the earliest iterations of modern HRET can be traced back roughly to another turbulent time, the 1970s, when – as has been discussed in earlier chapters of this thesis – organisations such as Amnesty International and Human Rights Watch began to bring grievous human rights abuses such as torture to mainstream public awareness, with HRET in that time heavily designed around "basic due-process rights" but over the decades having expanded to include social, economic, political and cultural rights such as labour rights, technology rights, climate rights and environmental justice, refugee and migrant rights, and business and human rights[1072].

Certainly, the pandemic has disrupted not only the modes and appeal of HRET but also its content, learning outcomes and modes of assessment. Pre-pandemic,

[1068] Mark A Cohen, Post-Pandemic Legal Education, Forbes, 13 August 2020, Accessed at https://www.forbes.com/sites/markcohen1/2020/08/13/post-pandemic-legal-education/?sh=660d18fd75d2
[1069] The International Bar Association's 2020 report identified the following key challenges for legal education in the time of Covid-19: the lack of face-to-face teaching and didactic human interaction, the rapid move from in-person to online teaching (which potentially has left gaps in the quality of teaching and blind spots in terms of assessment and student support), the need to increase exam flexibility as well as the urgency of integrating whole new skill sets, from management to technology skills, into legal education to best prepare students for increasingly globalised practice that can withstand similar disruptions that may arise in the future – see International Bar Association, Developing a Blueprint for Global Legal Education, November 2020, accessed at https://www.ibanet.org/PPID/Constituent/Acad_Professional_Dev/Default.aspx; also Jonathan Goldsmith, The pandemic's impact on legal education, Law Gazette, 15 December 2020, Accessed at https://www.lawgazette.co.uk/commentary-and-opinion/the-pandemics-impact-on-legal-education/5106805.article
[1070] Kenneth Rogoff, Will Universities Learn from Lockdowns?, 06 July 2020, Accessed at https://www.project-syndicate.org/commentary/will-covid19-trigger-technological-disruption-of-higher-education-by-kenneth-rogoff-2020-07
[1071] Hans d'Orville, COVID-19 causes unprecedented education disruption: Is there a road towards a new normal? Prospects (2020) 49, p 11-15, p 12
[1072] Francisco O Ramirez, David Suarez, and John W Meyer, The Worldwide Rise of Human Rights Education, In A Benavot, C Braslavsky, N Truong (eds) School Knowledge in Comparative and Historical Perspective, CERC Studies in Comparative Education, Vol 18, Springer, pp 35-52, p 40

Mitoma and Marcus identify deep-rooted societal, development and democratic challenges such as declining respect for democracy and a corresponding rise in authoritarianism, hate speech, and social inequality as providing "no shortage of human rights issues for students to explore"[1073]. Covid-19 has "inflamed" human rights challenges and "the harms they cause" have been greatly exacerbated, "further exposing political, racial, and economic divisions" which provides, in Mitoma's and Marcus' analysis, a unique and unprecedented opportunity for "authentic inquiry and learning"[1074]. Seven decades on from the UDHR, it has taken a global public health tragedy to lay bare the deficiencies in the global human rights system and compel a new urgency to make rights real and accessible to new generations of learners.

Although this can only be good for HRET, there are multiple difficulties with this ambitious premise. Firstly, the human rights community has had decades to mainstream HRET but has thus far failed to do so, and so HRET remains a niche, undersubscribed and misunderstood discipline, too closely associated with formal legal education to have made a discernible impact among citizens who have neither a professional interest nor any personal motivation to engage with HRET in the first place[1075]. Efforts to introduce HRET to school age children, as Struthers notes, have been implemented "deficiently"[1076], with minimal consolidation or development of HRET at secondary or tertiary levels of education and almost no post-education follow-up with professionals who may directly or indirectly engage with human rights in their everyday work.

Although HRET has been prioritised by the UN for many decades, inspiring landmark Declarations, a Decade, and multiple projects, initiatives, and partnerships to realise the goals of the UN through HRET, Robinson observes that the UN's mission for

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[1073] Glenn Mitoma, Alan S Marcus, Human Rights before and after COVID-19: Getting Human Rights Education out of Quarantine, Journal of International Social Studies 2020, Vol 10 No 2, p 127-140, p 129

[1074] *Ibid*

[1075] HRET has its roots, according to Samuel Moyn, in Amnesty International which emerged in the 1970s and remains one of the world's leading NGOs to this day alongside Human Rights Watch. As a result, HRET has from the outset of its history been closely aligned with the 'human rights bubble' of NGOs, human rights professionals, academics, and representatives of the various human rights institutions.

[1076] Alison EC Struthers, The Underdeveloped Transformative Potential of Human Rights Education: English Primary Education as a Case Study, Journal of Human Rights Practice, Vol 9, Issue 1, February 2017, pp 68–84, p 70

HRET has to date met with "limited success"[1077]. Where it has been available either within or outside of children's education or the legal sphere, efforts to mainstream HRET have been limited by the use of an exclusively and uber-traditional cognitivist pedagogical approach[1078]; let down by basic teaching methods that fail to incorporate advancements in technology; muddled by an incoherent curricula and inconsistent content, there being no clear consensus on what ought to be taught and no internationally recognised credential that qualifies an educator or trainer to deliver HRET to a globally acceptable 'gold standard'; and restricted by minimal audience engagement (and indeed, a demonstrably limited understanding at all levels of *who* the audiences for HRET actually *are* or who the actors driving HRET forward predominantly tend to be). As Cardenas finds, "few outside the field understand the overall scope of HRE[T], and research has emphasised the work of [NGOs]"[1079], neglecting the contributions of academic researchers, university human rights centres, or education technology entrepreneurs.

As the first of three chapters in this work on HRET, which collectively underpin and inform Principle 3 of the RbD Framework (that individuals should be empowered with human rights education in formal and informal education as part of lifelong 'about, through and for' human rights learning), this chapter examines key dimensions of HRET with a view to critically considering challenges and opportunities in its practical implementation at various stages of formal education. After establishing the legal basis for HRET in international law, this chapter will assess regional variances in thematic emphasis found in the content of HRET as delivered in different parts of the world, noting that there are serious inconsistencies in commitment between states on HRET and a clear implementation gap between soft law and state practice. This section also discusses the link between a region or state's historical trauma and the rights and freedoms it emphasises in its human rights education discourses, and examines the content and delivery of HRET programmes in post-conflict

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[1077] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 144

[1078] Cognitivism is a learning theory which emphasises the acquisition of knowledge and "cognitive processes such as thinking, problem solving, language, concept formation and information processing" - see Peggy A Ertmer and Timothy J Newby, Behaviourism, cognitivism, constructivism: Comparing critical features from an instructional design perspective, Performance Improvement Quarterly 2013, Vol 26 Issue 2, pp 43-71

[1079] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26, No 4 (Oct 2005), pp 363-379, p 363

environments, briefly exploring approaches in Palestine and Rwanda for comparative analysis.

The chapter also offers a brief history of 1948, exploring the provisions of key HRET documents and initiatives such as the Tehran Declaration (1968), the Vienna Declaration and Programme of Action of the World Conference on Human Rights (1993), the UN Decade for Human Rights Education (1995-2004), and the UN Declaration on Human Rights Education and Training (2011), which set out a tripartite 'learning *about*, learning *through* and learning *for*' framework for HRET. The remainder of the chapter and the two subsequent chapters then focus on how this framework can be actualised in practice, for early years, primary, secondary, tertiary, and lifelong learners, and delve more deeply into Freirean critical pedagogy, which presents a rich and substantive model for 'rethinking' HRET in all phases, and for all learner ages, now and in the future.

6.2 "You have a human right to know your rights": Establishing the legal basis for HRET in international human rights law and history

The right to education is well established in international human rights law in the UDHR: in its Preamble, which requires "every individual and every organ of society" to "strive by teaching and education to promote respect for these rights and freedoms"[1080]; and in Article 26, which provides that everyone has not only the right to education" (which has, per Cardenas, been "integral to the formation and consolidation of modern states"[1081]), but to one which "should be directed to the full development of human personality and to the strengthening of respect for human rights and fundamental freedoms", in order to "promote understanding, tolerance and friendship among all nations, racial or religious groups"[1082]. This right was 'legalised' in Article 13 of the ICESCR, which provides that education should "enable all persons to participate effectively in a free society"[1083]. The right to education is further proclaimed in numerous other core human rights treaties and instruments which cumulatively constitute, in Flowers' view, a "human right to know your

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[1080] Preamble, Universal Declaration of Human Rights 1948
[1081] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26, No 4 (Oct 2005), pp 363-379, p 365
[1082] Article 26, Universal Declaration of Human Rights 1948
[1083] Article 13, International Covenant on Economic, Social and Cultural Rights 1966

rights"[1084], including the UN Convention on the Rights of the Child ("UNCRC") and regional treaties such as the European Convention on Human Rights ("ECHR"). Article 30 of the UDHR declares that one goal of education should be "the strengthening of respect for human rights and fundamental freedoms"[1085], and according to the International Covenant on Civil and Political Rights (ICCPR), a government "may not stand in the way of people's learning about [their rights]"[1086]. Education is conveyed in these and many other legal instruments not only as a human right in itself, but as a conduit to the achievement of *other* human rights and fundamental freedoms[1087]; as Mary Robinson has said, "the right to education is itself a fundamental right" and "knowledge of one's rights is a prerequisite to establishing and defending those rights"[1088].

HRET has become so ingrained in the vernacular of the UN and other intergovernmental entities and regional institutions such as the CoE and the EU that it is one of the most popular areas of focus among NGOs[1089]. HRET emphasises, according to Tibbitts, "human rights protection, personal empowerment, nation-building, democratic participation and conflict resolution"[1090], and is usually designed to remedy past abuses by making them known through the study of the conditions that allowed the abuse to take place. Fundamentally, HRET aims to document and dissect human rights history to support informed, skills-based action, as "HRET purports to correct abuses mostly by making people aware of their rights and recourses"[1091]. This is reflected in the definition of the OHCHR for HRET, which is that it encompasses the development of knowledge and skills ("learning about human rights standards and mechanisms, as well as acquiring the skills to put them into practice in daily life"); values and attitudes ("developing values and reinforcing

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[1084] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 8
[1085] Article 30, Universal Declaration of Human Rights 1948
[1086] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 8
[1087] Lotta Brantefors & Ann Quennerstedt, Teaching and learning children's human rights: A research synthesis, Cogent Education, Volume 3, 2016 - Issue 1, p 2
[1088] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 145
[1089] Felisa Tibbitts, Emerging Models for Human Rights Education, International Review of Education 2002, Vol 48 Issue 3-4, pp 159-171, p 160
[1090] *Ibid*
[1091] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26 No 4 (Oct 2005), pp 363-379, p 366

attitudes which uphold human rights"); and behaviour / action ("encouraging action to defend and promote human rights")[1092]. Amnesty International similarly defines HRET as "a deliberate, participatory practice aimed at empowering individuals, groups, and communities through fostering knowledge, skills, and attitudes consistent with internationally recognised principles" with the stated goal of building "a culture of respect for and action in the defence and promotion of human rights for all"[1093]. Bajaj has also offered a deeper definition of HRET as:

> "education, training and information aiming at building a universal culture of human rights through the sharing of knowledge, imparting of skills and moulding of attitudes directed to: (a) The strengthening of respect for human rights and fundamental freedoms; (b) The full development of the human personality and the sense of its dignity; (c) The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups; (d) The enabling of all persons to participate effectively in a free and democratic society governed by the rule of law; (e) The building and maintenance of peace; and (f) The promotion of people-centred sustainable development and social justice."[1094]

HRET is, today, a vital component of every human rights defender's toolkit that has, in Flowers' estimation, democratised human rights awareness so that it is no longer available only to "educated elites"[1095]. Koenig sees HRET as "essential to a genuine process of global social change" which should be "included in educational and cultural activities in every society throughout the world"[1096]. In every region, grassroots and non-governmental organisations working in international and domestic human rights, economic development, international affairs, or peacebuilding use HRET as a valuable tool for engagement and advocacy on every area of the human rights framework, from gender-based violence and the rights of women and children to environmental justice, and business and human rights issues

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[1092] OHCHR, The Right to Human Rights Education: A compilation of provisions of international and regional instruments dealing with human rights education, Accessed at https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/Listofcontents.aspx
[1093] Amnesty International, Human Rights Education, Available at http://www.amnesty.org/ en/human-rights-educa
[1094] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp 481-508, p 484
[1095] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 8
[1096] Shulamith Koenig, Foreword in Human Rights Education for the Twenty-First Century, eds George J Andreopoulos, Richard Pierre Claude, University of Pennsylvania Press 1997, xiii

(labour rights being key among them). HRET is no longer available only in specialised form to human rights professionals or charity workers, but widely available to "the communities they serve", per Flowers et al, which comprises of indigenous communities, refugees, immigrants, members of the LGBTQ communities, rural people, and "minorities of all kinds"[1097].

In this way, HRET bridges the gap between the state and local communities, the global and the glocal, where the work of grassroots organisations is essential to facilitating the growth of social movements and effecting real and lasting social change[1098]. Bajaj sees this as a "more bottom-up approach" to HRET[1099] which is steered by civil society actors and "grounded in the human experience"[1100], embedding human rights principles as the "value base" and the international human rights framework as the normative standard for civil society in the protection of human rights and the exchange of human rights knowledge, action, and advocacy through HRET.

6.3 Content and context in HRET: Regional variances in thematic emphasis

HRET operates at three levels – the local, national, and international levels. International human rights law establishes a mandate for regional and state actors to contribute to the "world-wide dissemination" of human rights education[1101] in formal schooling, higher education, and professional / vocational training (via, for example, human rights modules on legal practice courses or sustainability curricula in

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[1097] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 8

[1098] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp 481-508, p 484

[1099] *Ibid*

[1100] Donna Hicks, Conflict Resolution and Human Rights Education, in Human Rights Education for the Twenty-First Century, eds George J Andreopoulos, Richard Pierre Claude, University of Pennsylvania Press 1997, p 93

[1101] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp 481-508, p 484

management / executive education[1102]), as well as in lifelong learning[1103]. Member states have a wide margin of appreciation in the promotion of HRET strategies (which might include integration of HRET into curricula and education systems or public education initiatives), but as Cardenas notes, there are no real quantifiable or measurable obligations when it comes to "actual implementation"[1104]. She writes: "[States] can fail to institutionalise HRE initiatives, withhold adequate funding, or not cooperate effectively with groups in civil society. In such cases, state-led HRE translates more into window dressing than into sustainable reform"[1105].

HRET has indeed been adopted by States with huge variances in commitment, consistency of approach, and intraregional cohesion, and no real reliability attached to efforts to monitor and measure its impact, successes, and lessons for future improvement. In a UN survey conducted during the Decade for Human Rights Education (1995-2004), HRET was found to be most dominant in Europe and the Americas, trailed by the Middle East and North Africa (MENA), Sub-Saharan Africa, and the Asia-Pacific[1106], and largely dependent upon the efforts of national human rights institutions[1107] ('NHRIs'), mandated to promote and protect human rights "through information and education and by making use of all press organs", per the Paris Principles[1108].

[1102] One example of an institution leading change in this area is the UN's Principles for Responsible Management Education (PRME), the "global movement transforming business and management education through research and leadership" which calls for recognition of the key role that business / management schools "as well as other management-related higher education institutions play … in shaping the mindsets and skills of future leaders" as "powerful drivers of corporate sustainability". PRME's vision is "to realize the Sustainable Development Goals through responsible management education." – see Principles for Responsible Management Education (PRME), Accessed at https://www.unprme.org

[1103] 'Lifelong learning' is defined by the ILO as "all education and training during a lifetime, including both initial education and training and adult learning. It is considered 'lifelong' but also 'lifewide', covering learning in institutions, families, communities, and workplaces. It is also considered 'life-deep' because it recognises the ongoing and active acquisition, development and deployment of knowledge over a lifetime". See ILO, Lifelong learning: Concepts, issues and actions, 17 June 2019, p 6, Accessed at https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_711842.pdf

[1104] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26, No 4 (Oct 2005), pp 363-379, p 364

[1105] *Ibid*

[1106] *Ibid*, p 368

[1107] The European Network of National Human Rights Institutions defines NHRIs as "state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level" – see European Network of National Human Rights Institutions at https://ennhri.org/about-nhris/

[1108] The Paris Principles (or formally, the Principles relating the Status of National Institutions) were adopted by General Assembly resolution 48/134 on 20 December 1993 and affirm that a national human rights institutions or NHRI is "vested with competence to promote and protect human rights" with "as broad a mandate as possible"; for HRET in particular, that mandates requires NHRIs to "assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles" (f); and to "publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use

Although HRET is present in "every inhabited continent" with the number of people potentially exposed to HRET numbering "in the millions … added together"[1109], Cardenas notes an overwhelming emphasis on civil / political rights in the Global North and on social / economic rights in Global South states. For example, the emphasis in European HRET rests firmly on civil and political rights, with most HRET initiatives being highly specialised and targeted towards professionals working in law enforcement or the criminal justice system[1110]. Dominant human rights discourses in Europe which influence the curricula and development of HRET in the region include modern slavery, gender discrimination, the rights of the child, refugee rights, the Holocaust, religious diversity, anti-discrimination, and freedom of expression as well as (more recently and especially under and after Covid-19) freedom of assembly, the right to peaceful protest, and employment rights. EU policy on human rights specifically emphasises:

> *"… the rights of women, children, minorities and displaced persons; opposition to the death penalty, torture, human trafficking and discrimination; and defending civil, political, economic, social and cultural rights … through active partnership with partner countries, international and regional organisations, and groups and associations at all levels of society … [and] inclusion of human rights clauses in all agreements on trade or cooperation with non-EU countries"[1111].*

The specific lens through which a region defines (or confines) its HRET narrative can arguably be contextualised not only against each region's political tradition but also the intergenerational and historical traumas that the states within it have endured[1112], the major events in its past related to civil war, genocide, or decades-long political oppression, all of which leave profound and lasting wounds on a state's political,

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of all press organs" – see UN Principles relating to the Status of National Institutions (The Paris Principles), adopted 20 December 1993, Accessed at https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris

[1109] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights, Vol 18 Issue 3, pp 293-307, p 298

[1110] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26 No 4 (Oct 2005), pp 363-379, p 369-370

[1111] European Union, Humanitarian aid and Civil protection, Accessed at https://europa.eu/european-union/topics/human-rights_en

[1112] Historical trauma (HT) theory is attributed to Native American mental health activist and academic Maria Yellow Horse Braveheart, who defined HT as "cumulative emotional and psychological wounding, over the lifespan and across generations, emanating from massive group trauma" - see Maria Yellow Horse Brave Heart, The historical trauma response among natives and its relationship with substance abuse: a Lakota illustration, Journal of Psychoactive Drugs, Jan-Mar 2003, Vol 35 Issue 1, p 7-13

economic, social, and cultural infrastructure. In Cardenas' and Bajaj's analysis, HRET in "post-conflict or post-colonial countries tends to be associated with the rule of law and authorities trying to establish their legitimacy"[1113], and is believed to "reinforce social cohesiveness and a sense of nationhood in post-conflict societies"[1114]. These values and aims recur in cursory analysis of the content and delivery of HRET programmes designed as part of the peacebuilding and post-conflict reconciliation effort for peoples in places such as Palestine, Peru, Liberia, Colombia, Guatemala, Sierra Leone, Cambodia, and Rwanda, especially for the most vulnerable groups (including women and girls)[1115] and survivors suffering from complex post-traumatic stress disorder in the aftermath of grievous human rights violations and "prolonged interpersonal trauma in adulthood (such as torture)"[1116].

In post-genocide Rwanda, to give one example, HRET is framed as 'citizenship education' which is clearly linked in existing literature with "promoting human rights, building peace, and fostering social cohesion in a divided society"[1117]. In Russell's analysis of the Rwandan state-led 'HRET as post-conflict reconciliation' model, she notes that HRET is designed by the state, drawing on "global models around citizenship and human rights", and then delivered by local actors who "interpret national models in their local context in ways that often undermine the original intention of the models"[1118]. This is clearly problematic for the integrity and efficacy of HRET as a peacebuilding and reconciliation effort overall, especially where learners and educators consider it safer and less confrontational to "avoid or reframe discussions around ethnic diversity, multiculturalism, and sensitive topics" – the very

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[1113] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp. 481-508, p 486

[1114] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26, No 4 (Oct 2005), pp 363-379, p 366; as Cardenas notes, organisations such as the UN OHCHR, UNESCO, the UN Children's Fund and the UN Development Programme have all supported HRET for this reason – other organisations at UN level also include UNRWA and UN ESCWA

[1115] Tracey Holland, J Paul Martin, Human Rights Education and Peacebuilding: A comparative study, 1st Edition, Routledge 2014, p 1-4

[1116] Matthew McDonnell, Katy Robjant, Cornelius Katona, Complex posttraumatic stress disorder and survivors of human rights violations, Current Opinion in Psychiatry, Jan 2013, Vol 26 Issue 1, p 1-6

[1117] Susan Garnett Russell, Global Discourses and Local Practices: Teaching Citizenship and Human Rights in Postgenocide Rwanda, Comparative Education Review, Volume 62, No 3, p 385-408, p 385, citing Diana Saltarelli and Kenneth D Bush, The Two Faces of Education in Ethnic Conflict: Towards a peacebuilding education for children (2000), Accessed at https://www.unicef-irc.org/publications/pdf/insight4.pdf; Lynn Davies, Global Citizenship: Abstraction or Framework for Action?, Educational Review 2006, Vol 58 Issue 1, p 5–25; and Susan Garnett Russell, and Laura J Quaynor, Constructing Citizenship in Post-conflict Contexts: The Cases of Liberia and Rwanda, Globalisation, Societies and Education 2016, Vol 15 Issue 2, p 248–270

[1118] Susan Garnett Russell, Global Discourses and Local Practices: Teaching Citizenship and Human Rights in Postgenocide Rwanda, Comparative Education Review, Vol 62 No 3, p 385-408, p 386-387

issues which may have created the same conditions under which rights violations could occur[1119].

In Palestine, to draw on another example, UNRWA's Human Rights, Conflict Resolution and Tolerance Programme (HRCRT) is mandated to provide HRET to over 500,000 Palestinian refugee students, with curricula largely designed around teaching them to "enjoy and exercise their rights, uphold human rights values, be proud of their Palestinian identity, and contribute positively to their society and the global community"[1120], with a sustained focus on minority rights, women's rights, and civil liberties. Although the objectives of the HRCRT programme are theoretically sound, the reality of Palestinians being able to meaningfully exercise rights and freedoms or contribute in any way to society or the global community is extremely limited in practice given the absence of even the most basic freedoms under continued occupation and the especially difficult environments under which teachers teach and learners learn in ongoing high-conflict scenarios[1121].

In developing countries, Cardenas finds that HRET is typically centred around social, economic, and women's rights, whereas in post-totalitarian and authoritarian states, it is usually developed around strengthening civil society and the necessary "infrastructures related to the rule of law" (such as training of the judiciary)[1122]. In many Global South and Central Eastern European countries, HRET is also closely linked with the concept of transitional justice (TJ)[1123], with post-totalitarian societies

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[1119] *Ibid*

[1120] UN Relief and Works Agency for Palestine Refugees in the Near East, Accessed at https://www.unrwa.org/what-we-do/human-rights-education; Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33 No 2 (May 2011), pp. 481-508, p 492-493

[1121] Without "discounting the political and security situations that afflict the education systems in, say, Lebanon, Syria, Gaza or even Jordan and Egypt", as Traxlera et al point out: "What makes Palestine profoundly different, however, is that education and life in general take place within the context of ongoing occupation by Israeli armed and police forces and by periodic security 'spikes', shootings, riots, curfews, lockdowns, unrest and disturbances". – see John Traxlera, Zuheir Khlaifb, Alan Nevilla, Saida Affounehb, Soheil Salhab, Ali Zuhdib and Fuad Trayek, Living under occupation: Palestinian teachers' experiences and their digital responses, Research in Learning Technology, Vol 27 2019, p 1-18, p 1. Also, although Palestine is given as an example for HRET under ongoing conflict situations, these challenges could equally apply to any other environment in an ongoing conflict situation, such as Afghanistan, Yemen, Syria, Iraq, Libya, or Ethiopia (at time of writing)

[1122] Felisa Tibbitts, Emerging Models for Human Rights Education, International Review of Education 2002, Vol 48 Issue 3-4, pp 159-171, p 160

[1123] The International Center for Transitional Justice (ICTJ) defines TJ as the approach of states "emerging from periods of conflict and repression address large-scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response"; the ICTJ also stresses that TJ goes beyond criminal prosecutions to include long-term reconciliation measures, including 'truth-seeking' ("fact-finding … processes into human rights violations by non-judicial bodies"); reparations (which can be "individual, collective, material, and symbolic"; and the reform of law and institutions (police, judiciary, military,

"an obvious target" for HRET as part of broader TJ programmes, which require significant co-operation between local communities and state-led or public institutions ("universities, research centres, think tanks, and civil society organisations")[1124]. HRET as integrated within TJ programmes is usually designed around truth and reconciliation, though it can be of limited value in post-conflict or post-totalitarian environments where there is no genuine commitment to achieving justice, truth, reconciliation, or remedy for the victims of human rights abuses. The Arab Spring states, which have always had a zero tolerance approach to HRET in any form, are a prime case study on how strictly omitting HRET from formal and informal educational settings (through the systemic and severe persecution of human rights NGO workers, defenders and educators) can obstruct post-conflict societal reconstruction efforts and ensure that the path for 'justice' circles straight back to the very conditions that allowed the injustices to incubate and occur in the first place[1125].

6.4 A brief history of HRET: 1948 to date

Although the birth of HRET is generally traced back to the late 1960s and 1970s when human rights organisations such as Amnesty International and Human Rights Watch (HRW) brought human rights to the forefront of consciousness, and its growth in subsequent decades closely associated with the "processes of globalisation"[1126], it could be argued that HRET has informally existed in the form of folklore, religious texts, and the pamphleteer activism that was critical to some of the most significant and revolutionary human rights events in history[1127], pamphleteering being an early

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and military intelligence) - see International Center for Transitional Justice, What is Transitional Justice?, Accessed at https://www.ictj.org/about/transitional-justice

[1124] Mihr cites as an example the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw which has contributed to TJ in Central and South-East Europe with its Rule of Law and Human Rights Programmes (ODIHR Rule of Law and Human Rights Programmes at https://www.osce.org/rule-of-law), see Anja Mihr, Chapter 10: Transitional Justice Research in Post-Totalitarian Societies in the OSCE Region, Transformation and Development, pp 147-154, p 147-148

[1125] Daoudi noted that in Arab countries subject to Shariah law, HRET "cannot be envisaged if it goes against Muslim dogma for fear of being considered contrary to public order" – see Riad Daoudi, Teaching of Human Rights in Arab Countries, Bulletin of Peace Proposals, Vol 14 No 1, Special Issue: Research and Teaching of Human Rights 1983, pp 69-71, p 69

[1126] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp 481-508, p 495

[1127] See Chapter 2 of this thesis for discussion on revolutionary events in human rights history and the central role of codification and communication in reinforcing and strengthening human rights culture after every event.

prototype for campaign communication and spreading knowledge into public life in order to build consensus and inspire action[1128].

After the UDHR, Flowers identifies that HRET got off to a "glacially slow start everywhere in the world"[1129], and that the Cold War played a significant role in delaying the green shoots growth of the fledgling movement for global human rights respect via teaching and education[1130]. Although HRET in the latter 20th century became somewhat professionalised through Amnesty and HRW, Flowers importantly credits "radical teachers in the Global South who showed the world the power of HRE[T] to further both civil-political and social-economic rights"[1131]. These radical teachers ("activist educators") have long leveraged existing formal education structures to reach marginalised populations ("the working class and the urban and rural poor"), with programmes that "emphatically condemned the violation of human rights and called for a restoration of democracy"[1132]. Through them, HRET became, writes Flowers, "an essential component of popular resistance" and a "political and cultural awakening that required personal transformation"[1133], and called on the learner to resist, campaign, demonstrate, and act.

Flowers sees human rights activism during the 1970s and 1980s as cementing a growing global awareness of how the international human rights framework might be used to bring about social change[1134]. Through the 1990s, economic development and advancements in communication technologies fundamentally globalised human rights, having "brought all parts of the world closer together", with human rights now recognised as a great, "unifying moral force that transcends national boundaries and empowers ordinary people everywhere to demand that their governments be accountable for the protection and promotion of their human rights"[1135]. Bajaj has

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[1128] Moe aptly references Habermas' definition of the public sphere as "a 'warning system with sensors' spread throughout society independent from the state apparatus" – see Hallvard Moe, Everyone a pamphleteer? Reconsidering comparisons of mediated public participation in the print age and the digital era, Media, Culture & Society, Vol 32 Issue 4, p 691-700, p 691

[1129] Nancy Flowers, The Global Movement for Human Rights Education, Radical Teacher, No 103 (Fall 2015), p 6, Accessed at https://core.ac.uk/download/pdf/193544575.pdf

[1130] *Ibid*

[1131] *Ibid*

[1132] *Ibid*

[1133] *Ibid*

[1134] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 8

[1135] *Ibid*

also noted that in the era of globalisation, which created a "global society … in which individual persons are both entitled member and proactive agents", HRET successfully mainstreamed the concept of a new global citizenship that required a "personal commitment" from the individual, and not just the state, to respect, promote and defend the human rights values and obligations that such citizenship entails[1136]. In this way, the concept of a 'global citizenry' individualised HRET and transformed it from an adult education offering only relevant to human rights and international development professionals, into a field of education that represented "hope for the future of our children and the destiny of humanity as a whole"[1137].

6.4.1 The Tehran Declaration (1968) to the Vienna Declaration and Programme of Action of the World Conference on Human Rights (1993)

The world's first International Conference on Human Rights was held in Tehran in 1968 to mark the twentieth anniversary of the Universal Declaration of Human Rights[1138] in the same year designated the 'International Year of Human Rights' by UNESCO[1139]. A read of the preamble of the Tehran Declaration reveals that the world in 1968 was not too different from the world in which we find ourselves in the second decade of this century; one that was "undergoing a process of unprecedented change"; one that was being transformed by "the rapid progress of science and technology" presenting new opportunities and unforeseen challenges; and one in which conflict and violence prevailed making "human interdependence and the need for human solidarity … more evident than ever before"[1140].

The Tehran Declaration was one of the first UN instruments to address and evaluate "the effectiveness of methods and techniques" of human rights education as "employed in the field of human rights at the international and regional levels"[1141],

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[1136] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp 481-508, p 495
[1137] Shulamith Koenig, Foreword in Human Rights Education for the Twenty-First Century, eds George J Andreopoulos, Richard Pierre Claude, University of Pennsylvania Press 1997, p xiii
[1138] Kevin Boyle, Stock-Taking on Human Rights: The World Conference on Human Rights, Vienna 1993, In David Beetham, Politics and Human Rights, Wiley-Blackwell 1995, p79
[1139] The UNESCO Courier, 1968: International Year for Human Rights, Accessed at https://en.unesco.org/courier/january-1968
[1140] Final Act of the International Conference on Human Rights, 22 April - 13 May 1958 Tehran, Accessed at https://legal.un.org/avl/pdf/ha/fatchr/Final_Act_of_TehranConf.pdf
[1141] *Ibid*, p 10

with emphasis on educating youth to respect human rights and fundamental freedoms[1142]. HRET was billed as a strategy to protect future societies from the nihilism and meaninglessness of the post-war decades, which Haggard notes were marked by both weakened "triumphalism of the immediate post-Cold War period" and collective "concern about decline" (a period which Haggard describes as the end of bipolarity and the dawn of a new era of multipolarity with all its "intrinsic uncertainties")[1143]. Giving human rights meaning, the Declaration stated, would be achieved by empowering young people, implanting "ideals of human dignity and equal rights" into the consciousness of youth through education[1144]. That said, HRET was not presented in the Tehran Declaration as a panacea to every human rights problem in the world, but rather one of many parts of a broader and interdependent strategy that would prioritise, among other things: multilateral co-operation between states and institutions and state acceptance of economic, social, and cultural rights as human rights.

In 1974, UNESCO's Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms took HRET into "new territory", by suggesting that HRET should proactively approach "questions of power and corruption"[1145] and be grounded in the "appropriate intellectual and emotional development of the individual"[1146], in that it should "develop a sense of social responsibility and of solidarity with less privileged groups and should lead to observance of the principles of equality in everyday conduct"[1147]. Rather controversially, in what Coysh has called a "progressive and radical" departure from earlier documents, the Recommendation admonished "monopolistic groups holding economic and political power, which practice exploitation and foment war", referring somewhat unambiguously to superpower states, rogue and failed states, and perhaps to transnational

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[1142] *Ibid*, p 15-16
[1143] Stephan Haggard, Liberal Pessimism: International Relations Theory and the Emerging Powers, Asia & The Pacific Policy Studies, Vol 1 Issue 1, January 2014, pp 1-17, p 1
[1144] Final Act of the International Conference on Human Rights, 22 April - 13 May 1958 Tehran, p 16
[1145] Joanne Coysh, The Dominant Discourse of Human Rights Education: A Critique, Journal of Human Rights Practice, Vol 6 No 1, March 2014, pp 89 – 114, p 92
[1146] Article 5, UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, 19 November 1974, Accessed at http://portal.unesco.org/en/ev.php-URL_ID=13088&URL_DO=DO_TOPIC&URL_SECTION=201.html
[1147] *Ibid*

corporations and other non-state actors in its calling for HRET to "emphasise the true interests of peoples" over their own[1148].

It would be 25 years before the UN held another human rights conference. In 1993, just four years after the fall of the Berlin Wall (in which time, as Boyle has noted, the world had already lost the optimism inspired by the end of the Communist era[1149]), the World Conference on Human Rights, billed as a much-needed follow up to the Tehran Conference and the "largest assembly ever of global human rights issues"[1150], delivered the Vienna Declaration and Programme of Action[1151]. This was a watershed development for the global promotion of human rights but especially for HRET in that it affirmed that human rights education, training, and public information were "essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace"[1152]. The Conference recommended that states "eradicate illiteracy and ... direct education towards the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms"[1153], making a clear link between education, literacy and respect for human rights and dignity. Significantly, the Vienna Declaration also called on all states to "include human rights, humanitarian law, democracy and rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings"[1154], whilst acknowledging that resource constraints and "institutional inadequacies" would prevent some states from being able to practically realise their HRET aims[1155].

The World Plan of Action proposed the following strategies for mainstreaming human rights awareness through education. Firstly, it called for the development and distribution by UNESCO of a standard template for planning, implementation, and

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[1148] Article 15, UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, 19 November 1974
[1149] Kevin Boyle, Stock-Taking on Human Rights: The World Conference on Human Rights, Vienna 1993, Political Studies 1995, XLIII, pp 79-95, p 79-80
[1150] Major international conferences have traditionally been seen as "a staple of great power diplomacy" – see Kevin Boyle, Stock-Taking on Human Rights: The World Conference on Human Rights, Vienna 1993, Political Studies 1995, XLIII, pp 79-95, p 79
[1151] Adopted by the World Conference on Human Rights in Vienna on 25 June 1993
[1152] OHCHR, United Nations Decade for Human Rights Education (1995-2004), Accessed at https://www.ohchr.org/EN/Issues/Education/Training/Pages/Decade.aspx
[1153] *Ibid*, para 79
[1154] *Ibid*
[1155] OHCHR, Vienna Declaration and Programme of Action, adopted 25 June 1993, Accessed at https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx

assessment of HRET. Secondly, the Plan called for the development of material, curricula, programmes, and networks to exchange methods and materials and develop 'best practice' approaches. Thirdly, it was imperative to make up-to-date information, documentation and "practical and inexpensive teaching materials" available and accessible, and for regional and global "momentum-building conferences" to be convened to cater to surges of international interest in human rights seminars, symposia, workshops, and other major conventions[1156]. Significantly, the Plan called for leveraging mass media, for mobilising 'train the trainer' initiatives, and aligning with popular social movements[1157].

6.4.2 The UN Decade for Human Rights Education (1995-2004)

In the afterglow of the Vienna Declaration and the World Conference on Human Rights, the UN capitalised on a new era of enthusiasm for HRET by launching a 'Human Rights Decade' (1995-2004) dedicated to the promotion of HRET[1158]. This was a drive by the UN, as Robinson called it, to "approach [HRET] in a more systematic and professional way"[1159] at a time in global politics during which, as Bajaj notes, HRET began to feature "more prominently in inter-governmental discussions"[1160].

During the Decade, UNESCO and OHCHR organised five major conferences on HRET in Finland (1997), Dakar (1998), Morocco (1999), India (1999) and Mexico (2001), culminating in a series of reports and recommendations which contributed to major advancements in HRET by "further refining the concepts, methods and content of human rights education, with special emphasis on regional specificities, evaluating the progress of human rights education in each region and by identifying obstacles and challenges"[1161]. A Plan of Action drawn up for the Decade recommended that NHRIs focus on developing a global repository of research on HRET; on the

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[1156] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 148
[1157] *Ibid*, p 151
[1158] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26, No 4 (Oct 2005), pp 363-379, p 366
[1159] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 144
[1160] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp 481-508, p 483
[1161] UNESCO, UNESCO & Human Rights Education (2003, ED.2003/WS/47), Accessed at https://unesdoc.unesco.org/ark:/48223/pf0000131836, at 20

translation and "culturally appropriate adaptation" of training materials; on strategic outreach to the professional and community workers working in close proximity to human rights problems locally; and on the facilitation of training, networking and collaboration opportunities as well as training programmes and internships for teachers and learners developing projects in HRET[1162]. The Plan also called for NHRIs to organise cultural events and campaigns where HRET could be merged with the output of the creative industries (art, music, literature, film, and theatre), to produce journals, popular books and audio-visual materials on human rights, and to create directories of "national experts and institutions" specialised in human rights and HRET[1163].

6.4.3 The UN Declaration on Human Rights Education and Training (2011)

The UN Declaration on Human Rights Education and Training, adopted by the General Assembly on 19 December 2011[1164] (the 'UN Declaration on HRET' or the 'Declaration') was, as Struthers notes, the "the first instrument in which international standards for human rights education [were] officially proclaimed by the United Nations"[1165]. It articulated a fuller scope for HRET when it called for "all States and institutions to include human rights, humanitarian law, democracy and rule of law in the curricula of all learning institutions", and to ensure that "human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights"[1166]. It offered a solid definition for HRET as comprising:

> *"… all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus contributing, inter alia, to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and*

[1162] UN, Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education, A/51/506/Add 1 (1996), para 61
[1163] *Ibid*
[1164] UN General Assembly, United Nations Declaration on Human Rights Education and Training, Resolution 66/137 on 19 December 2011
[1165] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 54
[1166] Preamble, UN Declaration on Human Rights Education and Training 2011

behaviours, to empower them to contribute to the building and promotion of a
universal culture of human rights"[1167].

By stressing the importance of "developing a universal culture of human rights, in which everyone is aware of their own rights and responsibilities in respect of the rights of others, and promoting the development of the individual as a responsible member of a free, peaceful, pluralist and inclusive society"[1168], the Declaration individualised HRET and made the rights bearer responsible for contributing to the creation and ongoing cultivation of human rights culture. In view of the huge variances that exist in regional implementation and thematic focus, as well as deep-rooted issues around literacy and digital divides in many countries, it emphasised the need to equalise access to "quality" HRET "without any discrimination"[1169]. Importantly, the Declaration set out a tripartite framework for HRET which encompassed: (a) Education *about* human rights, "providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection"; (b) Education *through* human rights, "learning and teaching in a way that respects the rights of both educators and learners"; and (c) Education *for* human rights, "empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others"[1170].

As Bajaj identifies, this three-pillar approach incorporates three vital schematic approaches to HRET: cognitive, knowledge-based learning (*about*); participatory methods of learning essential skills for engaging in democracy and citizenship through attitudes and behaviour (*through*); and finally, HRET in action (*for*), which empowers learners to "act in the face of injustice"[1171]. Importantly, all three pillars should be viewed as building blocks that together constitute a sound, holistic, comprehensive, human-centred framework for HRET. As Struthers has found, the

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[1167] Article 2(1), UN Declaration on Human Rights Education and Training 2011
[1168] Article 4, UN Declaration on Human Rights Education and Training 2011
[1169] Article 4, UN Declaration on Human Rights Education and Training 2011
[1170] Article 2(2), UN Declaration on Human Rights Education and Training 2011; Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 56; Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp. 481-508, p 483
[1171] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp. 481-508, p 483; also Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 57

pillars are "complementary" and must be studied together rather than "in isolation", as:

> *"… learning only about human rights is inadequate, for 'facts and fundamentals, even the best selected ones, are not enough to build a culture of human rights'. Equally, however, the building of such a culture by education through and for human rights cannot occur in the absence of fundamental human rights knowledge. The combination of all three, therefore, represents the holistic approach to HRE that is often expressly advocated within the relevant legislation and literature"*[1172].

The path-building *about*, *through* and *for* HRET framework can be considered a "useful starting point" for the pedagogical development of HRET, as it can very effectively guide curriculum design and intended learning outcomes for intensive, transformative HRET programmes[1173], integrating all three phases into the learning journey[1174]. Therefore, building upon Article 2(2) of the Declaration as well as the work of Struthers, Flowers, Lohrenscheit, Bajaj, Cargas, Cardenas and others, the remainder of this chapter will consider what learning *about*, *through* and *for* human rights entails in practice for learners at different stages of the lifelong learning journey, in early years, primary, secondary, university, vocational, and self-directed, digital by default learning.

6.5 Learning *about*, *through* and *for* human rights

To Lohrenscheit, the learning *about* element of HRET emphasises knowledge of the basic content of human rights, including the "genesis, history and relevance of human rights documents; controversies and conflicts of human rights; [and] content

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[1172] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 56

[1173] See Cranston and Janzen's experience of using the about, through and for framework to design a ten-day graduate level teacher training course in human rights education, in partnership between the Faculty of Education at the University of Manitoba and the Canadian Museum for Human Rights - Jerome Cranston and Melanie D Janzen, A Critical Approach to Teaching About, Through, and For Human Rights, The Canadian Journal for the Scholarship of Teaching and Learning, Vol 8, Issue 3, June 2017, p 3, Accessed at http://ir.lib.uwo.ca/cjsotl_rcacea/vol8/iss3/2

[1174] An excellent definition for 'learning journey' is offered by the private edtech firm LEO Learning: "A learning journey is a designed learning experience that occurs over a period of time and involves a whole series of different learning elements and learning experiences involving different methods and channels." See LEO Learning, Why We Should Consider the Entire Learning Journey, LEO, 8 July 2015, Accessed at https://leolearning.com/blog/learning-content/consider-entire-learning-journey/

of the various declarations and conventions"[1175]. Struthers notes that this element might initially appear to be exclusively concerned with "imparting knowledge"[1176], without prescribing any change in attitudes or behaviours or inspiring any form of action. In Tibbitt's Values and Awareness Model[1177], public education awareness campaigns and school-based curriculum typically fall within the learning *for* element, whereby "the key pedagogical strategy is engagement", which is simply "to attract the interest of the learner"[1178]. In this phase of learning, according to Tibbitt, there is minimal emphasis on the development of higher order communication, conflict resolution, negotiation, or advocacy skills, with the focus on nurturing cognitive and critical thinking skills among learners, as well as the all-important "ability to apply a human rights framework when analysing policy issues"[1179]. Tibbitt has observed that for most "critical consumers" of human rights education, the journey will stop at "content knowledge" and short of action, which heightens the "risk of offering a superficial exposure to the human rights field which, in the worst case, can be experienced as primarily ideological"[1180]. However, Struthers has made the important point that the learning *about* element of HRET should not be limited to merely absorbing fact-based knowledge and it cannot consist "simply of rote learning of factual human rights information but should instead place such knowledge within a culturally and contextually relevant setting"[1181]. In this view, the learning *about* stage of HRET should emphasise knowledge of human rights content, facts, theories, and histories, but should do so by framing these facts, theories and histories within social and cultural contexts that the learner can relate to and resonate with. Flowers cites a key recommendation of the Plan of Action for the UN Decade for Human Rights Education, which stated that effective HRET should be "shaped in such a way as to be relevant to the daily lives of learners, and … seek to engage learners in a dialogue about the ways and means of transforming human rights from the

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[1175] Claudia Lohrenscheit, International Approaches in Human Rights Education, International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education, Vol. 48, No. 3/4, Education and Human Rights (Jul 2002), pp 173-185
[1176] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 57
[1177] Felisa Tibbitts, Emerging Models for Human Rights Education, International Review of Education 2002, Vol 48 Issue 3-4, pp 159-171, p 164
[1178] Felisa Tibbitts, Emerging Models for Human Rights Education, International Review of Education 2002, Vol 48 Issue 3-4, pp 159-171, p 164
[1179] *Ibid*
[1180] *Ibid*
[1181] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 57

expression of abstract norms to the reality of their social, economic, cultural and political conditions"[1182]; in other words, it should consciously link advanced human rights learning with the real world around us.

This approach facilitates the development of critical thinking and comprehension skills from the outset of the human rights learning journey, and these are skills which will be embedded and strengthened further by learning *through* human rights, which for Flowers et al, involves "going beyond factual content to include skills, attitudes, values, and action", adopting a "horizontal" ("non-hierarchical, democratic, collaborative") rather than "hierarchical" learning environment which "engages each individual and empowers her or him to think and interpret independently"[1183]. This requires the active participation of all learners, through reflection, analysis, emphasis on skills building, and the "recognition of the importance of humour, fun, and creative play for learning" (with respect to what might and might not be culturally appropriate or the availability of resources such as internet access or materials)[1184]. This approach sees students introduced to "nondominant voices" through an inclusive syllabus designed for a "classroom based on diversity of thought and opinion" where "faculty can model what it means to live by human rights"[1185]. Struthers sees educating *through* human rights as the creation of a 'rights-respecting' class or school environment, one where human rights principles and values (non-discrimination, justice, equality, and dignity) are lived and experienced in the everyday learning environment, "infused throughout, including within decision-making processes and disciplinary procedures"[1186].

For Cargas, educating *through* human rights means the use of "participatory pedagogies, active learning, and student-centred learning [as] a call to teach diversity of perspectives"[1187], and it involves reciprocal respect between learner and

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[1182] UN, Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education, A/51/506/Add 1 (1996), para 6
[1183] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 59
[1184] *Ibid*
[1185] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307, p 296-297
[1186] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 58
[1187] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307, p 296-297

educator with the emphasis on reaching hearts and minds and promoting prosocial, pro-rights attitudes and behaviours in the learner. In this element, the focus is very much on the development of the personality, confidence, and dignity of the learner[1188]. Educating *through* human rights should clearly impart more advanced levels of knowledge, building on the foundational knowledge imparted in the learning *about* phase, *and* should also positively shape learners' attitudes, beliefs, and behaviours through participatory and inclusive pedagogical design[1189]. This approach should, according to Tibbitts, be "motivating, humanising and ultimately practical, since this form of learning is linked more strongly with attitudinal or behavioural change than with a pure lecturing approach"[1190].

Learning *through* human rights involves addressing topics as diverse as women's rights, economic development and human rights, climate and human rights, LGBTQ rights and human rights, minority rights, and refugee rights, challenging learners to confront their unconscious biases and honestly assess how their own behaviours and attitudes either or alternately contribute to or counter the rights-violating discrimination or persecution experienced by others. Learning *through* human rights is challenging, it is uncomfortable, it is provocative – and it is *meant* to be all of these things because this is the element of learning where HRET begins to demand inner reflection. For vulnerable learners who may be victims of human rights abuses or living in post-conflict societies, this may be the point in the HRET journey that signifies inner healing, because the overarching focus of HRET for this group should *always* be on healing; for all groups, it should serve as an opportunity for "personal empowerment leading towards activism for change" which might be "personal, community, [or] societal"[1191].

The third, learning *for* phase empowers the individual to "translate human rights into social and political reality", per Struthers[1192], who acknowledges that this may initially

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[1188] *Ibid*, p 59
[1189] United Nations, Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education, A/51/506/Add 1 (1996), para 9
[1190] Felisa Tibbitts, Emerging Models for Human Rights Education, International Review of Education 2002, Vol 48 Issue 3-4, pp 159-171, p 162
[1191] *Ibid*, p 166-167
[1192] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 59, citing UNESCO International Congress on the Teaching of Human Rights, Principles of the International Congress on the Teaching of Human Rights 1978, para 3(iii)

seem "excessively idealistic and beyond the scope of teaching at the level of formal primary and secondary education"[1193]. This is because learning *for* human rights involves, in practice, empowering the learner to recognise human rights violations and then personally "committing to their prevention"[1194]. In this element, learning *for* human rights may also incorporate more advanced learner capacity development, including (according to Tibbitts) "leadership development, conflict-resolution training, vocational training, work, and informal fellowship"[1195]. Where educating *through* human rights promotes the shift of mindsets towards tolerance, inclusion, diversity and respect for nondominant voices and opinion, and inspires *individual* attitude and behaviour change, educating *for* human rights is focused on converting awareness and attitude change into agency and action[1196], influencing – as Flowers notes – "how we act", how we utilise "skills for advocacy and action", how we analyse an emerging situation "in human rights terms", and how we 'strategise' to arrive at "appropriate responses to injustices"[1197]. Learning *for* human rights is not necessarily reserved for those who enter the field of human rights in their professional lives, but for everyone who believes that human rights is the responsibility of *every* individual. As Flowers writes:

> *"Only a few people may become full-time activists, but everyone needs to know that human rights can be promoted and defended on an individual, collective, and institutional level and be taught to practice human rights principles in his or her daily lives. And everyone needs to understand that human rights are linked with responsibilities: to observe human rights principles in one's own life and to defend and respect the rights of others."*[1198]

To summarise, learning *about* human rights is the definitive starting point in the human rights learning journey, and should be framed as an introduction to the content, history, basic processes of implementation, institutions, and mechanisms for

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[1193] *Ibid*

[1194] Felisa Tibbitts, Emerging Models for Human Rights Education, International Review of Education 2002, Vol 48 Issue 3-4, pp 159-171, p 166-167

[1195] *Ibid*

[1196] Deleuze and Guattari memorably define activism as "schizophrenising the existing power structure, making it vibrate to a new rhythm, making it change from within, without at the same time becoming a schizophrenic" – see Gilles Deleuze and Félix Guattari, Anti-Oedipus, trans Robert Hurley, Mark Seem and Helen R Lane, University of Minnesota Press 1983

[1197] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 13

[1198] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 13

enforcement at international and domestic levels. If the learning *about* phase intends to attract the initial interest of learners, the second phase, learning *through* human rights, should be designed to retain those learners through a process of value clarification ("one of the central objectives" of HRET, per Koenig, which enables each person to "draw upon her and his own lights and experience"[1199]), and critical self-reflection on their own prejudices which may inhibit their advocacy and the unconscious biases that may hinder their participatory learning[1200]. This element prioritises learning methods that set out to challenge dominant voices, seek out nondominant perspectives, and broaden mindsets when it comes to the protection of the rights of others. In the third phase, learners progress to the learning *for* level, and acquire the skills required to lead awareness into action, "power of action" being, as Deleuze wrote, "the sole expression of our essence"[1201].

6.5.1 Learning about human rights: The UDHR as the 'ideal introduction' to HRET

In the first phase of HRET, learning *about* involves engaging with knowledge of human rights content[1202]. Learning *about* human rights predominantly involves the cognitive absorption and comprehension of key facts, concepts, theories and principles of human rights[1203], alongside the development of core critical thinking and reflective skills[1204]. These can be derived from critical consideration of: a) the history

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[1199] Shulamith Koenig, Foreword in Human Rights Education for the Twenty-First Century, eds George J Andreopoulos, Richard Pierre Claude, University of Pennsylvania Press 1997, xiv; 'values clarification' is defined by Fritz and Guthrie as "a dynamic process in which people come to understand what they individually view as important in their lives by placing a name or label to what one values", a process that an individual typically undergoes in their college / university years and one which is also a "critical component" in leadership education – see Mackenzie R Fritz and Kathy L Guthrie, Values clarification: Essential for leadership learning, Journal of Leadership Education, 2017 Vol 16 Issue 1, pp 47-63, p 47

[1200] Unconscious bias is the concept, as defined by Fiarman and Benson, that "throughout our daily lives, we all absorb and internalise prejudices that influence our automatic actions and beliefs", and that "absorption of these biases is not a conscious process and in fact, can run counter to what we think we believe." See Sarah E Fiarman and Tracey A Benson, Unconscious Bias in Schools: A Developmental Approach to Exploring Race and Racism, Harvard Education Press 2020 (especially see Chapter 8: Addressing Unconscious Bias in Academics).

[1201] Gilles Deleuze, Expressionism in Philosophy: Spinoza, Zone Books 1990, p 226

[1202] 'Content knowledge' is defined as "the body of knowledge and information that teachers teach and that students are expected to learn in a given subject or content area", commonly used to refer to "facts, concepts, theories, and principles". See The Glossary of Education Reform, Accessed at https://www.edglossary.org/content-knowledge/

[1203] Although the term 'cognitive absorption' was coined by Agarwal and Karahanna in 2000 to refer to an individual's deep state of engagement with technology (see Ritu Agarwal and Elena Karahanna, Time Flies When You're Having Fun: Cognitive Absorption and Beliefs about Information Technology Usage, MIS Quarterly, Vol 24 No 4 (Dec 2000), pp 665-694), I use it here simply to refer to the mental processing of information, facts, concepts, and theories to where this information can be acquired, understood, stored, contextualised, recalled, manipulated, and retrieved.

[1204] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 57

of human rights, the life stories of key individual actors ('human rights heroes'[1205]) and significant human rights events in history[1206]; b) the laws, texts, and specific provisions of human rights instruments, treaties, and conventions; and c) the established principles of human rights (such as the universality, indivisibility, and inalienability of rights) enshrined within the core international human rights instruments[1207]. Learning *about* human rights therefore involves acquiring core knowledge of the *provisions* of human rights instruments (the 'content') and being able to critically reflect on their *relevance* to all human beings (the 'context'), which prepares learners for the learning *through* phase of the HRET journey. This represents, as Cargas finds, "the most obvious path for [HRET] pedagogy"[1208], with the UDHR both a clear starting point in the acquisition of content knowledge and the "vital basis", as Lohrenscheit finds, for any HRET curriculum which should accordingly be "adjusted to the specific learning and living environments of the target groups"[1209].

For as long as there is no set or defined standard for what is taught in HRET, there is no consensus on what constitutes HRET 'curriculum'. As Flowers has observed, because human rights are "part of many subject areas and approaches in formal education and have such wide political and social application, little agreement exists about what should be taught"[1210]. As Cargas has found: "If one looks at the published books introducing human rights, the way faculty organise their syllabi, educational handbooks, and manuals, one finds consistent calls to teach the following: the philosophical foundations of human rights, the historical precedents,

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[1205] Reardon recommends putting names and faces to human rights history: "Discussion of the events and conditions that led to these standards cannot avoid the questions of risk and sacrifice often involved in the exercise of moral responsibility. The histories of those who have taken such risks and made great sacrifices in the struggle for human rights most certainly should be introduced, as should the great successes that have been achieved by individuals and social movements." See Betty A Reardon, A Developmental Sequence for Presentation of the Core Concepts, in Educating for Human Dignity: Learning About Rights and Responsibilities, University of Pennsylvania Press 1995, p 21

[1206] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307, p 296

[1207] OHCHR, The Core International Human Rights Instruments and their monitoring bodies, Accessed at https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies

[1208] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307, p 296

[1209] Claudia Lohrenscheit, International Approaches in Human Rights Education, International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education, Vol 48 No 3/4, Education and Human Rights (July 2002), pp 173-185, p 179

[1210] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 40

the indivisibility of rights, the laws and content of the treaties and conventions", yet she identifies significant space for critical thinking in this phase if "controversies in the international debate, knowledge of violations, key people and events in resistance, and tools for addressing violations at the local, national, and international levels" are emphatically addressed within HRET course design[1211].

Human rights texts are content-rich, typically dense, heavy-going material. In other disciplines where learner material is lengthy and complex (such as medical education), research suggests that breaking human rights content into smaller, bite-sized learning or micro-learning ("an instructional method that utilises brief, focused learning units"[1212]) can make learning more manageable, reducing "demands on learner time and cognitive load"[1213]. Because of their article-based structure, delineated into tidy paragraphs with a clear introduction (or 'preamble'[1214]), human rights texts are almost readymade for microlearning. Lohrenscheit notably sees the UDHR as "a curriculum in 30 steps or paragraphs, which are basic to any programme of human rights education"[1215]. In HRET, the Preamble of an instrument being studied can be likened to a set of 'learning objectives', which put the rights contained within the instrument into context[1216]. Preambles, since the time of Plato[1217], have come to be regarded as a significant feature of constitutional design and a key interpretation tool because they are, per Orgad, "the part of the

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[1211] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307, p 296
[1212] Kimberly D Manning, Jennifer O Spicer, Lucas Golub, Mikhail Akbashev & Robin Klein, The micro revolution: effect of Bite-Sized Teaching (BST) on learner engagement and learning in postgraduate medical education, BMC Medical Education 2021, Vol 21 Issue 69, p 2
[1213] 'Cognitive load' refers to the theory that "individuals have a finite working memory to input, process and retain information" – see Kimberly D Manning, Jennifer O Spicer, Lucas Golub, Mikhail Akbashev & Robin Klein, The micro revolution: effect of Bite-Sized Teaching (BST) on learner engagement and learning in postgraduate medical education, BMC Medical Education 2021, Vol 21 Issue 69, p 2
[1214] A preamble is an 'introduction' to the rights contained within the instrument being studied which, as Aggelen notes, "aims at defining in general terms the parties' purposes and the considerations that led them to agree" – see Johannes van Aggelen, The Preamble of the United Nations Declaration of Human Rights, 28 Denver Journal of International Law and Policy 129 (2000), p 132
[1215] Claudia Lohrenscheit, International Approaches in Human Rights Education, International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education, Vol 48 No 3/4, Education and Human Rights (July 2002), pp 173-185, p 175
[1216] Learning objectives, to borrow Harvard Medical School's definition, are "clear, concise statements that define the expected goal of a curriculum, course, lesson or activity, and describe observable skills or knowledge that will be acquired by a student as a result of instruction" – see Harvard Medical School, Writing Learning Objectives, Accessed at https://meded.hms.harvard.edu/files/hms-med-ed/files/writing_learning_objectives.pdf.
[1217] Plato in *The Laws* explained that "just as a doctor explains the patient's illness to him, and tries to make him understand the reasons for the measures to be prescribed in order to gain his co-operation, so the legislator must explain and justify his laws. Hence every law must be headed by a preamble justifying its provisions; further, the preamble must be rhetorical in character: it must not only instruct but persuade." - Liav Orgad, The preamble in constitutional interpretation, International Journal of Constitutional Law, Vol 8 Issue 4, October 2010, pp 714–738, p 722

constitution that best reflects the constitutional understandings of the framers" and which "presents the history behind the constitution's enactment, as well as the nation's core principles and values"[1218].

As for the body of the treaty, convention or declaration, the specific rights provided are typically laid out in consecutively numbered articles (or 'enacting terms'[1219]), which effectively and thematically groups provisions for ease of reference and recall. As Cargas writes: "From Article 1's injunction to 'act toward one another in a spirit of brotherhood' to Article 29's directive on the individual's duty for living in a community dedicated to the 'free and full development' of one's personality, the UDHR provides a set of universal guidelines for harmonious coexistence"[1220]. Whilst she agrees that the UDHR is a "foundational document", she also finds that other instruments and declarations are equally "instructive for living peacefully in a pluralistic world"[1221], which speaks to the vastness and the richness of the source material available in writing course content for HRET. As Flowers suggests, the UDHR lies "at the heart of all human rights education" – not only was it the first major human rights instrument after the WWII it is also, "unlike subsequent and increasingly technical documents", easily understandable and more digestible, with "symbolic, moral, and practical significance as the constitution of the whole human rights movement" and "its grand simplicity of language and inspiring vision … accessible to people of all ages and conditions"[1222]. For Flowers, the UDHR has both "legal authority" and "poetic power"; as such, acquiring an understanding of the UDHR and the relevance of its provisions and principles to the daily life of the individual is, she writes, "the ideal introduction to human rights education"[1223].

[1218] *Ibid*, p 715 and 716; Orgad also notes that Preambles' significance extends to "an important non-legal purpose" in that they "reflect and affect social and political norms"; they "encourage cohesion or exacerbate divisions, express the constitutional identity, and are called upon to serve as a device of national consolidation or to reconcile past wrongs" (at 738).
[1219] The EU Publications Office uses 'enacting terms' interchangeably with 'articles' (EU Publications Office, Interinstitutional Style Guide, Accessed at https://publications.europa.eu/code/en/en-120300.htm); whereas 'article' refers to a "paragraph or section of a legal document or statute" per the Legal Information Institute's glossary at Legal Information Institute, Definition for Article, Accessed at https://www.law.cornell.edu/wex/article
[1220] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights, Vol 18 2019 - Issue 3, pp 293-307, p 295
[1221] *Ibid*, p 295
[1222] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 36
[1223] *Ibid*

This said, the UDHR should be seen, as Flowers suggests, as a primer, not a panacea, a starting point rather than the 'kitchen sink' of rights and freedoms. As expansive as the UDHR is, it is worth remembering that many of today's salient human rights challenges, such as climate change and environmental justice, women's empowerment, the right of indigenous people, and the rights of LGBTQ communities, could not have been included in the UDHR when it was drafted in the 1940s because they simply were not recognised as significant enough at the time to warrant inclusion in a global charter of human rights, although many of these concerns were duly "addressed in the later human rights conventions that have built on and elaborated the general principles" of the UDHR[1224]. Therefore, it makes sense that learners who wish to become specialised in a particular area of human rights should, Flowers suggests, first become acquainted with the UDHR before progressing to more "specialised conventions"[1225]. The UDHR is also the most translated document in the world[1226], and has been made available "in other forms appropriate for various levels of literacy and for the disabled"[1227], as well as in "pictorial, audio-visual or other formats"[1228], making it one of the easiest human rights documents to reuse and repurpose for the creation of multilingual HRET content in the widest possible variety of formats.

In the learning *about* phase, reading comprehension and critical thinking are the key skills being engaged, the vital four components of reading comprehension being – according to Elleman and Oslund – inference, knowledge, vocabulary, and comprehension monitoring[1229], or in Perfetti et al's assessment, "the coordination of multiple linguistic and cognitive processes including, but not limited to, word reading

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[1224] *Ibid*

[1225] *Ibid*; these more "specialised conventions" might include International Convention on the Elimination of All Forms of Racial Discrimination (1965); the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) – often collectively referred to as the 'International Bill of Rights'; the Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); International Convention for the Protection of All Persons from Enforced Disappearance (2006); and the Convention on the Rights of Persons with Disabilities (2006)

[1226] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 144-145

[1227] United Nations, Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education, A/51/506/Add 1 (1996), para 85

[1228] *Ibid*, para 86

[1229] Amy M Elleman, Eric L Oslund, Reading Comprehension Research: Implications for Practice and Policy, Policy Insights from the Behavioural and Brain Sciences, Vol 6, Issue 1, p 3-11, p 5

ability, working memory, inference generation, comprehension monitoring, vocabulary, and prior knowledge"[1230]. Reading for comprehension (or understanding) of human rights texts in the learning *about* pillar creates background knowledge that learners can build upon in the learning *through* pillar which encourages immersion, participation, and progression to a more advanced level of understanding[1231]. Reading comprehension also plays an important role in the development of word recognition which allows the learner to gain proficiency with the vocabulary that is commonly used around the field of human rights but not necessarily used in everyday interaction (words such as inalienable, indivisible, ratify, norm, or customary, to give just a handful of examples[1232]). Proficiency in human rights vocabulary lends itself to deeper engagement with HRET principles, provisions, and purpose. As Quennerstedt's recent study of the role of language in human rights teaching revealed, the more precise language and the more specific 'human rights vocabulary' a learner was confidently able to employ, the deeper their knowledge of human rights overall[1233]. For Gadamer, language was "the medium in which substantive understanding and agreement take place between two people"[1234]; as such, it is a "cornerstone in communication; it conveys knowledge and assists thought, and awareness of the connection between language and the growth of intellect is of essence for all educationalists"[1235]. For Dewey, language "includes much more than oral and written speech. Gestures, pictures, monuments, visual images, finger movements — anything consciously employed as a sign is, logically, language"[1236], echoing Wittgenstein in *Tractatus*, whereby "the sole function of language is to picture reality"[1237].

Quennerstedt points out that very little has been said on how the use of language in HRET helps learners to develop a more precise vocabulary that lends itself to

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[1230] *Ibid*, p 4

[1231] John D Bransford, Ann L Brown, and Rodney R Cocking, How People Learn: Brain, Mind, Experience, and School, In Early Childhood Development and Learning: New Knowledge for Policy, National Academy Press 2001, p 68

[1232] See UNHCR Human Rights Glossary available at https://www.unhcr.org/47cfad9e2.pdf which provides a comprehensive, if no-exhaustive, glossary of human rights terms and vocabulary

[1233] Ann Quennerstedt, Language use in the teaching of human rights, Cogent Education, Vol 6 Issue 1 2019, p 1-17, p 1

[1234] Hans-Georg Gadamer, Truth and Method, Crossroad 1989

[1235] Ann Quennerstedt, Language use in the teaching of human rights, Cogent Education, Vol 6 Issue 1 2019, p 1-17, p 2

[1236] John Dewey, Language and the Training of Thought, Chapter 13: How We Think, DC Heath 1910, p 171

[1237] David Keyt, Wittgenstein's Picture Theory of Language, The Philosophical Review, Vol 73 No 4 (October 1964), pp 493-511, p 494

deeper engagement and knowledge of the material[1238], and so this is mentioned here as a potential area for future research. One of the key components of reading comprehension, comprehension monitoring, is defined as "a metacognitive process that includes both the evaluation and regulation of understanding derived from discourse, verbal communication or the reading of text"[1239]. This process essentially entails the learner evaluating themselves, where metacognition is essentially the critical ability to "think about their thinking as they read"[1240]. This skill is crucial because it sets the learner up for the more advanced critical engagement they will need in the learning *through* phase, in which the learner further contextualises and internalises various rights and freedoms within their own social and political realities.

6.5.2 Learning through human rights: Internalising human rights to change attitudes and inspire behaviour change

Whilst learning *about* human rights is about exposing the learner to the core, basic human rights texts, principles, and issues, "from both an objective, intellectual perspective and from a subjective perspective"[1241], learning *through* human rights emphasises that HRET is best taught communicatively, using participatory, dialogic methods that draw on the learners' own experiences[1242] (or "critical reflections on social realities"[1243]), and that it is pedagogically rooted in empowerment, inclusion, and internalisation, which Zittoun and Gillespie define most simply as the "process by which culture becomes mind"[1244]. In the learning *through* phase, as Lohrenscheit explains, education is understood as "emancipatory", a "practice of freedom and

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[1238] Ann Quennerstedt, Language use in the teaching of human rights, Cogent Education, Vol 6 Issue 1 2019, p 1-17, p 1

[1239] Matt C Keener, Douglas J Hacker, Comprehension Monitoring, Encyclopaedia of the Sciences of Learning 2012, Accessed at https://link.springer.com/referenceworkentry/10.1007%2F978-1-4419-1428-6_1212. Comprehension monitoring has also been described by Elleman and Oslund as "one of the most complex cognitive activities in which humans engage, making it difficult to teach, measure, and research" - see Amy M Elleman, Eric L Oslund, Reading Comprehension Research: Implications for Practice and Policy, Policy Insights from the Behavioural and Brain Sciences, Vol 6 Issue 1, p 3-11, p 3

[1240] Brooke MacKenzie, Teaching Students to Read Metacognitively, Edutopia, 07 March 2019, Accessed at https://www.edutopia.org/article/teaching-students-read-metacognitively

[1241] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 42

[1242] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp 481-508

[1243] Felisa Tibbitts & Susan Roberta Katz, Dilemmas and hopes for human rights education: Curriculum and learning in international contexts. Prospects, Vol 47 2017, pp 31–40

[1244] Tania Zittoun and Alex Gillespie, Internalization: How culture becomes mind, Culture & Psychology, Vol 21 Issue 4 2015, pp 477-491

empowerment" and "the empowered and active individual is the central goal"[1245]. In this pillar, the individual acquires a more acute understanding of their own needs and interests, and an appreciation of the structural (political, social, and economic) issues at play which often limit the engagement of individuals in what Lohrenscheit sees as the "transformation of society on the basis of human rights"[1246].

In this phase, HRET curricula and content must move out of the 'easy' zone of the UDHR and the other core instruments to dive into deeper, more complex or more specialised human rights instruments and international human rights standards[1247]. Some of these instruments are likely, in many increasingly diverse and multicultural educational environments, to resonate on a deeply personal and potentially traumatic level with diverse groups of leaners, amplifying the potential for HRET learnings to intrinsically embed as deep knowledge. As Flowers writes:

> "Communicating the content of human rights is the easy part in that it can be accomplished through traditional methods. Affecting attitudes and values is a much more difficult, slow, and idiosyncratic process that will never be accomplished if this education fails to come "close to home," to involve individual experience, aspirations, and deeply held values. Because human rights include everyone personally, both as individuals with inherent rights and as members of the community, learning about human rights must relate the "deep knowledge" of personal reality as well as the "hard knowledge" of factual content. Otherwise educators may be conveying information but inspiring neither commitment nor action"[1248].

This pillar of HRET, which aims to make human rights resonate on a personal and emotional level with human rights learners, calls for an inherently participatory approach[1249], where methods might include debates or focus groups with students

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[1245] Claudia Lohrenscheit, International Approaches in Human Rights Education, International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education, Vol 48 No 3/4, Education and Human Rights (Jul 2002), pp 173-185, p 176-177

[1246] *Ibid*

[1247] These may include the Nuremberg Principles on Individual Responsibility, or 'The Nuremberg Code' (1946), the Refugee Convention (1951), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1990), the Declaration on the Right to Development (1986), or the Declaration on the Rights of Indigenous Peoples (2007)

[1248] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 36

[1249] This is defined in the Encyclopaedia of Distance Learning as a process which involves the learner throughout the whole learning journey by "authoring, solving, and evaluating a problem and its solution" – see Encyclopaedia of Distance Learning, Participatory Learning Approach, Accessed at https://www.igi-global.com/dictionary/participatory-learning-approach/21940

brainstorming possible solutions to hypothetical challenges or discussing case studies, which would allow them the opportunity to develop their listening, critical questioning, and public speaking skills[1250]. The UN has long advocated the use of "creative, interactive teaching methods, which offer the best hope for securing … active, engaged participation", examples being "the use of working groups, lecture-discussions, case-studies, panel discussions, roundtable discussions, brainstorming sessions, simulation and role-playing, field trips, and the use of audio and visual aids, as culturally appropriate to the specific audience"[1251].

Field trips, as Flowers recommends, should be conducted in the very same places where human rights problems occur (she lists "prisons, hospitals, [and] international borders as examples), including places of work of those who work on behalf of human rights (and she notes "non-profit organisations, government offices, homeless or battered women's shelters, food or clothing banks" as examples of such places)[1252]. Field trips may also take place at human rights hearings and tribunals (as "public testimony can give a human face to both human rights defenders and victims and serve to both educate and motivate those who attend"[1253]). Research-based projects (which Flowers defines as "independent investigations that permit participants to explore topics in depth and to share their findings with others"[1254]) are another excellent recommendation, as are 'law in action' approaches such as awards schemes, contests, exhibitions, showcases, human rights 'hackathons' (tech-based competitions or pitch events), debates or symposia[1255].

Creative work is another crucial participatory human rights learning method, with learners composing their own "poetry, songs, dramas, stories, essays or … letters or editorials on issues that concern them", as Flowers suggests, or engaging in painting, photography, poster design, music, role play or dramatic readings[1256].

[1250] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 62-67
[1251] United Nations, Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education, A/51/506/Add 1 (1996), para 75
[1252] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 62-67
[1253] *Ibid*, p 67
[1254] *Ibid*, p 72
[1255] *Ibid*, p 76
[1256] *Ibid*, p 61-65

Additionally, film screenings are a part of participatory human rights learning, as recognised by Flowers, who suggests that learners should be introduced to the film "thoughtfully, perhaps providing some preliminary questions to focus viewing"; that teachers permit Q&A time after the film so that students can contextualise and crystallise their learning (especially in the case of films that might trigger emotional responses), which should be "followed immediately by a focus group discussion and suggested action based on the issues arising in the film"[1257]. And lastly, games as a participatory method are "a lively, experiential way to introduce difficult concepts and complement cognitive learning", although Flowers warns that "participants often remember the game but forget its purpose" and accordingly suggests that the game be followed by discussion and "explicit links to the human rights concept"[1258].

6.5.3 Learning for human rights: Turning awareness into action and advocacy

In the first pillar, learning *about* human rights, learners are introduced to the UDHR and other foundational international human rights texts, documents, and standards. In the learning *through* pillar, learners engage more deeply with what those international standards mean in the context of their own lives; their learning is structured in such a way as to engender curiosity, independent research, discussion, debate, the exchange of opinion and sometimes – in an increasingly diverse and multicultural learning landscape – the exchange of direct, lived experiences as well. In the third pillar, learning *for* human rights, HRET goes to a deeper level still. As Tibbitts notes, in this phase the learner goes beyond the 'what' (*about*) and the 'why' (*through*) to the 'how' (*for*), with the ultimate outcome of this phase of HRET being the empowerment of learners to *act* on behalf of human rights, which is the most fundamental HRET learning objective. As Lohrenscheit reminds us:

> *"International human rights law provides a 'mandate' for "world-wide dissemination" of what UNESCO has termed a "culture of human rights", but instruments in international law are meaningless if they do not develop generations of human rights defenders through HRET, passionate advocates for human rights who will "struggle not only for their own rights but also for the rights of others"*[1259].

[1257] *Ibid*, p 62-67
[1258] *Ibid*, p 67
[1259] Claudia Lohrenscheit, International Approaches in Human Rights Education, International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education, Vol. 48, No. 3/4, Education and Human Rights (Jul 2002), pp 173-185, p 182-183

For learners in this pillar, there should be emphasis on accountability, agency and the HRET 'call to action', which compels learners to apply what Flowers calls the "skills of human rights" to human rights problems. Atkinson has defined 'advocacy' simply as "speaking up"[1260], whereas a Columbia University Human Rights Learning Module offers a more nuanced definition of advocacy as "the organised attempt to influence specific outcomes - including public policy and resource allocation decisions within political, economic, and social systems and institutions - that directly affect people's lives"[1261]. 'Self-advocacy', in the context of human rights, disability rights, and social justice movements, refers to those who defend (speak up for and take action to protect) their own rights[1262], whereas 'para-advocacy', in the analysis of Petri *et al*, are "practices embedded in … everyday activities that people do" which don't always involve "speaking up"[1263].

All three advocacy models – advocacy, self-advocacy, and para-advocacy – are critical, desired outcomes of the learning *for* human rights pillar that directly support the mainstreaming of rights awareness and action that underpins the R*b*D framework. Advocacy is central to this phase of HRET, and as Flowers *et al* note, "mastering the skills of human rights goes beyond 'book learning'. Analysis, advocacy, lobbying, and reporting can be studied and discussed, but they can only be mastered by direct personal engagement in those actions. Thus, human rights education cannot be detached from human rights advocacy any more than learning about citizenship can be separated from participation in society"[1264]. Here, Flowers is emphasising the need for HRET to equip learners with the skills that will serve them well in their advocacy, and leadership development is at the forefront of these skills – leadership being, in Tibbitt's view, a vital HRET skill because it empowers learners to be "politically aware" enough to see 'the big picture', and "to consider specific

[1260] Dorothy Atkinson, Advocacy: A Review, Pavilion/Joseph Rowntree 1999, p 5-9
[1261] Columbia University Mailman School of Public Health, Human Rights Learning Module: Forms of Human Rights Work, Accessed at http://www.columbia.edu/itc/hs/pubhealth/modules/humanRights/work.html
[1262] Harvard Project on Disability, Change Your Life with Human Rights: A Self-Advocacy Book for People with Disabilities, p 6, Accessed at https://hpod.law.harvard.edu/pdf/Change_Your_Life_With_Human_Rights.pdf
[1263] Gabor Petri, Julie Beadle-Brown and Jill Bradshaw, Redefining Self-Advocacy: A Practice Theory-Based Approach, Journal of Policy and Practice in Intellectual Disabilities, Vol 17 Issue 3, September 2020, p 207-218, p 207
[1264] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 36

objectives and develop effective strategies for the political environment they are in"[1265].

As the most advanced and distinctly skills-based pillar in the UN's HRET framework, learning *for* human rights is best achieved when modelled on Kolbe's experiential learning cycle, where skills such as strategic leadership[1266], communication, conflict resolution, and critical thinking are learned through experience rather than 'taught'[1267]. Experiential learning happens "when carefully chosen experiences are supported by reflection, critical analysis and synthesis", according to the Association for Experiential Education's Principles of Practice[1268]. Experiential learning methods in the context of HRET, especially when organised in formal education settings or as part of continued professional development ("CPD"), might include place-based education (for example, via work experience placements or internships[1269] undertaken at NGOs, refugee support centres, immigration law firms, or national human rights institutions or research institutes). Experiential learning might also include project-based learning, inquiry-based, constructive, and collaborative learning that shares pedagogical commonalities with problem-based learning, which is contextual, active, and *inter*active, "through social interactions and the sharing of knowledge and understanding"[1270].

Commonly, this type of social, knowledge exchange-based learning is engaged in through observation, interaction, and reflection, via participation in conferences or

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[1265] Felisa Tibbitts, Emerging Models for Human Rights Education, International Review of Education 2002, Vol 48 Issue 3-4, pp 159-171, p 161

[1266] Schoemaker et al define strategic leadership as the ability of a leader "to anticipate, challenge, interpret, decide, align, and learn"; a strategic leader is "someone who is both resolute and flexible, persistent in the face of setbacks but also able to react strategically to environmental shifts" and importantly, has ambidexterity having "learned to apply all six at once" – see Paul JH Schoemaker, Steve Krupp, and Samantha Howland, Strategic Leadership: The Essential Skills, Harvard Business Review, Jan - Feb 2013, Accessed at https://hbr.org/2013/01/strategic-leadership-the-esssential-skills

[1267] Council of Europe, Experiential learning – a basis for human rights education, Accessed at https://www.coe.int/en/web/gender-matters/experiential-learning-a-basis-for-human-rights-education

[1268] The Association for Experiential Education, What is Experiential Education?, Accessed at https://www.aee.org/what-is-experiential-education

[1269] Gregory A Smith, Place-Based Education: Learning to Be Where We Are, Phi Delta Kappan, Vol 83 Issue 8, pp 584-594, p 590; as Smith writes, place-based education is mutually beneficial to both individuals and institutions because it "serves both individuals and communities, helping individuals to experience the value they hold for others and allowing communities to benefit from the commitment and contributions of their members" (at 594).

[1270] Dimitra Kokotsaki, Victoria Menzies, Andy Wiggins, Project-based learning: A review of the literature, Improving Schools, Vol 19 Issue 3, pp 267-277, p 267-268; Kokotsaki defines project-based learning as "an active student-centred form of instruction which is characterised by students' autonomy, constructive investigations, goal-setting, collaboration, communication and reflection within real-world practices" (at 267)

workshops. Conferences expose the learner to "the wider information landscape"[1271] and to valuable opportunities for networking, mentorship, and skills-building. Flowers sees HRET conferences, workshops, and conventions as "a principal means for learning, exchanging views, networking, and affecting social or institutional change"[1272]; in all disciplines, conferences "provide an arena for experts and learners to share knowledge and experiences on a variety of areas and specialisms", per Jenkins[1273]. Whilst conferences certainly have value as venues of "collective consciousness" (to borrow Durkheim's description of communal, exchangeable, dynamic information gathering, transfer and transformation in his 'sociology of knowledge'[1274]), for all their failings (primarily expense, which leads to exclusivity, thereby minimising their power and potential impact as "public sphere" venues for vital human dialogue[1275]) they are generally designed as spaces to facilitate the transfer of knowledge and the exchange of ideas and opinions, and foster the creation of new partnerships and initiatives based on collaborative action. This said, there is research that suggests that conferences may not be the most effective venues for HRET, a subject that is typically weighty and with deep-rooted socio-political complexities, given that on average, 70% of learning is forgotten by conference attendees within 24 hours of the event ending[1276]. Also, as Mary Robinson has pointed out, HRET events at international and regional levels have been limited to "rather ad hoc conferences", and training and seminar events have been "rarely evaluated"[1277]. The question then becomes: how can we disrupt the

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[1271] Ruth Jenkins, Learning and Teaching in Action, Health Information and Libraries Journal, Vol 32, pp 156–160, p 158

[1272] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota, 2000, p 101-102

[1273] Ruth Jenkins, Learning and Teaching in Action, Health Information and Libraries Journal, Vol 32, pp 156–160

[1274] Dénes Némedi, Collective Consciousness, Morphology, and Collective Representations: Durkheim's Sociology of Knowledge 1894–1900, 1 March 1995, Vol 38 Issue 1, pp 41-56; Durkheim's 'collective consciousness' in relation to conferences is also covered in Ruth Jenkins, Learning and Teaching in Action, Health Information and Libraries Journal, Vol 32, pp 156–160

[1275] "By the public sphere we mean first of all a realm of our social life in which something approaching public opinion can be formed. Access is guaranteed to all citizens. A portion of the public spheres comes into being in every conversation in which private individuals assemble to form a public body." – See Jürgen Habermas, The Public Sphere: An Encyclopaedia Article (1964), transl Sara Lennox and Frank Lennox, New German Critique, Vol 3 1974, p 49-50

[1276] "The truth is: conferences are not the most effective method of transferring knowledge. Attendees aren't likely to retain the information they take in during those few days packed full of sessions. They end up getting overwhelmed with new information and falling victim to the forgetting curve—which means they will forget 70 percent of what they 'learn' within 24 hours." - see WBT Systems, How to Continue the Conference Learning Experience, Accessed at https://www.wbtsystems.com/learning-hub/blogs/how-to-continue-the-conference-learning-experience

[1277] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 151

conference format to ensure that human rights learners are provided with experiential learning opportunities that are meaningful, that inspire, inform and motivate the learner to take action?

In formal education, this might be achieved by empowering students to lead the programming, organisation, and execution of academic conferences or symposiums (as a "social system for linking information … with people", per Brusilovsky[1278]). Student-led conferences become an immersive, interactive, leadership-focused experiential learning opportunity, where learners (traditional consumers of knowledge) become what Gross and Fleming call "producers of social knowledge"[1279]. Within the conference format, which evokes an "intensity of interaction that might not normally occur in day to day life" per González-Santos and Dimond[1280], organisers might take advantage of that intensity by scheduling HRET opportunities via workshop 'break-outs', where human rights skills (especially problem-solving with pragmatism and empathy, public speaking that impassions and inspires, communication, listening, interpersonal and critical thinking / inquiry skills), can be substantively developed, making conferences a vital tool for "bridging" gaps in HRET between knowledge, skills and action[1281].

6.6 Conclusion

The argument for mainstreaming HRET is clear cut; without it, human beings are left vulnerable to demagogues laundering the "dangerous belief" that "that they will never need their rights against an overreaching government claiming to act in their name"[1282]. The key characteristic of HRET is 'hope'; as Cargas notes, "HRE[T] provides essential evidence for hope and a necessary ingredient for making human

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[1278] Peter Brusilovsky, Jung Sun Oh, Claudia López, Denis Parra & Wei Jeng, Linking information and people in a social system for academic conferences, New Review of Hypermedia and Multimedia, Vol 23 2017 - Issue 2, p 81-111

[1279] Neil Gross and Crystal Fleming, Chapter Four: Academic Conferences and the Making of Philosophical Knowledge, in Social Knowledge in the Making, Charles Camic, Neil Gross, Michèle Lamont (eds), University of Chicago Press 2012, p 152

[1280] Sandra González-Santos & Rebecca Dimond, Medical and Scientific Conferences as Sites of Sociological Interest: A Review of the Field, Sociology Compass, Vol 9 Issue 3, pp 235-245, p 236

[1281] Colette Chabbott, Constructing educational consensus: international development professionals and the world conference on education for all, International Journal of Educational Development, Vol 18 Issue 3, May 1998, pp 207-218, p 210

[1282] Kenneth Roth, We Are on the Verge of Darkness, 12 January 2017, Accessed at https://foreignpolicy.com/2017/01/12/we-are-on-the-verge-of-darkness-populism-human-rights-democracy/

rights work in the twenty-first century. HRE[T] courses teach the philosophies inspiring action, the history of failures and triumphs, stories inspiring empathy and action, research, and best-practice methods for doing human rights work, as well as an approach to living well together"[1283]. Sikkink has challenged theorists of international human rights law who focus too closely on all that is wrong with the global human rights regime without coming up with a cohesive strategy to strengthen all that is right, stating that "we must be prepared to critique and to propose", to "determine what works and what doesn't work and do more of what does [1284]. As Cargas notes: "It is too easy for those of us with faith in the movement not to question it enough. Therefore, at the heart of all teaching about human rights must be critique and the incorporation of new strategies"[1285]. Sikkink's 'critique and propose' strategy calls for educators, practitioners, programme-makers and all of us who are involved in human rights culture, communication, and education to reconsider long-held assumptions, to be honest about why HRET has failed to embed in various contexts and environments, and to integrate cutting edge learner-centred pedagogies, innovative technologies, and interdisciplinary research to identify new ways of 'doing' HRET, imagining a bold new future for HRET in the process.

It is appreciated that although this chapter recognises the value of using the UDHR as a 'starting point' in HRET, it should be remembered that the UDHR is not universally recognised as a foundational human rights instrument in many Asian, Arab, African, and Asian-Pacific states, and so there is an issue of willingness of states to integrate its articles into national education systems in any form, or to permit the values, principles and freedoms enshrined within them to be propagated through civil society-led HRET. As Tibbits and Fernekes note: "Human rights education programming necessarily raises questions about the universality of human rights and the viability of the framework in relation to national legal and cultural norms (in particular, norms that appear to be in conflict with human rights)"[1286]. This

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[1283] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307, p 305
[1284] Kathryn Sikkink, Evidence for Hope: Making Human Rights Work in the 21st Century, Princeton University Press 2019, p 51
[1285] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal Journal of Human Rights, Vol 18 2019 - Issue 3, pp 293-307, p 304
[1286] Felisa Tibbitts and WR Fernekes, Human rights education, in S Totten & JE Pedersen (eds), Teaching and studying social issues: Major programs and approaches, IAP Information Age Publishing 2011, p 87-117

makes the UDHR a potentially ineffective 'starting point' in the HRET journey in many states, and so it falls to human rights educators to make appropriate judgements as to the most suitable curriculum and to frame their pedagogical approach in such a way that their own liberty and safety and that of their students is not at risk. In some states, delivering a HRET programme that explicitly links local or national values with international human rights discourse and teaching human rights outside of sanitised, state-sanctioned curricula can amount to a criminal offence and risk of imprisonment, torture and even the death penalty[1287]. In some local contexts, HRET educators may have no choice but to teach a muted version of the UDHR or to 'reframe' HRET as a more politically palatable 'national values' curriculum. Re-framing HRET is in some cases the best that can be done in the mission to mainstream HRET, and at any rate, a diluted version of HRET is preferable to a complete blackout on HRET overall.

For human rights educators in environments where it is safe to do so, now is the optimal time to build on the history of HRET and bring it into the mainstream by amplifying its successes, tackling its weaknesses through further critique and the development of new proposals and new pedagogies, and incorporating new perspectives into existing 'good practice'. As Cargas has suggested, "[w]hy not critique to improve what we have – a human rights system already deeply embedded in our political and cultural structures – and fortify it by expanding and improving the educational component that can lead the way to new possibilities?"[1288]

[1287] Amnesty International, Sudan: Religious teacher faces death penalty for defending human rights, 11 July 2018, Accessed at https://www.amnesty.org/en/latest/news/2018/07/sudan-religious-teacher-faces-death-penalty-for-defending-human-rights/
[1288] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights, Vol 18, 2019 - Issue 3, pp 293-307, p 294

Chapter Seven

Human Rights Education and Training II: Reimagining Rights Education in Primary, Secondary and Higher Education

7.1 Chapter Introduction

The UN Declaration on Human Rights Education and Training 2011, the "first instrument in which international standards for human rights education [were] officially proclaimed by the United Nations"[1289], defined HRET as "comprising all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms"[1290]. The Declaration explicitly provided that all individuals have the inherent "right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training"[1291]. It also established a tripartite framework for HRET schematically outlined in Article 2(2) of the UN Declaration on Human Rights Education and Training, which encompasses: (a) Education *about* human rights, "providing knowledge and understanding of human rights norms and principles, the values that underpin them and the mechanisms for their protection"; (b) Education *through* human rights, "learning and teaching in a way that respects the rights of both educators and learners"; and (c) Education *for* human rights, "empowering persons to enjoy and exercise their rights and to respect and uphold the rights of others"[1292].

The *about*, *through* and *for* framework has informed the work of leading voices on HRET in formal education, including Flowers, Cardenas, Cargas, Struthers, Reardon, Lohrenscheit, Quennerstedt, Bajaj, and others, who have articulated visions for how the three pillars of the framework can be realised in practice within the formal education system, as has Amnesty International in its Human Rights

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[1289] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 54

[1290] Article 2, Plan of Action for the United Nations Decade for Human Rights Education 1995-2004 (1996)

[1291] Article 1(1), UN Declaration on Human Rights Education and Training, A/RES/66/137

[1292] Article 2(2), UN Declaration on Human Rights Education and Training 2011; Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 56; Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33 No 2 (May 2011), pp 481-508, p 483

Friendly Schools programme[1293]. The previous chapter considered how these three components of HRET, learning *about, through* and *for* human rights, might each contribute to a more holistic and more inclusive approach to HRET, and how learning under each of these phases might be structured to inspire knowledge (*about*), participation (*through*) and advocacy (*for*). This and the subsequent chapter argue for integrating HRET across *all* levels of formal schooling, across *all* curricula and *all* disciplines and departments where there is potential for adverse human rights impact. This is admittedly an ambitious call given that the relevance of human rights spans every STEM and humanities discipline[1294], but in my view, it is integral to mainstreaming human rights culture and fully reflective of the profound (and largely underacknowledged) influence of human rights not only on future lawyers but also to the supply chain workers, teachers, engineers, doctors, artists, scientists, politicians, journalists, business leaders, researchers, public servants, and CEOs of the future. HRET, crucially, is *not* just for lawyers or human rights professionals.

Struthers has previously identified that all three pillars combined are intrinsic to the actualisation of human rights culture, and that the *about*, *through* and *for* framework are "complementary and any single one in isolation would be insufficient for compliance" [1295]. Stopping at the *about* phase would be, as Struthers has noted, "inadequate, for 'facts and fundamentals, even the best selected ones, are not enough to build a culture of human rights' [and] the building of such a culture by education through and for human rights cannot occur in the absence of fundamental human rights knowledge. The combination of all three", she argues, "represents the holistic approach to HRE that is often expressly advocated within the relevant legislation and literature"[1296].

[1293] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33 No 2 (May 2011), pp. 481-508, p 483

[1294] STEAM fields include Science, Technology, Engineering, Arts and Mathematics – see Laura Colucci-Gray, Pamela Burnard, Donald Gray, and Carolyn Cooke, A Critical Review of STEAM (Science, Technology, Engineering, Arts, and Mathematics), Oxford Research Encyclopaedia of Education, March 2019, DOI: 10.1093/acrefore/9780190264093.013.398, which explains that the addition of the Arts recognises "the recovery of educational aims and purposes that exceed economic growth: for example, by embracing social inclusion, community participation, or sustainability agendas" (p 1 of 22).

[1295] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 56

[1296] *Ibid*

With this in mind, this chapter considers how the *about*, *through* and *for* pillars of HRET relate to different stages of the learner journey – from early years and primary education, a clear starting point for HRET emphasising knowledge, comprehension, reflection and critical thinking to internalise and identify with human rights values; to secondary school and university education, where there can be more advanced emphasis on participatory approaches to HRET which both prepare and challenge learners to actively promote and defend human rights in the world around them. As Roda and Perry have noted, human rights teaching itself is "a form of activism which often requires embracing and harmonising conflicting approaches and methodologies. On the one hand, there is the detached perspective and long-term analytical insights of academic research, while on the other the engaged loyalty to a human right cause and the need for immediate relevancy and direct language of activist action"[1297]. This discussion segues naturally into the following chapter, which considers the *for* phase in the context of postgraduate, vocational, and lifelong learning, with a focus on legal education, executive education, and digital, heutagogical (self-determined[1298]) and increasingly dialogic learning. In doing so, this and the subsequent chapter inform Principle 3 of the R*b*D Framework (that individuals should be empowered with human rights education in formal and informal education as part of lifelong 'about, through and for' human rights learning),

There is growing consensus on why it is vital, in the creation of human rights culture through education, to start HRET with children from early years, primary and secondary school education settings[1299]. As Mary Robinson has advised: "Effective inclusion of human rights education in schools can be a first important step toward the development of an overall country human rights education plan"[1300]. As Flowers et al have noted, "values are largely set before the age of ten so HRE[T] cannot start too young", with "some of the most creative and effective human rights educators …

[1297] Claudia Roda and Susan Perry, Learning in Lockdown: Teaching Human Rights Practice During the COVID-19 pandemic, Journal of Human Rights Practice, Vol 13, Issue 3, November 2021, pp 690–702, p 692, citing Ron Dudai, The Study of Human Rights Practice: State of the Art, Journal of Human Rights Practice 2019, Vol 11 Issue 2, pp 273–295

[1298] Lisa Marie Blaschke, Heutagogy and Lifelong Learning: A Review of Heutagogical Practice and Self-Determined Learning, The International Review of Research in Open and Distance Learning, Vol 13 No 1, January 2012, pp 56-71

[1299] Alison EC Struthers, Teaching Human Rights in Primary Schools: Overcoming the Barriers to Effective Practice, Routledge 2019

[1300] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 151

found in pre-school and primary classes"[1301]. Reardon has suggested that the latter years of primary school are an appropriate stage to "introduce concepts of community and social values"[1302], and Struthers has written that "formal education (particularly with young learners) has the potential to alleviate the attitudinal problems caused by hyperbolised or erroneous accounts of human rights"[1303]. In the post-truth age of fake news and declining media literacy, she has called for young learners to be "equipped with the knowledge, skills and values necessary for questioning and challenging populist and reductive human rights stories, in particular those that perpetuate divisive 'them and us' dichotomies"[1304], seeing this as a way to protect children from harmful misrepresentations of human rights from embedding themselves into youth-led discourses on human rights at what is a profoundly impressionable juncture in young people's development. Largely for political and ideological reasons, HRET is often packaged or re-framed within less-threatening 'national values', 'beliefs and values', or 'citizenship education' frameworks in primary school settings. This is arguably the point when the impact of HRET begins to splinter in formal education, as by the time a student reaches university, HRET has typically dropped off the learner's radar entirely unless they are in the very small minority of learners studying a specific course on human rights, typically as an optional module for a law degree.

In higher education, Mary Robinson has said, "human rights are rarely a focus, apart from the programs of specialized human rights institutes"[1305]. It has been said that HRET at university level can 'fortify' the future of human rights[1306], yet it is a curiosity of higher education curricula in the UK and many other countries that HRET is not a core or compulsory module within the syllabus of the LLB or the UK Qualifying Law Degree (QLD) nor its international equivalents; and it is very rarely available as either a core or optional module to students on courses delivered *outside* of the law

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[1301] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 15

[1302] Betty A Reardon, A Developmental Sequence for Presentation of the Core Concepts, in Educating for Human Dignity: Learning About Rights and Responsibilities, University of Pennsylvania Press 1995, p 17

[1303] Alison EC Struthers, Debunking the "criminals' charter": education as an antidote to human rights sensationalism, European Human Rights Law Review 2017, pp 169-179, p 169

[1304] *Ibid*

[1305] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 148

[1306] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights, Vol 18 Issue 3 2019, pp 293-307

school. Within law schools, human rights-related modules tend to be under-subscribed to by students with a strategic career interest in more commercially-attractive subject areas such as Commercial Law, International Trade, or other private law subjects[1307].

As outlined in two seminal reports on human rights education – one by Amnesty International and the other produced by the Council of Europe – there are long-established communities of practice and solid precedents for addressing a wide range of human rights problems within formal learning environments, from "AIDS prevention, sexual education, development education and human rights education"[1308], to disability, racial discrimination in society and sport, the environment, gender, hate speech, homelessness, LGBTQI rights, or discrimination against refugees or migrants[1309]. The chapter examines the learning *about*, *through* and *for* framework in primary, secondary and tertiary education, addressing the challenges of mainstreaming and integrating human rights challenges into formal education. The chapter makes recommendations for how educators might infuse the learning journey with human rights values, knowledge and inspiration across these key stages, and demonstrates that current primary school, secondary / GCSE, and university curricula can seamlessly integrate HRET into existing curricula and content models for nearly every subject and every discipline. It briefly examines the role of peer group education in empowering young learners to address issues that affect them personally within an inclusive curriculum[1310] and in an open, supportive environment where they can explore human rights problems which resonate with their developing social consciousness, defined simply by Cooley as an "awareness of society"[1311]. Throughout, the chapter argues that young people should be

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[1307] Hilary Sommerlad, Sonia Harris-Short, Steven Vaughan, Richard Young (eds), The Futures of Legal Education and the Legal Profession, Hart 2015; Steven Vaughan, Some Reflections on Diversity and Diversifying the Law Curriculum, 16 May 2019, http://dx.doi.org/10.2139/ssrn.3392248; Steven Vaughan, The state of the nation: diversity and the British legal academy, The Law Teacher, Vol 50 Issue 2, pp 255-263; Howard R Berman, Teaching Human Rights Law, Journal of Legal Education, Vol 35, No 3 (September 1985), pp 428-444; Claudio Grossman, Global Legal Education and Human Rights, Human Rights Brief, Vol 11 Issue 3, pp 20-23
[1308] Amnesty International, First Steps: A Manual for Starting Human Rights Education, Peer Education Edition 2001, p 16
[1309] Nik Paddison, Human Rights Education in Action: Practices of Human Rights Education with and by young people, Council of Europe 2017, p 7, Accessed at https://rm.coe.int/2017-hre-in-action/168072bcd7
[1310] An excellent definition for 'inclusive curriculum' is one that "includes locally relevant themes and contributions by marginalized and minority groups. It avoids binary narratives of good and bad" – see Open Society Foundations, The Value of Inclusive Education, May 2019, Accessed at https://www.opensocietyfoundations.org/explainers/value-inclusive-education
[1311] Charles H Cooley, Social Consciousness, American Journal of Sociology, March 1907, Vol 12 No 5 (March 1907), pp 675- 694, p 676

empowered to take charge of their own experiences as learners and to advocate for human rights issues that they personally care deeply about, and it continually reiterates the importance of skills-building around critical thinking, reflection, empathy, digital / media / information literacies, and communication from the earliest years right through to higher education.

7.2 Learning *about*: Starting with the basics in early years, primary and secondary schooling

In the early learning phase, HRET is centred almost entirely on empathy, and on modelling respectful, tolerant, and inclusive behaviour within the preschool / kindergarten environment to reinforce (or correct) the behaviours that children are exposed to at home and prime the young learner for primary school interventions in HRET[1312]. In early years, primary school and early secondary school levels, learning *about* human rights is a clear starting point in the HRET journey because this phase develops core, foundational, facts-based knowledge, comprehension, and critical thinking skills that are developmentally appropriate for the learner age. Although there is broad agreement that HRET for children should begin in early years and primary school, HRET at school remains controversial on two fronts: firstly, in terms of ensuring that methods of delivering such education are age-appropriate to the cognitive abilities of children of the targeted age range (2-4 years for early years in the UK, and 5-11 for primary school); and secondly, navigating ideological objections to teaching human rights to young children on the basis that the subject matter is tacit, biased endorsement and indoctrination within the education system of 'left-wing' or 'liberal' political values[1313].

A foundational text for primary and early secondary school HRET is the UN Convention on the Rights of the Child, which provides a perfect introduction for learners to the UN Declaration of Human Rights and to the general principle that participation (and the right to be heard) is in the best interest of the child[1314], which serves as a primer to the participatory approach that underpins the learning *through*

[1312] See the earlier chapter on *Human Rights at Home and in the Community* for further discussion.
[1313] Alison EC Struthers, Human Rights: A Topic Too Controversial for Mainstream Education?, Human Rights Law Review 2016, Vol 16, pp 131-162, p 151
[1314] To illustrate, see Articles 12, 23, and 31 of the UN Convention on the Rights of the Child 1989

pillar of HRET. In the learning *about* pillar, learners should acquire the necessary baseline of knowledge and the complementary skills to learn *through* human rights in the second pillar of the UN's HRET framework, which relies heavily on participatory methods, on engaging the learner in higher order thinking at a pivotal stage of the learner's development of beliefs, character, and values, and introducing more advanced, specialised conventions as well as opportunities to develop critical advocacy, self-advocacy and para-advocacy skills. This prepares the learner for a deeper, more action-oriented experience in the third pillar of the HRET journey, learning *for* human rights, which is most effective when the learner has acquired and can augment the confidence and the core HRET competencies (knowledge and participatory skills) gained from the *about* and *through* pillars.

7.2.1 Early years and primary school

Early years education has long been recognised by Amnesty International as an ideal time to introduce children to human rights and "the perfect starting point to engage children in discussion and raise awareness of their own rights"[1315]. Human rights in early years education is about simplifying human rights to the most intuitive level so that even the very youngest learners will innately understand the key principles underlying them. One of the key methods used with early years learners to achieve this aim is constructive play, which is directly linked with the development of problem-solving skills[1316], and teaches flexibility, patience and perseverance, and teamwork. In a Swedish study by Quennerstedt on the engagement of preschool children with human rights through play and interaction, activities or situations that engaged human rights thinking included the sharing of toys, taking the initiative, communicating with educators and peers, taking turns, and asserting their own will, all of which were found to support understanding of rights around ownership, influence, participation, and equality[1317]. Although young children may not have direct knowledge about human rights frameworks or international law, they "live their

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[1315] Amnesty International, First Steps: Activities to explore human rights with 3-5 year olds, March 2017, Accessed at https://www.amnesty.org.uk/files/2017-03/First%20Steps%20-%20Teacher%20Resource.pdf

[1316] Deborah W Tegano, Sandra Lookabaugh, Gretchen E May & Marsha P Burdette, Constructive play and problem solving: The role of structure and time in the classroom, Early Child Development and Care 1991, Vol 68 Issue 1, pp 27-35, p 28

[1317] Ann Quennerstedt, Young children's enactments of human rights in early childhood education, International Journal of Early Years Education, 2016 Vol 24, No 1, pp 5-18

lives in societies, institutions and families that are – more or less – guided by human rights norms"[1318]. As Quennerstedt explains:

> "*In these settings, children act and their actions are met with a response. They also experience the actions of others. Thus, from a very early age children, albeit to varying degrees, encounter the norms that are inherent in human rights thinking. In practices that are guided by human rights, children will learn what it means to act in accordance with, or in opposition to, human rights norms*"[1319].

An earlier chapter, *Human Rights at Home,* establishes that how young people think and feel about society, civic participation and human rights is largely influenced not only by their engagement with formal education and human rights teaching but also by their interactions with their peers, families, communities, and their "wider social, cultural, and political contexts"[1320]. At home, young children develop as individuals and ascertain through socialisation their place within the immediate and extended family units. Whilst much of this development is greatly influenced by parenting, the familial environment, the wider family network, and the child's own temperament[1321], when early years learners progress to primary education, they are entering a formative, "critical period for the development of attitudes"[1322] in which, as Struthers notes, "an early human rights pedagogy can contribute to inhibiting students from adopting egocentric and ethnocentric views of rights"[1323].

The impact of early years schooling and primary education in the development of empathy, the embedment of prosocial behaviours, and the influence of education in nurturing pro-rights attitudes in young children cannot be understated. At preschool, they exist both as individuals and as part of a classroom of individuals that make up a group of playmates. Children are made to feel that they belong, and that there are

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[1318] Ann Quennerstedt, Young children's enactments of human rights in early childhood education, International Journal of Early Years Education, 2016 Vol 24, No 1, pp 5-18, p 5

[1319] *Ibid*

[1320] Keith C Barton, Young adolescents' positioning of human rights: Findings from Colombia, Northern Ireland, Republic of Ireland and the United States, Research in Comparative and International Education, Vol 10, Issue 1, pp 48-70, p51

[1321] See earlier chapter in this thesis, *Human Rights at Home and in the Community*, for analysis of how parenting and the familial environment impact the development of empathy and prosocial behaviours which are the ideal foundation for raising future generations of instinctive and empathic defenders in rights-respecting families.

[1322] Alison EC Struthers, Debunking the "criminals' charter": Education as an antidote to human rights sensationalism, European Human Rights Law Review 2017, pp 169-179, p 175

[1323] *Ibid*

rules that the group must follow so that everyone is comfortable within the group and that the group dynamic runs fairly – these rules might include that the children be kind to and consider others, that the child take turns because all children have equal value and equally deserve a turn, that the child respect the bodies, property and feelings of others and equally, and that they can expect others to respect their own bodies, property and feelings. This early emphasis on belonging reinforces the inclusion, equality, dignity, and interconnectedness that is a fundamental principle of the human rights framework and of human dignity, and this early exposure abstractly readies the early learner for later exposure to HRET in primary school education and beyond.

For Struthers, starting young learners on the HRET journey early is a crucial way to minimise the risk of "ingrained prejudices by the time in later education when these issues are traditionally confronted"[1324]. Primary education is the optimum time to equip young learners with the "tools to be critical and questioning of information and ideas", thereby "shaping the attitudes that will contribute to the building of a universal culture of human rights"[1325] and recognised by the UN as a "critical period for realising children's rights"[1326]. For primary school age children, the UDHR is "the most obvious path for pedagogy"[1327] and the UNCRC a natural starting point in their human rights education journey, simply because – as the "most complete statement of children's rights ever produced"[1328] – it is the most clearly aligned of all the human rights instruments with children's rights and interests within, as Theobold notes, a 'three Ps' framework, covering children's rights to "provision, protection and participation"[1329]. The UNCRC comprises "the most widely-ratified international

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[1324] *Ibid*
[1325] *Ibid*
[1326] OHCHR, UN General comment No. 7: Implementing child rights in early childhood (CRC/C/ GC/7/Rev.1), p 3, Accessed at http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf
[1327] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal Journal of Human Rights 2019, Vol 18 Issue 3, pp 293-307, p 296
[1328] UNICEF also notes that all UN member states except for the United States have ratified the Convention - see UNICEF, How we protect children's rights with the UN Convention on the Rights of the Child, Accessed at https://www.unicef.org.uk/what-we-do/un-convention-child-rights/
[1329] Maryanne Theobald, UN Convention on the Rights of the Child: "Where are we at in recognising children's rights in early childhood, three decades on …?", International Journal of Early Childhood 2019, V 51, pp 251–257, p 251

human rights treaty in history"[1330], with 196 state signatories to date[1331], and addresses in explicit detail the rights of children as well as the responsibilities of the state to "enable and protect" the rights to which all children are automatically entitled, "regardless of where or when they are born"[1332].

Currently, at both primary and secondary levels, the emphasis of HRET is firmly limited to learning *about* human rights[1333], with educators rarely taking the leap into the next phase, learning *through*. This is possibly because there is limited teacher training in HRET in schools, as Robinson points out, where "human rights training of school personnel, and development of extracurricular activities are not undertaken on a regular basis"[1334]. This may be related to concerns over developmental appropriateness and the misguided presumption that young learners have limited capacity or interest in effecting social change[1335]. However, it is more likely linked with the fact that HRET, at its core, is "inherently revolutionary"[1336], as Cardenas observes, and if "implemented effectively … has the potential to generate social opposition, alongside rising demands for justice and accountability"[1337], with Bajaj rightly pointing out that governments – especially those in the throes or on the edge of authoritarianism – may flatly reject any form of HRET as "contrary to their own interests"[1338], to be discouraged if not tacitly prohibited, or denounced as a means of propagandising Western imperialism and an encroachment on non-Western values,

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[1330] UNICEF also notes that all UN member states except for the United States have ratified the Convention - see UNICEF, How we protect children's rights with the UN Convention on the Rights of the Child, Accessed at https://www.unicef.org.uk/what-we-do/un-convention-child-rights/

[1331] UNODC, 30 years on, the Convention on the Rights of the Child remains relevant and needed, Accessed at https://www.unodc.org/dohadeclaration/en/news/2019/11/30-years-on--the-convention-on-the-rights-of-the-child-remains-relevant-and-needed.html

[1332] *Ibid*

[1333] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 11-12

[1334] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 148

[1335] 'Developmentally appropriate' practices as defined by Charlesworth et al are "those that fit young children's stages of development both relative to their age and to their individual developmental level and their family and cultural backgrounds. Appropriate practice provides an environment for young children where knowledge can be constructed through the children's own actions during concrete, authentic experiences in contrast to inappropriate practice that relies on paper and pencil workbook or worksheet, lecture, and other abstract experiences." See Rosalind Charlesworth, Craig H Hart, Diane C Burts, Renee H Thomasson, Jean Mosley, Pamela O Fleege, Measuring the developmental appropriateness of kindergarten teachers' beliefs and practices, Early Childhood Research Quarterly 1993, Vol 8 Issue 3, pp 255-276, p 257-258

[1336] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26 No 4 (Oct 2005), pp 363-379, p 364

[1337] *Ibid*

[1338] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp 481-508, p 488

beliefs, cultures and religions[1339]. There is also a cultural relativism argument against HRET which is, simply, that as human rights are not universally believed to constitute globally ascribed to values, they should therefore not be taught at school as though they were universally accepted or aspired to. Instead, relativists argue for the teaching of 'national values' over HRET on the basis that values vary so widely in different parts of the world that it should be those values articulated by the nation state and not the values imposed by 'elite globalists' that inform the teaching of human rights, and that any such teaching should be framed within the cultural boundaries of the state with respect to political sensitivities and religious nuances.

Globally, Flowers has pointed out that schools are inherently conservative, and as the "principal institution for the socialisation of children … they usually embody the values of the communities in which they exist"[1340]. This seems increasingly true of the UK, which is (or rather, used to be) socially and ideologically far more centred than the US, but where HRET is increasingly under attack as a form of left-wing "political indoctrination"[1341], both shaped and left vulnerable, as Struthers has identified, by "changes in the political tides: with each change of government comes a change in the education policy landscape concerning human rights"[1342]. Over the past decade, HRET in the UK has been incrementally re-framed as more ideologically palatable 'national values', 'beliefs and values', or 'fundamental British values (FBV)' courses, which as Struthers argues, may provide "scope" for HRET within the curriculum but ultimately fails to "direct teachers to engage with the broader human rights framework nor explicitly recognise the values it contains as stemming from universal notions of rights"[1343]. This has essentially created a vast ideological disconnect between HRET and the English education system, with only a small handful of educators (those with a personal interest in human rights) "likely to

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[1339] As Flowers finds, "cultural differences among individual countries and attitudes toward human rights as "western values" create a prevailing resistance to HRE in formal education. As a Chinese presenter at a 2001 national HRE conference in Beijing declared, "Why do we need the Universal Declaration? The constitution of the People's Republic and our Confucian tradition provide us with all the human rights education we need!" See Nancy Flowers, The Global Movement for Human Rights Education, Radical Teacher, No 103 (Fall 2015), p 7
[1340] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33, No 2 (May 2011), pp. 481-508, p 488
[1341] Amnesty International, First Steps: A Manual for Starting Human Rights Education, Peer Education Edition, 2001, p 14; also see Alison Struthers, Teaching human rights in schools: 'Who am I to say that democracy is the right way?', Human Rights Law Review, 4 April 2016, Accessed at https://blog.oup.com/2016/04/teaching-human-rights-in-schools/
[1342] Alison EC Struthers, Debunking the "criminals' charter": education as an antidote to human rights sensationalism, European Human Rights Law Review 2017, pp 169-179, p 178
[1343] *Ibid*

make a connection" between national values and human rights, and an even smaller handful still who will be able to successfully integrate HRET meaningfully into 'beliefs and values' teaching given the school-wide and system-wide lack of support for materials and resources for general curriculum teaching[1344].

In many environments, teachers may also have to contend with headteachers and parents who believe that "young learners ought to be shielded from supposedly controversial issues, such as human rights, for as long as possible"[1345], a phenomenon which Struthers refers to as 'cocoon theory', which holds that while children are young, they should not be "disturbed by confronting them with issues that a mature adult has difficulties coping with"[1346]. However, this concern can normally be countered by critically examining the content of HRET, which is nearly always designed and delivered in line with developmental and age appropriateness – a primary school child, for example, is unlikely to be exposed to materials containing references to torture in any responsible human rights education programme, as a secondary school or higher education learner might. Cocoon theory represents quite a patronising and adultist stance to take, because as Struthers argues it fails to "appreciate the maturity and competency of many young people" or to recognise that in the social media age, "characterised by the proliferation of easily accessible digital information, children are likely to be exposed to controversial issues to an extent far greater than their counterparts at the end of the twentieth century"[1347].

Although quality of life has undoubtedly improved for many children globally in recent decades, especially in literacy, education, and health, there are significant, emergent challenges and threats that have arisen in the last decade to which HRET is a clear antidote. The prevalence of these issues, especially after Covid-19, makes children's rights an especially salient sub-field of human rights that should be proactively addressed in the context of formal education, with urgency. These challenges are identified by UNODC as climate change and cyberbullying[1348]; by Internet Matters

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[1344] *Ibid*

[1345] *Ibid*, p 176

[1346] *Ibid*

[1347] *Ibid*

[1348] UNODC, 30 years on, the Convention on the Rights of the Child remains relevant and needed, Accessed at https://www.unodc.org/dohadeclaration/en/news/2019/11/30-years-on--the-convention-on-the-rights-of-the-child-remains-relevant-and-needed.html

and Youthworks as internet safety and access to pornography or other harmful digital material[1349]; by Rafferty as exposure to risks of trafficking and commercial sexual exploitation, these being "egregious crimes, extreme forms of child maltreatment, and major violations of children's human rights"[1350]; as well as challenges to mental health and wellbeing per Cooper and Hornby, who identify suicide as a rising cause of death among school-aged children[1351]. As McKenzie-Edwards acknowledges:

> *"… children are facing some tough challenges in terms of mental and physical health. Our communities become enriched by happy, well adjusted, confident young people. We need to consider significant investment in their care and development a priority. Our attendance to children's emotional and physical wellbeing in the primary care setting is particularly important as it is in this environment that children seem to glean a great deal from intervention"[1352].*

Another significant challenge recognised by UNESCO is in making the language and core concepts of human rights digestible to younger children, so that they are more "accessible, relevant and applicable to real life situations"[1353] but without leaning into content that might be deemed in some environments to be too negative, too traumatic, or inappropriate to the age and development level of the learner in question. UNESCO, other UN agencies (such as UNICEF and UNHCR), as well as NGOs around the world have taken great initiative in producing pedagogical materials, teaching resources, and programmes tailored to young learners, such as UNICEF's Rights Respecting Schools Award[1354] and animated videos and cartoons, enrichment activities, illustrated books, and games[1355], aided to a great extent by the

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[1349] Adrienne Katz and Dr Aiman El Asam, Refuge and Risk: Life Online for Vulnerable Young People, 2021, Accessed at https://www.internetmatters.org/wp-content/uploads/2021/01/Internet-Matters-Refuge-And-Risk-Report.pdf - see also Adrienne Katz and Dr Aiman El Asam, Vulnerable Children in a Digital World, 2021, Accessed at https://www.internetmatters.org/wp-content/uploads/2019/04/Internet-Matters-Report-Vulnerable-Children-in-a-Digital-World.pdf

[1350] Yvonne Rafferty, The Impact of Trafficking on Children: Psychological and Social Policy Perspectives, Child Development Perspectives, Vol 2 Issue 1, April 2008, pp 13-18

[1351] Paul Cooper & Garry Hornby, Facing the challenges to mental health and well-being in schools, Pastoral Care in Education: An International Journal of Personal, Social and Emotional Development 2018, Vol 36 Issue 3, pp 173-175

[1352] Emma McKenzie-Edwards, Are we enabling the next generation to thrive?, London Journal of Primary Care (Abingdon), November 2017, Vol 9 Issue 6, pp 81–82, p 81

[1353] UNESCO, UNESCO & Human Rights Education (2003), Accessed at https://unesdoc.unesco.org/ark:/48223/pf0000131836, p 5-6

[1354] UNICEF, Rights Respecting Schools, Accessed at http://www.unicef.org.uk/rights-respecting-schools

[1355] Please see: UN OHCHR's Human Rights Education Series, available at https://www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx; Amnesty International's Human Rights Education portal at https://www.amnesty.org/en/human-rights-education/; the Council of Europe's Compass: Manual for Human Rights Education with Young People at https://www.coe.int/en/web/compass; and

emergence of digital tools and technologies which empower educators and entrepreneurs alike to repurpose human rights content into manageable, 'bite-sized' pieces for younger digital audiences, or to merge text with graphics or animations to create new, innovative and interactive teaching resources. Still, more can be done to ensure that these texts and materials are better "geared to children's needs", as Mary Robinson suggests, to tap into young people's "great reserves of energy, creativity and enthusiasm"[1356].

In this way, HRET can be said to not only support human rights literacy among school-aged children but also to develop proficiencies in media literacy, a critical skill in the digital era of misinformation and disinformation in which, as Peters finds, 'post-truth' has essentially become 'post-fact'[1357]. Struthers sees human rights education as an "antidote to human rights sensationalism" and our best chance at countering human rights myths; misunderstandings at best, or mistruths and misrepresentations that are "exaggerated at best or entirely apocryphal at worst", fake news which has, in her view, "arguably contributed to widespread hostility and scepticism" for human rights as a whole[1358].

7.2.2 Secondary school education

By the time the learner progresses to secondary school (typically around the age of 11), behaviours and attitudes are already largely embedded through the family environment, early years learning, and the primary school years, where according to the Joseph Rowntree Foundation in the UK, "there are already large and significant

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Kid World Citizen for a one-page exhibition of various child-focused HRET teaching resources: https://kidworldcitizen.org/human-rights-lessons-kids/

[1356] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 146

[1357] Aufderheide defined 'media literacy' in 1997 as "the ability to access, analyse, and produce information for specific outcomes", which "helps people understand, produce, and negotiate meanings in a culture made up of powerful images, words and sounds" leading to "informed citizenship", "social advocacy", and "consumer competence" (Patricia Aufderheide, Media literacy: A report of the national leadership conference on media literacy, Aspen Institute 1993, p 6-9, Accessed at https://files.eric.ed.gov/fulltext/ED365294.pdf). In the digital, post-truth age media literacy has evolved somewhat to factor in the necessity of using critical media literacy skills to discern responsible, accurate, fact-based news and information from 'fake news' and mis- or disinformation – see Michael A Peters, Education in a post-truth world, Educational Philosophy and Theory 2017, Vol 49 Issue 6: Special Section: History Education, pp 563-566, p 565 - see the earlier chapter on human rights information, myths, and fake news for deeper analysis of what happens when human rights and free speech encounter social media.

[1358] Alison EC Struthers, Debunking the "criminals' charter": education as an antidote to human rights sensationalism, European Human Rights Law Review 2017, pp 169-179, p 169

socioeconomic differences in educational attainment by age 11"[1359]. In this stage of formal education, older primary and secondary school students are increasingly exposed to more advanced and thematically challenging material, which introduces new opportunities to engage with human rights learning in ways that may not be as appropriate in the earlier and more foundational stages of learning *about* human rights, where the emphasis is on human rights facts, histories and heroes, and on introducing young learners to critical thinking and key comprehension competencies.

By this phase of formal education, learners should be able to confidently transition between the learning *about* to learning *through* pillars of HRET, which as Cargas suggests, means "teaching with an appropriate approach" that is based on the use of "participatory pedagogies, active learning, and student-centred learning"[1360]. Active learning requires students to engage in instruction-based activity that compels them to go beyond basic listening, reading or rote memorisation, and might involve collaborative interaction between learners (either in pairs or in random groups) on activities that demand critical analysis, reflection, writing or other project-based work where findings might be reported back to the learner environment as a whole. As this happens, learning *through* human rights becomes, per Cargas, "a call to teach diversity of perspectives" and an opportunity to expose students to "nondominant voices" and for educators to "model what it means to live by human rights … by organising a syllabus to be inclusive and teach nondominant perspectives, and by sustaining a classroom based on diversity of thought and opinion"[1361].

In my view, the suite of subjects taught at secondary level, such as English, History, Geography, and Information Technology, among others, can be and to some extent already are infused with valuable human rights learnings, and if they are not, can at

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[1359] Alissa Goodman and Paul Gregg, Poorer children's educational attainment: how important are attitudes and behaviour?, Joseph Rowntree Foundation, March 2010, Accessed at
https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/poorer-children-education-full.pdf
[1360] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307, p 296; Active learning is defined elsewhere as the "process of having students engage in some activity that forces them to reflect upon ideas and how they are using those ideas. Requiring students to regularly assess their own degree of understanding and skill at handling concepts or problems in a particular discipline. The attainment of knowledge by participating or contributing. The process of keeping students mentally, and often physically, active in their learning through activities that involve them in gathering information, thinking, and problem solving." See Joel Michael, Where's the evidence that active learning works?, Advances in Physiology Education, Vol 30, Issue 4, December 2006, pp 159-167, p 160
[1361] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307, p 297

least readily accommodate the integration of a human rights-inclusive syllabus. In fact, most of the UK's GCSE curriculum is 'human rights ready'. In English, for example, classic literary texts such as Harper Lee's *To Kill a Mockingbird*, JB Priestley's *An Inspector Calls*, Dickens' *A Christmas Carol*, Orwell's *1984* and *Animal Farm*, Margaret Mitchell's *Gone with the Wind*, Margaret Atwood's *The Handmaid's Tale*, John Boyne's *The Boy in the Striped Pyjamas*, or Burgess' *A Clockwork Orange* are examples of texts that introduce young people to human rights issues and scenarios that violate the rights of fictional but relatable characters. Human rights in literature is a field of scholarship that has grown considerably in the last two decades[1362], worthy of further exploration as a future area of research post-PhD for its potential to enrich HRET and for how readily it could be integrated into mainstream English literature curricula. Literature is profoundly significant to HRET for school aged children and indeed for every learner age group because reading is, per the late Archbishop Desmond Tutu, "all bound up with this wonderful talent we humans have: to empathise with others. Through empathy," he wrote, "we overcome prejudice, develop tolerance and ultimately understand love", as stories "bring understanding, healing, reconciliation and unity"[1363].

Secondary school history lends itself perfectly to human rights teaching because, as Flowers suggest, the curriculum demands a critical approach to significant historical events from World Wars, women's suffrage, and the Holocaust to the civil rights movement, the Cold War, and 9/11, all important human rights lessons *if* explicitly critiqued through a human rights lens and provided educators encourage students to link these world-shaping events with fundamental human rights principles such as dignity, justice, and equality[1364]. Reardon advocates for the use of history to illustrate the "cyclical process of discrimination" so students understand the conditions that incubated human rights atrocities like the Holocaust and recognise that history tends

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[1362] 'Human rights literature' is defined by Nayar as literature with "emphasis on the human 'subject', the formation of this [human] subject, and the hurdles that confront its formation, is appropriate for the study of how humans are conceptualized as deserving (or not) of rights, and the conditions in which the human loses her humanness". See Pramod K Nayar, Human Rights and Literature, Oxford Bibliographies, 22 April 2020, Accessed at https://www.oxfordbibliographies.com/view/document/obo-9780190221911/obo-9780190221911-0096.xml

[1363] Amnesty International UK, Literature and human rights, 27 Jun 2018, Accessed at https://www.amnesty.org.uk/literature-and-human-rights

[1364] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 7

to repeat itself if lessons are not actively learned through education, reflection, and action, and if narratives designed to 'other' human beings are not explicitly and unconditionally rejected[1365]. History also provides the most appropriate context for reflection on the many current geopolitical, climate-related, and conflict-based situations globally that all have their roots in recent and sometimes not so recent history. As Reardon notes: "Knowledge of the historical origins of human rights is important to understanding the human rights movement as a dynamic, living human endeavour. The teaching of history can be greatly enlivened by the story of the conceptualisation of and struggle for human rights"[1366]. After each world revolutionary event, human rights have been strengthened by the resolve of states and individuals to "never again" allow rights to be violated, which Ignatieff called the "elemental priority of all human rights activism: to stop torture, beatings, killings, rape, and assault and to improve, as best we can, the security of ordinary people"[1367].

Geography, increasingly, is broadening as a subject to include not only the study of "spaces and places ... and the ways in which people use and shape the environment"[1368] but also of human geography, the study of "how we organise ourselves and our activities in space; how we are connected to one another and the environment; how we make places and how those places in turn shape our lives; and how we think about and organise ourselves locally and globally", and includes the sub-disciplines of political, economic, population, urban and cultural geography[1369]. Geography naturally covers environmental rights and justice, recognising that environmental protection is "a pre-condition for the enjoyment of many human

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[1365] Reardon identifies that there are three main strands of discrimination, sexism, racism, and colonialism, and the "daily life of every one of us is negatively affected in some way by each of these". The 'Cycle of Injustice' was conceptualised by Reardon to demonstrate the cyclical nature of how discrimination and prejudice feed inequality, violence and oppression and how this cyclical process continues ad infinitum until something is done to stop it. See Betty A Reardon, Junior High School: Reflecting and Valuing—Grades Seven to Nine in Educating for Human Dignity: Learning About Rights and Responsibilities, Pennsylvania Studies in Human Rights 1995, pp 87-142, p 104, 107, and 112

[1366] Betty A Reardon, Human Rights Education: An Essential Teacher Preparation, Teacher Education Quarterly 1994, Vol 21 No 4, Reconstructionist Perspectives on Teacher Education, pp 79-91, p 85-86

[1367] Jessica Whyte, Human Rights, Revolution and the 'Good Society', In The Soviet Union and the Universal Declaration of Human Rights (from Part V - Rights), Revolutions in International Law: The Legacies of 1917, Cambridge University Press 2021, p 401, citing Michael Ignatieff, Human Rights as Politics and Idolatry, Princeton University Press 2001, p 19

[1368] Erin H Fouberg, Alexander B Murphy, Human Geography: People, Place, and Culture, John Wiley & Sons 2020, p 2

[1369] *Ibid*

rights"[1370] and, per the Rio Declaration, is "best handled with the participation of all concerned citizens at the relevant level"[1371]. Human geography, as an element of the wider Geography curriculum, naturally segues into tackling human rights issues and inspiring youth perspectives around globalisation and economic development, poverty and hunger, climate change and food / water / energy security, migration and the refugee crisis, and other human / place interactions that generate adverse human rights impacts on people or the planet (or both). These are all topics that are developmentally appropriate and likely to have already entered the secondary school learner's consciousness via news coverage, social media, and the "celebrity diplomacy" of sporting figures, movie stars and other public figures in popular culture[1372] (a whole separate area of research that is flagged for follow-up post-PhD because of the depth of influence that public figures have on human rights narratives and their unparalleled ability to call young people to action as well as to mainstream popular awareness of human rights issues).

STEM subjects spanning the sciences, technology, engineering and mathematics all offer educators a valuable opportunity to embed human rights teaching within the curricula of the very disciplines where the majority of human rights challenges of the future could potentially be created. There is already a clear need for information communication technology, coding, and design technology courses to integrate ethics into core curricula given the explicit link between the development of emerging and AI technologies and the potential adverse impact of such technologies on data, privacy and intellectual property rights[1373]. The emerging 'right to science', which as

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[1370] Dinah Shelton, Human Rights and the Environment: What Specific Environmental Rights Have Been Recognized, Denver Journal of International Law & Policy, Vol 35, Number 1 Winter, April 2020, p 129

[1371] Principle 10 of the Rio Declaration on Environment and Development 1992, which produced 27 key principles for supporting future generations in sustainable development, reads: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided." See UN General Assembly, Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, Accessed at https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

[1372] Wheeler defines 'celebrity diplomacy' as a reconfigured form of international relations, or (citing AF Cooper, Celebrity Diplomacy, Paradigm 2008, p 116) as an "alternative form of agency" - see Mark Wheeler, Celebrity diplomacy: United Nations' Goodwill Ambassadors and Messengers of Peace, Celebrity Studies, Vol 2 Issue 1 2011: Celebrity and the Transnational, pp 6-18, p 7

[1373] Kelly Ann Joyce, Kendall Darfler, Dalton George, Jason Ludwig, Kristene Unsworth, Engaging STEM Ethics Education, Engaging Science, Technology, and Society 4 (2018), pp 1-7, p 2

Guidotti notes encompasses three "constituent rights" (the right to participate in science, the right to benefit from science, and the right to "benefit from one's own invention or contribution"[1374]), covers a diverse spectrum of issues in STEM, such as "ethics, capacity building … support for research, freedom to pursue scientific questions where there is an interest and resources to do so, freedom to pursue science for applications that will benefit a particular community or country, and freedom to use the knowledge and methods of science and technology for personal benefit and gain"[1375]. Not only are "international rights of freedom of speech, freedom of travel, freedom to associate and collaborate … essential ingredients in the practice of science", according to a leading US science NGO, there should be greater consideration of "what human rights bring to science … [and] what science brings to human rights"[1376].

These are the years in which many children, as they develop into young adults, will begin to more actively participate in school and social life, breaking away from the influence of their parents and attaching more to the influence of their peers and other social groups (although this does not mean that the influence of the family evaporates entirely[1377]). In doing so, they develop vital confidence and capacity to conduct themselves in society as individuals or as part of a collective group or several different groups concurrently, such as sports teams and special interest clubs, where they may develop different strands of their identity. It is around this time that they will undergo an internal process of 'values clarification' that will help them to formulate personal opinions on global issues that have an impact on human rights and social justice[1378]. Simply imparting information to young people *about* human

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[1374] Tee L Guidotti, Scientific freedom and human rights, Archives of Environmental & Occupational Health, Volume 73, 2018 - Issue 1, pp 1-3, p 1

[1375] *Ibid*

[1376] Anne Q Hoy, Integrating Human Rights with STEM Education Inspires Students, American Association for the Advancement of Science, 4 February 2018, Accessed at https://www.aaas.org/news/integrating-human-rights-stem-education-inspires-students; see also the link made between STEM, sustainability, and human rights education by Inga Bostad & Aled Dilwyn Fisher, Curriculum and Social Change in Education for a Sustainable Future?, in Human Rights in Language and STEM Education, SensePublishers, pp 71-90

[1377] Bandura's theory of social learning, according to "emphasises the importance of influences of the environment on the social development of students according which the children learn new behaviours by observing other people, including parents, teachers and peers, and on that way, they develop new skills and acquire new information" – see Ines Blažević, Family, Peer and School Influence on Children's Social Development, World Journal of Education, Vol 6 No 2 2016, pp 42-49, p 44, citing Albert Bandura, Social Learning Theory, General Learning Press 1977; also GW Ladd, Peer relationships and social competence during early and middle childhood, Annual Review of Psychology 1999, Vol 50, pp 333–359

[1378] 'Values clarification' is defined by Fritz and Guthrie as "a dynamic process in which people come to understand what they individually view as important in their lives by placing a name or label to what one values", a process that an individual typically undergoes in their college / university years – see Mackenzie R Fritz and

rights does school-aged children a great injustice as they progress in their education towards young adulthood and enter either the world of work or higher education (for those who choose to progress or have the economic privilege of progressing to tertiary study[1379]). It is worth remembering that in many socioeconomic contexts, secondary school is often the last chance saloon for HRET, the last opportunity for human rights educators to reach young people before they leave education altogether – as World Bank / UNICEF data indicates, the world average duration for compulsory schooling is still just 10 years of age[1380], despite secondary education attainment being an important marker of progress on Goal 4 of the SDGs, which recognises the power of education to enable "upward socioeconomic mobility" which is "key to escaping poverty"[1381]. Therefore, wherever they are in the world, the R*b*D frameworks calls for secondary school learners to leave formal education with, at minimum, two fundamental understandings as learning outcomes of effective HRET.

The first of these is that human rights are rooted in human dignity "and integrity", per Reardon who in *Educating for Human Dignity* writes that these are "symbiotic concepts at the centre of this ethical system comprising the social values that are the essence of human rights"[1382]; as such, per Barton, they "transcend national legislation or specific cultural values"[1383] and are not for the state to give or take away[1384]. This is important for the development of the learner's personhood,

Kathy L Guthrie, Values clarification: Essential for leadership learning, Journal of Leadership Education, 2017 Vol 16 Issue 1, pp 47-63, p 47

[1379] As Kromydas finds, the hyper-commercialisation of higher education means that the emphasis has shifted from human development to economic progress, "where attainment and degrees are seen as a currency that can be converted to a labour market value" that "few have the money to afford". See Theocharis Kromydas, Rethinking higher education and its relationship with social inequalities: past knowledge, present state and future potential, Humanities and Social Sciences Communications 2017, p 1, Accessed at https://www.nature.com/articles/s41599-017-0001-8.pdf

[1380] According to World Bank data, the world average for compulsory education (duration in years) is 10, or 9 in the Middle East and North Africa, 10 in the European Union, 13 in Latin America, 8 in Sub-Saharan Africa, and 11 in North America and the UK. See The World Bank, Compulsory education, duration (years) (data as of September 2021), available at https://data.worldbank.org/indicator/SE.COM.DURS

[1381] UN, Sustainable Development Goal 4, available at https://www.un.org/sustainabledevelopment/education/

[1382] Reardon also defines 'dignity' and 'integrity' as follows: "Within this approach dignity is defined as the fundamental innate worth of the human person. A good society honours the dignity of all persons and expects all its members to respect the dignity of others. Integrity refers to the wholeness of the physical, mental, aesthetic, and spiritual facets of the person". See Betty Reardon, Educating for Human Dignity: Learning About Rights and Responsibilities, University of Pennsylvania Press 2010, p 5

[1383] Keith C Barton, Young adolescents' positioning of human rights: Findings from Colombia, Northern Ireland, Republic of Ireland and the United States, Research in Comparative and International Education, 17 February 2015, Vol 10 Issue 1, pp 48-70, p 49

[1384] Amnesty International, First Steps: A Manual for Starting Human Rights Education, Peer Education Edition, 2001, p 13-14

because as Reardon notes, "pre-adolescent and early adolescent years are crucial in the development of personal and social identity"[1385]. She writes:

> *"Young people of this age should be encouraged to think about what values they hold and how the values affect their personal relationships and the social groups to which they belong. They should also be helped to reflect on the values that seem to guide the society and how social values relate to their personal values. Most important to human rights education is their reflection on the social and political consequences of actions taken in accordance with their personal values."[1386]*

The second outcome must be that the learner, both as an individual and collectively as part of a group, leaves secondary education with the vital knowledge, skills, values, and attitudes to confidently act and "make the situation better"[1387] when they are confronted with human rights problems in their immediate spheres and in the world around them. HRET has an important role to play in both teaching young people to counter, through critical thinking, "attitudinal problems caused by hyperbolised or erroneous accounts of human rights", per Struthers[1388], and also (with its grounding in empathy and integrity) in encouraging the appropriate emotional responses and neurological impulses when that young person is exposed to the suffering of others. By transforming the curriculum to infuse young learners with hope, and with a meaningful understanding of how agency, dignity, integrity, and individual responsibility commingle, HRET can effectively counter the growing 'doom and gloom' narrative that has demoralised the global human rights system. This sort of negativity bias, as Sikkink has identified, is what leads some to believe that human rights just don't work and are therefore not worth caring about; instead, she advocates that human rights defenders and educators should "rely less on information politics, less on so-called 'naming and shaming', and more on what we might call 'effectiveness politics' – identifying techniques and campaigns that have been effective at improving human rights"[1389]. Cargas, in her excellent analysis of

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[1385] Betty A Reardon, Junior High School: Reflecting and Valuing – Grades Seven to Nine in Educating for Human Dignity: Learning About Rights and Responsibilities, Pennsylvania Studies in Human Rights, 1995, pp 87-142, p 87
[1386] *Ibid*
[1387] Amnesty International, First Steps: A Manual for Starting Human Rights Education, Peer Education Edition 2001, p 13-14
[1388] Alison EC Struthers, Debunking the "criminals' charter": education as an antidote to human rights sensationalism, European Human Rights Law Review 2017, pp 169-179, p 169
[1389] Kathryn Sikkink, Evidence for Hope: Making Human Rights Work in the 21st Century, Princeton University Press 2017, p 179

Sikkink's *Evidence for Hope* which elaborates on how critical HRET is to the realisation of what Sikkink calls the "possibilism" of human rights for the future, adds:

> *"There is great danger in the negativity bias that causes us to give more weight to negative information and ignore all that is working. It affects students and researchers alike. More bad events get reported than good. And if students are not taught that there have been great achievements in human rights, it may weaken their belief that anything can be done. HRE must teach hope, not only because it is an honest assessment but also because it can provide necessary motivation for action."*[1390]

Coombes in his inspirational 'hope-based' communications model for human rights, has observed that human rights movements spend a lot of time "cursing the darkness"[1391] through negative, traumatic messaging, narratives and imagery. Negativity in the content of HRET ultimately triggers emotions like fear, disgust, and anger in the audience, because stories of suffering and abuse trigger the lower part of the brain where the survival instinct lives and may therefore be inadvertently driving defensive responses to human rights teaching[1392]. A negative, trauma-based, sympathy-seeking approach to HRET is unquestionably counterproductive; as Ligouri identifies, "repeated exposure to accounts of human rights abuses may inadvertently prime individuals to engage in the very acts we hope to eliminate"[1393], whereas communicating positively triggers a higher part of the brain where different reactions exist; namely, empathy, compassion, and rational thought[1394]. The analysis of Coombes and Ligouri reinforces the need to employ proactive positivity in framing human rights for HRET to avoid alienating learners or presenting them with learnings that they can neither relate to nor feel inspired by. As Izard notes: "We do not want to shield our students from reality. They should be aware of what is going on in the

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[1390] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights 2019, Volume 18 Issue 3, pp 293-307, p 302-303
[1391] Thomas Coombes, Hope, not fear: A new model for communicating human rights, Medium.com, 10 December 2017, Accessed at https://medium.com/@the_hope_guy/hope-not-fear-a-new-model-for-communicating-human-rights-d98c0d6bf57b
[1392] *Ibid*
[1393] Laura Ligouri, Brain research suggests emphasizing human rights abuses may perpetuate them, OpenGlobalRights 18 June 2019, Accessed at https://www.openglobalrights.org/brain-research-suggests-emphasizing-human-rights-abuses-may-perpetuate-them/
[1394] Laura Ligouri, Brain research suggests emphasizing human rights abuses may perpetuate them, OpenGlobalRights 18 June 2019, Accessed at https://www.openglobalrights.org/brain-research-suggests-emphasizing-human-rights-abuses-may-perpetuate-them/

world, but we also do not want to bombard them with negative statistics that may be inappropriate"[1395].

7.3 Learning *through* and *for*: Human rights in higher education

As Cargas writes: "Beyond law degrees, HRE[T] in higher education occurs in undergraduate, master's, and PhD programs in North and South America, Europe, Africa, and Asia", with higher education institutions (HEIs) offering "human rights majors, minors, certificates, and concentrations"[1396]. She cites Suarez and Bromley's 2012 research which finds that "more than 140 universities in 59 countries established academic chairs, research centres, and programs for human rights from 1968–2000, a development that highlights the diffuse penetration of the social movement into core domains of society"[1397]. Although HRET at university level can "fortify" the future of human rights[1398], as Mary Robinson has said, within higher education overall "human rights are rarely a focus, apart from the programs of specialized human rights institutes"[1399], and Flowers has found that "very few courses in human rights are taught in higher institutions in the US (and other countries) even *within* law schools"[1400]. By the time a learner reaches university, where they have usually elected to undertake a specialised course of study to enter into a particular profession or sector, HRET tends to drop off the learner's radar entirely unless they are in the very small minority studying a specific course on human rights. These, generally, are only available as an optional module on LLB or joint law degree programmes, and even where they are offered outside of the law school, Flowers points out that universities "tend to develop specialised courses for particular academic departments (public health, women's studies, political science, international affairs, history) that lack any action component"[1401].

[1395] Blair Izard, Teaching Human Rights through Mathematics, The Mathematics Teacher, Vol 112, No 2 (October 2018), pp 114-119, p 118

[1396] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307, p 298

[1397] *Ibid*, citing David Suárez and Patricia Bromley, Professionalizing a global social movement: Universities and human rights, American Journal of Education 2012, Vol 118 No 3, pp 253–280, p 253

[1398] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights, Volume 18, 2019 - Issue 3, pp 293-307

[1399] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 148

[1400] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 42

[1401] *Ibid*

It is a curiosity of legal academic training in higher education curricula, in the UK and many other countries, that our fundamental human rights are not considered fundamental enough to be designated a core or compulsory module within the syllabus of the LLB, Qualifying Law Degree (QLD), or its international equivalents; and nor is it typically available as either a core or optional module to students on courses delivered *outside* of the law school. And although knowledge of human rights is vital to legal professionals, it is also arguably important to those engaged professionally in disciplines *outside* of law and human rights; as Flowers has previously argued, an overly legal-centric approach to HRET in higher education "devalues the real-life stories and struggles of ordinary people and does not help them to frame personal experience in human rights terms" and in doing so, it "cultivates a small elite of experts and disempowers potential activists"[1402]. So whilst there is a strong argument to be made for human rights to become a core part of the legal curriculum, as critical to attaining a law degree as passing the foundational Criminal Law or Contract Law modules[1403], there is also scope for embedding HRET across *all* academic specialisations where there is potential for adverse human rights impact. If human rights are not just for lawyers, it is logical to argue that HRET should not be limited to students of the law. This is a core and recurring position taken with this thesis, and one which underpins Principle 3 of the R*b*D Framework.

While there may be 'scope', we must acknowledge that there would likely be minimal appetite. Embedding HRET across the spectrum of higher education courses as a golden thread running through every academic discipline that portends the potential, now or in the future, to adversely impact human rights is an ambitious call, as this essentially encompasses nearly every STEAM-related discipline if one considers the profound relevance of human rights not only to future lawyers but also to supply chain workers, teachers, engineers, doctors, artists, scientists, politicians, journalists, business leaders, researchers, public servants, and CEOs of the future[1404]. This

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[1402] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 41

[1403] In the UK, to achieve a Qualifying Law Degree, the seven core subjects which must be passed are Criminal Law, Law of Torts, Contract Law, Land Law, Equity and Trusts, Constitutional & Administrative Law, and European Union Law

[1404] STEAM fields include Science, Technology, Engineering, Arts and Mathematics – see Laura Colucci-Gray, Pamela Burnard, Donald Gray, and Carolyn Cooke, A Critical Review of STEAM (Science, Technology,

reiterates Cargas' view that, fundamentally, HRET in higher education is "an agent of growth for human rights"[1405], not just in law but in every discipline that intersects and converges with law and sociolegal issues, or which relies upon the ethical, dignified and rights-respecting behaviours and attitudes of the people working within it to ensure that 'race to the top' standards of work and industry are designed with dignity in mind. In doing so, human rights and human dignity become an interdisciplinary benchmark for how a sector contributes to 'good society', which according to Reardon, is "built on the active recognition of individual and group rights and the fulfilment of individual and social responsibility"[1406].

HRET, like human rights itself, is inherently multi-disciplinary and non-exclusive to the politico-legal sphere or, for that matter, to the academic sector. The growing number of academic journals which have 'human rights' in their titles, according to Cargas, "demonstrates the extent to which there is an active critical exploration of this burgeoning field. Many of these are law journals, but they also explore the realms of education, health, and social justice … anthropology, history, philosophy, political science, and religious studies"[1407]. As Flowers et al and Cargas note, the need for HRET in higher education can be found in "numerous non-human rights fields" such as political science, government, anthropology, international relations, history, foreign language, business, sociology, social work, and philosophy courses as well as law courses[1408]; and as Cargas notes, there are "hundreds of courses with human rights in the title in the United States and Canada alone"[1409], which speaks to the inherent interdisciplinary nature of HRET. Even mathematics, according to Izard,

Engineering, Arts, and Mathematics), Oxford Research Encyclopaedia of Education, March 2019, DOI: 10.1093/acrefore/9780190264093.013.398, which explains that the addition of the Arts recognises "the recovery of educational aims and purposes that exceed economic growth: for example, by embracing social inclusion, community participation, or sustainability agendas" (p 1 of 22).

[1405] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights 2019, Vol 18 Issue 3, pp 293-307, 298

[1406] Betty Reardon, Educating for Human Dignity: Learning About Rights and Responsibilities, University of Pennsylvania Press 2010, p 5

[1407] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights 2019, Vol 18 Issue 3, pp 293-307, p 294-295

[1408] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 35

[1409] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights 2019, Vol 18 Issue 3, pp 293-307, 298

"has the potential to help students understand their lives and surroundings and see math as instrumental in making the world more equitable and just"[1410].

Although in all disciplines, academics and educators at university level – who remain the "gatekeepers of curriculum"[1411] – have far much more discretion over course content than teachers in primary or secondary schools, integrating HRET into non-traditional or non-humanities subjects such as mathematics may be daunting to educators outside of the law school and even those within the law school who do not have pre-existing experience in or knowledge of human rights and how rights frameworks, instruments, and principles might be relevant to a particular discipline. Izard acknowledges that it is certainly not easy and "can be a scary thought as a mathematics teacher" (or indeed any STEM teacher) who has "not been prepared to teach human rights"[1412]. Here, she encourages partnering up with educators from other disciplines and "collaborating in an interdisciplinary way" to prepare for these lessons and ensure that the problem being addressed in the lesson is correctly aligned with the relevant human rights instruments, theory, and context[1413].

Higher education is also an optimum time for educators in all disciplines to meaningfully implement co-creation to embed HRET into the curriculum, which – as defined by Bovill – occurs "when staff and students work collaboratively with one another to create components of curricula and/or pedagogical approaches"[1414]. Various models for student engagement[1415] might include undergraduate students assuming leadership over course design from the outset by co-developing lesson plans, in a "process of student engagement distinguished by the importance placed

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[1410] Blair Izard, Teaching Human Rights through Mathematics, The Mathematics Teacher, Vol 112 No 2 (October 2018), pp 114-119, p 114

[1411] Catherine Bovill & Cherie Woolmer, How conceptualisations of curriculum in higher education influence student-staff co-creation in and of the curriculum, Higher Education 2019, Vol 78, pp 407–422

[1412] Blair Izard, Teaching Human Rights through Mathematics, The Mathematics Teacher, Vol 112 No 2 (October 2018), pp 114-119, p 118

[1413] Blair Izard, Teaching Human Rights through Mathematics, The Mathematics Teacher, Vol 112 No 2 (October 2018), pp 114-119, p 118

[1414] Catherine Bovill & Cherie Woolmer, How conceptualisations of curriculum in higher education influence student-staff co-creation in and of the curriculum, Higher Education 2019, Vol 78, pp 407–422, p 408

[1415] Student engagement can be broadly categorised as either "the way in which students invest time and energy in their own learning", or "the ways in which students are involved and empowered by institutions to shape their learning experiences" - see Mick Healey, Abbi Flint and Kathy Harrington, Engagement through partnership: students as partners in learning and teaching in higher education, Higher Education Academy 2014, Accessed at https://www.heacademy.ac.uk/sites/default/files/resources/engagement_through_partnership.pdf

on the distribution of power"[1416]. Another model involves inviting student-led curriculum design as the course progresses[1417] or alternatively, assigning students to work alongside staff on curriculum design committees or 'Course Design Teams', where they can contribute their insight and recommendations to "selecting and designing course materials, assignments, and tasks", as well as steering the themes, subject matter, and focus of the learning in question as part of an inclusive, power-sharing exercise that is more focused on the learning process rather than merely the outcomes and allows for the learner to exercise their creativity, responsibility and agency over their own learning[1418].

These approaches align well with the ethos around learning *through* human rights, which recognises that "the context and the way human rights learning is organised and imparted has to be consistent with human rights values (such as participation, freedom of thought and freedom of expression) and that in human rights education the process of learning is as important as the content of the learning"[1419]. In sustainability education, co-creation – or the partnership and collaborative leadership in learning between staff and students – transitions 'learning by listening' to 'learning by doing'[1420], and not only promotes active student engagement and participation but also positions students as "co-creators of knowledge" and "gatekeepers" to a viable, robust human rights framework for the future[1421].

Similarly, in HRET, the co-creation approach emphasises both the importance of the multidisciplinary *process* of learning, the value of *participation* which empowers students to teach the curriculum in their own later years of study, and the potential

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[1416] Cherie Woolmer, Peter Sneddon, Gordon Curry, Bob Hill, Szonja Fehertavi, Charlotte Longbone & Katherine Wallace, Student-staff partnership to create an interdisciplinary science skills course in a research-intensive university, International Journal for Academic Development 2016, Vol 21 Issue 1, pp 16–27, p 17
[1417] Cook-Sather et al note that students can "contribute to their explorations of curricular or pedagogical questions by bringing their backgrounds and perspectives into our thinking and planning as faculty members. This not only expands our understanding of existing student learning and teaching experiences but also can be the beginning of shared dialogue and deeper understanding about learning and teaching content and processes as we exchange perspectives." – See Alison Cook-Sather, Catherine Bovill, Peter Felten, Engaging students as partners in learning and teaching: a guide for faculty, Jossey Bass 2014, p 16
[1418] Richard J Mihans, Deborah T Long & Peter Felten, Power and Expertise: Student-Faculty Collaboration in Course Design and the Scholarship of Teaching and Learning, International Journal for the Scholarship of Teaching and Learning 2008, Vol 2 Issue 2, p 3
[1419] Council of Europe, Introducing human rights education, COMPASS: Manual for Human Rights Education with Young people, Accessed at https://www.coe.int/en/web/compass/introducing-human-rights-education
[1420] Maria Rosario Perello-Marín, Gabriela Ribes-Giner and Odette Pantoja Díaz, Enhancing Education for Sustainable Development in Environmental University Programmes: A Co-Creation Approach, Sustainability, Vol 10 Issue 1, Accessed at https://www.mdpi.com/2071-1050/10/1/158
[1421] *Ibid*

for peer learning and peer mediation training to help students acquire important social skills that will prepare them for the advocacy element in the learning *for* pillar of HRET, which involves the development of "skills, attitudes and values for the learners to apply human rights values in their lives and to take action, alone or with others, for promoting and defending human rights"[1422]. According to Condette, these skills include "progressive mastery of communication techniques, appropriate attitudes and shared values" as well as "knowledge about conflict and negotiation", self-esteem building, and understanding "how to distance one's emotions and opinions, knowing how to show empathy, knowing how to find the proper words that will trigger dialogue"[1423].

These skills all play a critical role in the learning *for* pillar of HRET, best approached in the later stages of higher education and at the vocational or postgraduate stages where learners might go from learning the basics of human rights and core critical thinking skills (in the *about* pillar), and from understanding the important role that each of us plays in actualising human rights in our local communities and the worlds we have access to (in the learning *through* pillar), to engaging on a much deeper, more meaningful level with the practical, technical, and soft skills required for practitioner-level advocacy at both community and institutional level. As Cargas identifies, HRET is perfectly aligned with and "should be at the forefront of teaching for advocacy. NGOs do some of this, but … the university, whose main function is education, should lead in teaching why and how to do advocacy for human rights"[1424].

HRET in higher education can build upon secondary level learning by introducing learners to more advanced concepts that require them to take a more critical, analytical role, turning them from passive observers of a human rights problem to advocates for its solution. Cargas suggests that HRET content be focused on social injustices that the learners themselves have witnessed in their own families and communities; values and skills building that promotes solidarity with victims, and the

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[1422] Council of Europe, Introducing human rights education, COMPASS: Manual for Human Rights Education with Young people, Accessed at https://www.coe.int/en/web/compass/introducing-human-rights-education
[1423] Sylvie Condette, Chapter 8: The Contribution of Peer Mediation to the Implementation of Human Rights Education, in Human Rights Education Globally 2020, pp 159-172, p 165
[1424] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights 2019, Vol 18 Issue 3, pp 293-307, p 303-304

fundamental principles of equality, justice and rule of law; and with a central focus on action and empowering the learner to tangibly and meaningfully contribute to solving human rights problems that they see on their doorsteps and in the wider global community. At this level, these actions as identified by Bajaj might include "collective protest, intervening in situations of abuse, and joining NGOs or social movements to advance greater participation and inclusion"[1425].

Universities, which Weber envisaged as a platform for political and sociocultural agency[1426], are where students become more personally involved and aggrieved by unfairness, social inequality, and injustice, at an age when they attain a more nuanced appreciation of the impact and dynamics of social, individual, and institutional relationships and interactions, and how these interactions are vulnerable to being manipulated by power structures leading to injustices being experienced by members of marginalised groups[1427]. There is an appreciation at this age that human rights are, as Meintjes puts it, "inherently about relationships; and whatever their nature, whether they concern the power relations between individuals, groups, society, and/or the state, they are inevitably always dynamic and relative"[1428]. However, as Banki et al note, at tertiary level human rights teaching is still dominated by the theoretical rather than the practical and as such remains "disconnected from [human rights] practice"[1429]; additionally, assessments are currently predominantly comprised of "written exams, essays and class presentations as the basis for assessment rather than the hands-on, interactive practice of skills that human rights students would require for pursuing human rights advocacy"[1430]. Enhanced cooperation between universities and NGOs can support more practical student

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[1425] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33 No 2 (May 2011), pp 481-508, p 494

[1426] Perry Myers, Max Weber: Education as Academic and Political Calling, German Studies Review, Vol 27 No 2 (May 2004), pp 269-288, p 270

[1427] UK Aid Direct defines marginalisation as "both a process, and a condition, that prevents individuals or groups from full participation in social, economic and political life. There is a multidimensional aspect, with social, economic, and political barriers all contributing to the marginalisation of an individual or group of individuals. People can be marginalised due to multiple factors; sexual orientation, gender, geography, ethnicity, religion, displacement, conflict or disability." See UK Aid Direct, Definition of Marginalisation, https://www.ukaiddirect.org/wp-content/uploads/2017/03/Defining-marginalised.pdf

[1428] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33 No 2 (May 2011), pp 481-508, p 494

[1429] Susan Banki, Elisabeth Valiente-Riedl, Paul Duffill, Teaching Human Rights at the Tertiary Level: Addressing the 'Knowing–Doing Gap' through a Role-Based Simulation Approach, Journal of Human Rights Practice, Volume 5, Issue 2, July 2013, pp 318–336, p 318

[1430] *Ibid*, p 319, citing Timothy A McElwee, B Welling Hall, Joseph Liechty, and Julie Garber (eds), Peace, Justice, and Security Studies: A Curriculum Guide, Lynne Rienner 2009

engagement in human rights issues, with NGOs offering students opportunities to participate in collaborative problem solving and to attain valuable 'real life' advocacy and campaigning skills that they would not gain from sitting through a theoretical lesson only. In doing so, universities work with NGOs to bridge what Banki et al call the 'knowing–doing gap', which refers to the "challenge of applying classroom concepts, theory and knowledge to 'realistic' contexts of interest to students outside of formal learning environments … particularly worrisome in tertiary programmes with a vocational element, a class of applied programmes to which human rights courses invariably belong"[1431].

As Flowers et al suggest, NGOs themselves and the activists that work within them need HRET because "they might not be solidly grounded in the human rights framework and many human rights scholars in turn know nothing about advocacy"[1432]. NGOs also have much to gain by embedding the perspectives of young people who are drivers of change and can in fact be considered an example of a marginalised group themselves in the contexts of education, employment, gender, health, and migration, given the limited opportunities they enjoy for non-token participation in politics and governance[1433]. In progressive societies, as Rivers et al suggest, "there is an expectation for young people to become the social leaders and innovators of tomorrow", implying "an intergenerational 'passing of the baton'" and assuming that "social constructs will enable young people to work as change agents, rather than create hindrances"[1434].

Therefore, taking stock of how students themselves perceive their own agency and whether they feel empowered and confident in their own abilities to facilitate change and create impact could, as Rivers et al suggest, give universities "a meaningful set of drivers and constraints around which to develop the curriculum" – without which,

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[1431] *Ibid*, p 318
[1432] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 18
[1433] Kate Offerdahl, Alicia Evangelides, and Maggie Powers, Columbia Global Policy Initiative In collaboration with The Office of the United Nations Secretary-General's Envoy on Youth, Overcoming Youth Marginalization: Conference Report and Policy Recommendations, March 2014, Accessed at https://www.un.org/youthenvoy/wp-content/uploads/2014/10/Columbia-Youth-Report-FINAL_26-July-2014.pdf
[1434] B Alden Rivers, R Hazenberg, and M Bajwa-Patel, Barriers and enablers of youth as drivers of social change: university students' perspectives, Seminar Presentation presented to: Journal of Youth Studies Conference in Copenhagen 29 March - 01 April 2015, Accessed at http://nectar.northampton.ac.uk/7505/1/AldenRivers20157505.pdf

"the efforts of universities to promote social innovation and social impact may be in vain"[1435]. Here, Dawes and Larsen's three theories of engagement can inform the development of HEI programmes, campaigns and initiatives (such as Sustainability Weeks or Pride Month) that should aim to empower students with the motivation to actively participate in progressing positive change, and the forum to practically facilitate change in the ways that they can. These are: i) flow theory ("where there is motivation through being suitably challenged by a task"); ii) interest theory ("where the task is personally meaningful to the participant"); and iii) self-determination theory ("where the task is integrated into one's self and internally regulated")[1436].

Exploring each of these theories in more detail, Ryan and Deci have said that "no single phenomenon reflects the positive potential of human nature as much as intrinsic motivation"[1437]. Beyond graded assessments, awards, and performance-contingent recognition, as Alden Rivers et al note, a learner needs to "see the value in participating" and must be able to feel that "through their participation, they can influence change"[1438]. This is the intrinsic motivation that should underpin human rights learning. Human rights advocacy training, skills building and HRET in general must become more personal in order to cognitively resonate with learners and inspire genuine interest in the subject area, interest being – per Harackiewicz et al – "a powerful motivational process that energises learning, guides academic and career trajectories, and is essential to academic success. Interest is both a psychological state of attention and affect toward a particular object or topic, and an enduring predisposition to reengage over time"[1439]; it is, per Vlieghe, "the full devotion to a 'thing', ie to a subject matter, which makes emancipation possible"[1440].

[1435] *Ibid*

[1436] *Ibid*, citing Nickki Pearce Dawes and Reed Larson, How youth get engaged: grounded-theory research on motivational development in organized youth programs, Developmental Psychology 2011, Vol 47 Issue 1, p 259

[1437] Richard M Ryan, Edward L Deci, Self-determination theory and the facilitation of intrinsic motivation, social development, and well-being, The American Psychologist 55, pp 68–78, p 70

[1438] B Alden Rivers, R Hazenberg, and M Bajwa-Patel, Barriers and enablers of youth as drivers of social change: university students' perspectives, Seminar Presentation presented to: Journal of Youth Studies Conference in Copenhagen 29 March - 01 April 2015, citing Nickki Pearce Dawes and Reed Larson, How youth get engaged: grounded-theory research on motivational development in organized youth programs, Developmental Psychology 2011, Vol 47 Issue 1, p 259

[1439] Judith M Harackiewicz, Jessi L Smith, and Stacy J Priniski, Interest Matters: The Importance of Promoting Interest in Education, Policy Insights from the Behavioral and Brain Sciences, Vol 3 Issue 2, pp 220-227, p 220

[1440] Joris Vlieghe, Rethinking emancipation with Freire and Rancière: A plea for a thing-centred pedagogy, Educational Philosophy and Theory, Volume 50, 2018 - Issue 10: Critical Pedagogies and Philosophies of Education, pp 917-927, p 918

Interest is paramount here because, as Caro notes, learners who are interested (and therefore invested) in human rights will "tend to pose and answer questions, look for new knowledge and stimulating educational environments, whereas less motivated students represent a challenge for the work of educators"[1441]. Importantly, for learners to become intrinsically motivated to engage with HRET, it is vital that educators do not focus merely on human rights laws and the "meaninglessly legalistic" aspects of HRET in course design[1442], this being what Cargas calls the "mere instrumentalist approach, or simply teaching students the laws and norms"[1443]. Neither should they neglect the philosophical underpinnings of human rights and the stories of history's 'human rights heroes'[1444] which ultimately humanise HRET and make dense, abstract, and complex concepts more personally relatable.

Higher education is where many learners can rigorously, critically, and analytically engage with more advanced concepts that are peripheral but nonetheless integral to a holistic understanding of the situation of and challenges for human rights in the future world that they will inhabit and hopefully improve. For a truly 'holistic' view of HRET, programmes must incorporate parallel competencies such as economic literacy[1445], which would introduce and critically engage learners with neoliberalism, socioeconomic inequality, and capitalism as they relate to human rights. Additionally, HRET in higher education must emphasise the 'soft', human skills training that effective HRET relies so greatly upon, leading to "an understanding of, and sympathy for, the concepts of democracy, justice, equality, freedom, solidarity, peace, dignity, and rights and responsibilities", as Lohrenscheit writes, as well as to the:

[1441] Daniel H Caro, Socio-economic gaps in subject interest: the mediating role of parental cognitive involvement, Large-scale Assessments in Education 2018, Vol 6 Issue 13, p 3 of 38, citing Anne C Frenzel, Thomas Goetz, Reinhard Pekrun, Helen MG Watt, Development of mathematics interest in adolescence: Influences of gender, family, and school context, Journal of Research on Adolescence 2010, Vol 20 Issue 2, pp 507–537

[1442] Susan Banki, Elisabeth Valiente-Riedl, Paul Duffill, Teaching Human Rights at the Tertiary Level: Addressing the 'Knowing–Doing Gap' through a Role-Based Simulation Approach, Journal of Human Rights Practice, Vol 5, Issue 2, July 2013, pp 318–336, p 319, citing Peter Uvin, From the right to development to the rights-based approach: How 'human rights' entered development, Development in Practice 2007, Vol 17 Issue 4-5), pp 597 – 606

[1443] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights 2019, Vol 18 Issue 3, pp 293-307, p 296

[1444] As Cargas suggests, learners should be "taught about the heroic movers and shakers, but also that most who work tirelessly on a campaign are never in the media or historical spotlight" – *Ibid*

[1445] *Ibid*, p 303-304

"… acquisition of certain basic skills, in particular skills associated with language development, such as written and oral expression and the ability to discuss and listen; skills involving judgements - the collection and analysis of material from various sources, the detection of prejudice and bias (including the mass media), and the ability to arrive at fair and balanced conclusions; social skills, including the recognition and acceptance of differences and the ability to form positive and non-oppressive personal relationships; and action skills such as solving conflict in a non-violent way, taking responsibility, participating in group decisions, and understanding and using the mechanisms for the protection of human rights that exists at local, national, European and world levels."[1446]

Cargas makes the important point that HRET courses in higher education must involve advanced, honest, constructive critique of "what does and does not work in human rights", ensuring that study of human rights at this level does not become a superficial and meaningless exercise in "cheerleading"[1447] human rights at all costs. Emphasising only the positives whilst ignoring the fractured and fractious nature of human rights in its global social, economic, and political dimensions does a great injustice to the resilience and robust nature of both the spirit and the system of human rights, which as I argued in the second chapter of this thesis, have withstood enormous challenges over the last eight decades and over the eight revolutionary centuries that preceded them. For any serious human rights educator to pretend that the human rights framework is a perfect, utopic institution of harmonious equality, universal peace, love, and mutual respect would be counterproductive and indicative of a naively placed optimism which is harmful to the credibility of the global human rights system. It is important that learners are actively encouraged to think critically and play 'devil's advocate' when considering the many problems with human rights, from the lack of universal endorsement and the outright rejection and unchecked subversion of fundamental rights by some of the most economically powerful states in the world, to the perceived 'toothlessness' of the UN and the practical impracticalities of trying to enforce social and economic rights in the world's poorest or most corrupt nations (which for sceptics like Hayek proves "the absurdity of the whole thing"[1448]).

[1446] Claudia Lohrenscheit, International Approaches in Human Rights Education, International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education, Vol 48 No 3/4, Education and Human Rights 2002, pp 173-185, p 178
[1447] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights 2019, Vol 18 Issue 3, pp 293-307, p 303
[1448] F A Hayek, Justice and Individual Rights: Appendix to Chapter Nine, in Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy, Routledge 1998, p 101 and 105

Lastly, peer group education warrants further research in the context of HRET because it prompts learners to work collaboratively and with collective trust, respect and receptiveness to others' ideas, beliefs, and values. Peer group education also helps learners to draw connections that may not always be immediately obvious between independent concepts (the link between climate change and human trafficking being one example[1449]), and through this, to develop sufficient confidence in their knowledge and skills to be able to defend their conclusions and critically present their own arguments within or outside of their peer group. Peer education provides members with a supportive sandbox in which they can collaboratively create new works as part of constructivist learning – working together, for example, on a human rights game, magazine, handbook or other publication, a toolkit, peer training course, student-made documentary film, or a student-led workshop or symposium[1450]. Assessment might entail group work on a campus-wide or community-wide human rights-related public awareness campaign where learners can develop core skills in strategic campaign management – among them, letter writing, lobbying, organising demonstrations, or working with the media and civil society to generate public awareness. Amnesty International highlights in its *First Steps* manual that the "action component" of HRET is crucial, as is practice in designing, implementing, and measuring campaigns which allow members of the peer group to "become active for human rights"[1451]. Peer group education works because "young people are ready-made experts, they may have a perspective on the issues as they affect young people in similar situations and can often 'make things happen' if encouraged and resourced"[1452]. In addition, peer group education has been found to have an important "multiplier effect" where "resources are limited and large numbers have to be reached", with these programmes creating vital momentum by having a secondary, "informal knock-on or cascade effects, creating

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[1449] There is a proven link between climate change-driven natural disasters and conflict and the increased multifactorial risk of human trafficking, with Sheu *et al* linking "potential impact of climate change on risk factors to human trafficking including poverty, gender inequality, political instability, migration or forced displacement, and weather disasters". See Jessica Sheu, Melissa Torres, Mollie Gordon, Phuong T Nguyen, John H Coverdale, Potential Impact of Climate Change on Human Trafficking, The Journal of Nervous and Mental Disease 2021, Vol 209 Issue 5, pp 324-329

[1450] Nik Paddison, Human Rights Education in Action: Practices of Human Rights Education with and by young people, Council of Europe 2017, p 7, Accessed at https://rm.coe.int/2017-hre-in-action/168072bcd7

[1451] Amnesty International, First Steps: A Manual for Starting Human Rights Education, Peer Education Edition 2001, p 71

[1452] *Ibid*, p 16

'buzz' in the community"[1453], and the sort of momentum that is invaluable to sparking human rights conversations and keeping them going.

In Cargas' analysis, the human rights mission encompasses the fight against "dehumanising and exclusionary ideologies" as "a natural goal" for HRET, and that students should be taught that genocides and other human rights abuses are not entirely unpredictable because "studies have shown which characteristics commonly precede them, including the rhetoric labelling targeted groups as subhuman"[1454]. In this way, she writes, teaching *through* and *for* human rights must include the "tools to prevent marginalization"[1455] and must prioritise the building of skills and capacity that can empower the next generation as passionate advocates for human rights, prepared to "struggle not only for their own rights but also for the rights of others"[1456].

7.4 Conclusion: Education means emancipation

Fundamentally, as Tibbitts has written, the "implicit strategy" around HRET is that "mass support for human rights will … bring pressure upon authorities to protect human rights"[1457]. This recalls Sikkink's concept of the 'justice cascade', which is how she describes the "interrelated, dramatic new trend in world politics toward holding individual state officials, including heads of state, criminally accountable for human rights violations"[1458]. The 'justice cascade' is the basis of transitional justice which Sikkink defines as "efforts to address past human rights crimes ... mainly adopted after countries have made a transition from authoritarian rule to more democratic governments"[1459], and as such deserves a prominent place in human rights curricula as it amplifies the efficacy, relevance, credibility, and legitimacy of the

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[1453] *Ibid*
[1454] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights 2019, Vol 18 Issue 3, pp 293-307, p 303-304
[1455] *Ibid*
[1456] Claudia Lohrenscheit, International Approaches in Human Rights Education, International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education, Vol 48 No 3/4, Education and Human Rights 2002, pp 173-185, p 182-183
[1457] Felisa Tibbitts, Emerging Models for Human Rights Education, International Review of Education 2002, 48(3-4), pp 159-171, p 164
[1458] Kathryn Sikkink, The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics, WW Norton & Company 2011, p 5
[1459] *Ibid*, p 27

human rights framework overall (and speaks directly to the *through* and *for* elements of human rights education).

To a large extent, HRET already lends the global human rights movement valuable momentum; after all, as Sikkink writes in *Evidence for Hope,* "[t]he power of the human rights movement is that it contains within it the seeds of its own expansion"[1460]. Those seeds, simply, should be planted in the earliest stages of the learning journey within formal education systems[1461], and must be nurtured through every stage of mainstream formal education, with the roots and branches of that expansion being the advocacy and action-oriented outcomes of HRET which are a critical part of the learner's university experience and which could ultimately make a tangible, real world and inherently positive impact on a wide range of human rights issues that future generation of rights defenders can engage meaningfully and confidently with.

However, before universities can 'do the work' and undertake the intensive curriculum review necessary to integrating HRET into higher education curricula in every discipline and every school (and *not* just as part of the law school offering), the following two things should ideally happen. Firstly, there needs to be a strategic reorganisation of the massive body of HRET literature to make HRET knowledge more accessible and intelligible to educators without a legal background. As part of this, there should be a collective effort to create HRET communities of practice that can provide vital support to educators who care about human rights but are unsure of where to start in integrating them into their curricula, within or outside of the law school. We need consensus-building initiatives that bring Global North and South voices together to synthesise the literature, and the innovations of various HRET communities of practice, to deliver a set of guiding principles around HRET and a set of clear recommendations for practice that will complement and update the 2011 Declaration.

[1460] Kathryn Sikkink, Evidence for Hope: Making Human Rights Work in the 21st Century, Princeton University Press 2017, p 167

[1461] UNESCO's definition of a "quality education" is one where "the education system is oriented towards human values allowing the realization of peace, social cohesion and respect for human dignity" – see UNESCO, UNESCO & Human Rights Education (2003), Accessed at https://unesdoc.unesco.org/ark:/48223/pf0000131836, p 3-4

To achieve this, there should be enhanced funding made available by grant-making bodies, institutions, and foundations to support entrepreneurial and NGO-led initiatives that are creatively exploring new ways of mainstreaming HRET both within and beyond the traditional learning environment – and here, the Global Campus for Human Rights is one such innovation that should be most closely case studied. I propose that it is certainly possible to inspire educators, communicators and creatives who aspire to embed HRET into their work by making inspiration more visible, accessible, and digital, and it is therefore a core recommendation in this thesis that a database of HRET innovations that curates and profiles inspirational global platforms, projects, technologies, and initiatives would be an ideal digital square where innovators, educations, communicators and creatives can access a library of innovations that speak to the common goal of mainstreaming HRET in disruptive ways and in non-traditional settings. This is a form of idea management, which in corporate innovation speak, refers to "a sub process of innovation management with the goals of effective and efficient idea generation, evaluation and selection", and which Bakker et al have described as a 'crea-political process' because "ideators demonstrate creativity and (intentional and unintentional) political behavior simultaneously" in the submission and generation of new ideas"[1462].

Curating, collating, profiling and archive creative ideas for embedding HRET in traditional and non-traditional learning contexts, within and beyond legal education and from all countries of the world, could yield even "more successful innovation behaviour" in HRET[1463], especially if those innovations are focused on small inventions that inspire change in local contexts and our most intimate, home, work and other social environments. This project is directly linked with Principle 5 of the R*b*D Framework (which calls for individuals to be supported as innovators, creatives, communicators and programme-makers in advancing and mainstreaming human

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[1462] Sophia Gerlachb & Alexander Brem, Idea management revisited: A review of the literature and guide for implementation, International Journal of Innovation Studies, Vol 1 Issue 2, Nov 2017, pp 144-161, p 147, citing H Bakker, K Boersma and S Oreel, Creativity (ideas) management in industrial R&D organizations: A crea political process model and an empirical illustration of corus RD&T, Creativity and Innovation Management, 15 (3) (2006), pp 296-309, p 300
[1463] Sophia Gerlachb & Alexander Brem, Idea management revisited: A review of the literature and guide for implementation, International Journal of Innovation Studies, Vol 1 Issue 2, Nov 2017, pp 144-161, p 144, citing HJ Boeddrich, Ideas in the workplace: A new approach towards organizing the fuzzy front end of the innovation process, Creativity and Innovation Management, 13 (4) (2004), pp 274-285

rights culture, and is explored further in the concluding chapter as a key outcome of this research.

I also believe that educators keen on embedding HRET into their curricula should not have to reinvent the wheel by creating content entirely from scratch which is often time-consuming and subject to funding and workload limitations. One innovative solution might be a handbook that sets out a model curriculum that is relevant and useful to educators from any discipline, which they can use on a 'plug and play' (and entirely open access) basis. Such a handbook and model curricula, especially if supported with a suite of digital resources that educators can share with their students, could well resolve any concerns that educators without a legal background may have about creating courses that are rooted in international human rights law, which may seem daunting to those even within a law school where there is no pre-existing expertise or engagement with human rights. Such a handbook, as proposed, would be a decisive step towards building capacity and confidence within teachers who may want to integrate HRET into their teaching plans but lack confidence in their ability to organise and synthesise the material effectively enough to facilitate HRET learning with their students[1464].

Secondly, before HRET can be effectively embedded into the higher education environment, universities are going to need to look critically and inwardly at their own role as incubators and conduits of social transformation and how their own global growth strategies both impact human rights and are impacted *by* human rights[1465]. This is reflected in the sometimes volatile discourse on the function of universities as forums for social transformation and social justice (often used interchangeably in formal education settings with 'human rights') which has led to charges from right-leaning actors that universities are breeding grounds for 'wokeism'[1466], indoctrinating

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[1464] Please see the concluding chapter of this thesis for a summary of the projects that are outcomes of this thesis, which include the Rights Reimagined database of HRET innovations and also the handbook and model curricula that will create human rights learning content for learners both within and outside of law schools.
[1465] For Bourdieu, both legal and education systems are "characterised by the regularised, institutionalised unequal positions of social agents and, crucially, by competitive relations or 'struggles' within them" – see Annette Hastings and Peter Matthews, Bourdieu and the Big Society: empowering the powerful in public service provision?, Policy & Politics, Vol 43 No 4, pp 545-560, p 547, citing Pierre Bourdieu and Loic Wacquant, An Invitation to Reflexive Sociology, University of Chicago Press Books 1992, p 98–104
[1466] 'Woke' is a social justice activism term that the Oxford Dictionary defines as being "alert to injustice in society", and it attracts "symbolises awareness of social issues and movement against injustice, inequality, and prejudice" which attracts criticism if too liberally or cynically used by brands in their marketing. The term, originally used by black Americans in the fight against racism, has been "appropriated by other activist groups -

young people to left-wing social ideals and bias[1467] and entrenching snowflake 'cancel culture'[1468]. Kelley, on the one hand, takes the view that universities "will never be engines of social transformation", because social transformation is "ultimately the work of political education and activism" and as such, takes place outside of the HEI environment and exclusively within the political sphere[1469]. I fundamentally disagree with this position; in my view, the key actors that comprise the higher education ecosystem – the institutions, leadership, academics, researchers, administrators, and students – *all* have a critical role to play in filling in social transformation gaps left by political failures or by political design. However, if HEIs are to adopt any serious emphasis on HRET in their law school and other curricula, there should be some inward reflection as to the university's *own* human rights footprint first.

As early as 1984, Hoffman identified the moral quandary of academics and HEIs in the US that enter into research, teaching, or service-based partnerships with universities in foreign jurisdictions that are "engaged in serious violations of human rights and academic freedom"[1470]. Over the last two decades, a number of wealthier Western universities with serious brand recognition have established satellite campuses and learning programmes in capitals across Asia and the Middle East,

taking it from awareness and blackness to a colourless and timeless phenomenon" - see Abas Mirzaei, Where 'woke' came from and why marketers should think twice before jumping on the social activism bandwagon, 8 September 2019, Accessed at https://theconversation.com/where-woke-came-from-and-why-marketers-should-think-twice-before-jumping-on-the-social-activism-bandwagon-122713; the Oxford Dictionary's definition of the word "woke" is being "alert to injustice in society, especially racism" – Lexico Oxford, Definition for Woke, Accessed at https://www.lexico.com/en/definition/woke

[1467] John Morgan, Are universities hotbeds of left-wing bias?, The Times Higher Education, 21 February 2019, Accessed at https://www.timeshighereducation.com/features/are-universities-hotbeds-left-wing-bias

[1468] 'Cancel culture' as defined in the popular press is a "toxic online trend", and "the phenomenon of promoting the "cancelling" of people, brands and even shows and movies due to what some consider to be offensive or problematic remarks or ideologies" - see Brooke Kato, What is cancel culture? Everything to know about the toxic online trend, New York Post, 31 August 2021, Accessed at https://nypost.com/article/what-is-cancel-culture-breaking-down-the-toxic-online-trend/ (in this article, the author makes the important point that 'cancel culture' is not a new phenomenon and has recurred throughout human history, where societies have "punished people for behaving outside of perceived social norms for centuries", and this is just a "new variation" that depends upon social media momentum).

[1469] Jennifer M Case, Higher education and social justice: engaging the normative with the analytical, Working Paper No 23 June, Centre for Global Higher Education, Working Paper Series 2017, Accessed at https://www.researchcghe.org/perch/resources/publications/wp23.pdf; for another view on this, for Day et al, higher education's potential as a catalyst for social change is undermined by financial and other constraints, it being "impossible for the sector to fulfil the vision of higher education as a force for social good without a significant reshaping of funding, responsibilities and incentives" – see Natalie Day, Chris Husbands and Bob Kerslake, Making Universities Matter: How higher education can help to heal a divided Britain, Higher Education Policy Institute Report 125, Accessed at https://www.hepi.ac.uk/wp-content/uploads/2020/02/Making-Universities-Matter-Report-125-FINAL.pdf

[1470] Stanley Hoffmann, Universities and Human Rights, Bulletin of the American Academy of Arts and Sciences, Vol 32 No 2 (Nov 1978), pp 5-9, p 5

typically funded by state or sovereign investors, whole 'Knowledge Cities', per Alraouf[1471], which have been constructed to cluster these campuses and programmes for undergraduate, postgraduate and executive education students who cannot travel internationally for the same degrees. These cities are designed to diversify the region from its dependence on energy to create 'knowledge economies' and improve the skills, competencies and preparedness of national workforces, effectively contributing to economic growth, investment and infrastructure development for a post-energy age.

The net result of these nations' substantial investment into knowledge diversified economies is that some of the world's most authoritarian regimes now host some of the largest and most prestigious universities in the world whilst simultaneously being the world's worst violators of freedom of expression, thought, assembly, information and academic freedom, jailing academics and researchers whilst promoting education-driven 'Visions' for sustainable empowerment aligned with ambitious 2030 goals that hinge on youth engagement and women's empowerment[1472]. The human rights predicament of Western universities that enter into multi-billion dollar partnerships with such regimes is worthy of further academic critique, especially given the 'chilling effect' that academics have reported when delivering lectures or conference papers in countries within autocratically-governed regions (and even outside of them)[1473]. The relationship between academic freedom and HRET, and the subject of academic freedom and its critical importance to the realisation of HRET and rights consciousness overall should be further explored as a post-PhD area of research, and certainly before any universal international standard or a set of guiding principles for HRET can be realistically imagined[1474].

[1471] Ali Alraouf, Emerging Middle Eastern knowledge cities: The unfolding story, in Knowledge-Based Urban Development: Planning and Applications in the Information Era, IGI Global 2008, p 240-259

[1472] Scholars at Risk, Free to Think: Report of the Scholars at Risk Academic Freedom Monitoring Project 2020, p 45, Accessed at https://www.scholarsatrisk.org/wp-content/uploads/2020/11/Scholars-at-Risk-Free-to-Think-2020.pdf

[1473] Simeon Kerr, Western universities' reputations at stake in Gulf links: Satellite operations raise issues of academic freedom, Financial Times, 20 October 2013, Accessed at https://www.ft.com/content/7e8f1d8a-170d-11e3-9ec2-00144feabdc0

[1474] See page 40-45 of the Scholars at Risk 2020 report for more data and case studies relating to specific academics and countries: Scholars at Risk, Free to Think: Report of the Scholars at Risk Academic Freedom Monitoring Project 2020, p 40-45, Accessed at https://www.scholarsatrisk.org/wp-content/uploads/2020/11/Scholars-at-Risk-Free-to-Think-2020.pdf

Academic freedom is a bellwether for stronger democracy, and human rights education the great transposer of human rights values into democracy. Under the global development lens, education is the ultimate pathway to economic freedom and inclusion. Under the human rights lens, it is about emancipation[1475], participation, collaboration, inclusion, and action. The significance and urgency of HRET is clear, yet beyond ambitious non-binding declarations and plans at the international level, which often fail to be implemented effectively at local and cultural levels, there is no binding agreement on the format, content, curricula, or mandatory nature of HRET, and HRET is still found in relatively few national education systems[1476]. One way to address this is with a binding agreement on human rights education and in this, the experiences of the global business and human rights movement and specifically the precedent set by the UN Working Group on Business and Human Rights which has diligently advocated for a binding treaty on corporate responsibility to respect human rights, is especially informative[1477].

However, the key to achieving lasting change, credibility, longevity and relevance in the embedment of human rights culture is for HRET advocates to lead by consensus-building movement and *not* by mandate; as Cardenas notes, "without sufficient political, economic, and social capital, any attempts to construct a human rights culture are likely to founder"[1478], whereas investments in "ubiquitous, quality" HRET, as Cargas suggests, "will both guide and galvanize the movement"[1479]. In this mission, the experiences and innovations of human rights teachers themselves are especially instructive, and the opportunities presented by education technology to

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[1475] The concept of emancipation, per Bingham and Biesta, is rooted in Roman law and refers to the "freeing of a son or wife from the legal authority of the ... father of the family. Emancipation literally means to give away ownership ... to relinquish one's authority over someone" where "the 'object' of emancipation ... becomes independent and free as a result of the act of emancipation. This is reflected in the legal use of the term today, where emancipation means the freeing of someone from the control of another." See Charles Bingham and Gert Biesta, Jacques Ranciere: Education, Truth, Emancipation, Bloomsbury 2010, p 27

[1476] Claudia Lohrenscheit, International Approaches in Human Rights Education, International Review of Education / Internationale Zeitschrift für Erziehungswissenschaft / Revue Internationale de l'Education, Vol 48 No 3/4, Education and Human Rights 2002, pp 173-185, p 176

[1477] For further analysis of international efforts for a binding treaty on business and human rights and the UN Guiding Principles on Business and Human Rights, please see the 'Human Rights at Work' chapter in this thesis. Also see the Business & Human Rights Resource Center's timeline of events around global advocacy to "elaborate an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises" – Business & Human Rights Resource Centre, Binding Treaty, Accessed at https://www.business-humanrights.org/en/big-issues/binding-treaty/.

[1478] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26 No 4 (Oct 2005), pp 363-379, p 374

[1479] Sarita Cargas, Fortifying the future of human rights with human rights education, Journal of Human Rights 2019, Vol 18 Issue 3, pp 293-307, p 293

mainstream and democratise HRET *outside* of formal education are limited only by imagination (and the accessibility of funding). As Cargas writes, we need to embrace new possibilities to "help human rights evolve and adapt to meet the needs of our time through empirical examination … equipping those who will take the reins of the movement in the years to come"[1480].

Ultimately, the goal is to empower the individual, or as Flowers has put it, "giving people the knowledge and skills to take control of their own lives and the decisions that affect them", which is easier said than done given the dominant view among corporatised academia that "this goal [is] too political for schools and appropriate only to conformal education" against those educators who see it as "essential for becoming a responsible and engaged citizen and building civil society"[1481]. Active citizenship, they write, "means participation in the democratic process, motivated by a sense of personal responsibility for promoting and protecting the rights of all. But to be engaged, citizens must first be informed"[1482]. In the end, as Cardenas notes, "the most fundamental effect of HRE[T] may be its capacity to change social expectations, generating vital debate and public contestation"[1483]. In reforming HRET so that it is future proof and fit for purpose in the pivotal decades ahead, I firmly believe that it could well be the individual – the activist, the teacher, the edtech entrepreneur, the filmmaker, the photographer, the writer, or the journalist – who fills the critical gaps between state implementation of the HRET agenda, and narrows the gulf between its adoption in both formal and informal education settings[1484].

[1480] *Ibid*, p 294
[1481] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 13
[1482] *Ibid*, p 15
[1483] Sonia Cardenas, Constructing Rights? Human Rights Education and the State, International Political Science Review / Revue Internationale de Science Politique, Vol 26 No 4 (Oct 2005), pp 363-379, p 375
[1484] See Principle 5 of the R*b*D Framework: Individuals should be supported as innovators, creatives, communicators and programme-makers in advancing and mainstreaming human rights culture

Chapter Eight

Human Rights Education and Training III: Human rights in postgraduate, vocational and lifelong learning

8.1 Chapter Introduction

The previous two chapters have outlined how HRET might be more effectively embedded within the education system, taking a critical view of how formal education might integrate the learning *about*, *through* and *for* pillars of HRET across early years, primary, secondary, and tertiary learning. In this chapter, I explore the need to embed more advanced human rights knowledge, participation, and advocacy skills into vocational, continuous, and lifelong learning, where HRET can be tailored to specialist interests or made specifically relevant to the sectors in which the learner will be professionally engaged in (such as medicine, policing, the military, or the media, to give just a few examples) and which is, in my view, imperative to bringing human rights to life within future workforces (the subject of the next, penultimate chapter on *Human Rights at Work*). The concept of human rights learning as lifelong learning recurs frequently throughout this work, and it underpins Principle 3 of the R*b*D Framework on human rights education in formal and informal education.

In this chapter, HRET is reimagined for the world *beyond* the undergraduate degree, for those engaged in postgraduate or Technical and Vocational Education and Training (TVET) which, according to UNESCO, is "mainly designed to lead participants to acquire the practical skills, know-how, and understanding necessary for employment in a particular occupation or trade or class of occupations or trades"[1485]. In this context, learning *for* human rights entails (per the definition of the Council of Europe) the development of skills, attitudes, and values which empower learners to "apply human rights values in their lives and to take action, alone or with others, for promoting and defending human rights"[1486]. As outlined in the previous

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[1485] Gavin Moodie, Identifying vocational education and training, Journal of Vocational Education and Training 2002, Vol 54 Issue 2, pp 249-266, p 250-251
[1486] Council of Europe, Introducing human rights education, Accessed at https://www.coe.int/en/web/compass/introducing-human-rights-education

chapters, learning *for* human rights involves, in practice, empowering the learner to recognise human rights violations and then personally "commit to their prevention" in Tibbitt's definition[1487], through "leadership development, conflict-resolution training, vocational training, work, and informal fellowship"[1488], and it empowers the individual to "translate human rights into social and political reality", per Struthers[1489]. As such, learning *for* human rights is naturally aligned with the characteristics and objectives of TVET as well as continuous adult education or 'lifelong learning', a "beautifully simple idea" according to Field[1490] which UNESCO has long promoted as "an emancipatory and rights-based concept"[1491]. Lifelong learning became synonymous with 'future of work' discourse when it became a cornerstone concept of the International Labour Organization (ILO) in its January 2019 report, *Work for a Brighter Future*, in which 'lifelong learning' encompasses formal and informal learning throughout every stage of a learner's life, but importantly in the context of this research, links lifelong learning with capacity development of future generations for effective participation in democratic society:

> "*Lifelong learning encompasses formal and informal learning from early childhood and basic education through to adult learning, combining foundational skills, social and cognitive skills (such as learning to learn) and the skills needed for specific jobs, occupations or sectors. Lifelong learning involves more than the skills needed to work; it is also about developing the capabilities needed to participate in a democratic society. It offers a pathway to inclusion in labour markets for youth and the unemployed. It also has transformative potential: investment in learning at an early age facilitates learning at later stages in life and is in turn linked to intergenerational social mobility, expanding the choices of future generations.*"[1492]

[1487] Felisa Tibbitts, Emerging Models for Human Rights Education, International Review of Education 2002, Vol 48 Issue 3-4, pp 159-171, p 166-167

[1488] *Ibid*

[1489] Alison EC Struthers, Human rights education: educating about, through and for human rights, The International Journal of Human Rights, Vol 19 Issue 1 2015, pp 53-73, p 59, citing UNESCO International Congress on the Teaching of Human Rights, Principles of the International Congress on the Teaching of Human Rights 1978, para 3(iii)

[1490] John Field, Lifelong education, International Journal of Lifelong Education 2000, Vol 20 No 1–2, pp 3–15, vii

[1491] Maren Elfert, Chapter 2 Revisiting the Faure Report and the Delors Report: Why Was UNESCO's Utopian Vision of Lifelong Learning an "Unfailure"?, in Power and Possibility: Adult Education in a Diverse and Complex World, Research on the Education and Learning of Adults, Vol 7 2019, Accessed at https://brill.com/view/book/edcoll/9789004413320/BP000003.xml?body=fullHtml-43184, citing GJJ Biesta, What's the point of lifelong learning if lifelong learning has no point? On the democratic deficit of policies for lifelong learning. European Educational Research Journal 2006, Vol 5 Issue 3–4, pp 169–180

[1492] ILO Global Commission on the Future of Work, Work for a brighter future, 23 January 2019, p 30, Accessed at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf

HRET is itself intended to be "a lifelong process by which people at all levels of development and in all strata of society learn respect for the dignity of others and the means and methods of ensuring that respect in all societies", as Robinson has observed, as "the educational process is not confined to one phase of our lives but continues throughout our existence"[1493]. UNESCO also recognises HRET as a "comprehensive, lifelong process, which should make peace, human rights and democracy a matter of daily practice", engaging learners of all ages with human rights knowledge so they are "moved to action" and intellectually and strategically equipped to defend their own rights and those of others[1494].

Lifelong human rights learning, importantly, is integral to helping vulnerable populations in their efforts to retrain and reintegrate after conflict. As Mary Robinson has written: "In adult life the need for human rights education is also great. This takes on a special urgency in societies in conflict and in societies, where gross violations have been committed"[1495]. Vulnerable learners in this category include those participating in special education programmes that enable assimilation, rehabilitation, or supported re-entry into the workforce or society, such as refugees, minorities, migrant workers, indigenous peoples, at-risk children, prisoners, the disabled and the poor. For vulnerable learners, HRET becomes part of a holistic process of healing, as "those caught up in conflict situations see human rights as a basis on which to build a better life"[1496]. As Bajaj writes, human rights education is commonly called for after conflict because it "offers the chance to shape minds, hearts, and behaviours of succeeding generations"[1497]; educating young people "to respect others; to understand the costs of group hatreds; to make friends, not stereotypes; to know tools for resolving disputes, to choose to stand up to demagogues, to be peace makers, then we could hope to prevent future violence and future atrocities"[1498].

[1493] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 146
[1494] UNESCO, UNESCO & Human Rights Education (2003), Accessed at https://unesdoc.unesco.org/ark:/48223/pf0000131836, p 5
[1495] *Ibid*, p 146
[1496] *Ibid*
[1497] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33 No 2 (May 2011), pp 481-508, p 498
[1498] *Ibid*

In TVET, there are numerous opportunities, largely unrealised, to integrate human rights teaching into the mandatory courses that learners must undertake to join professions where there is potential for adverse human rights impact. As the architects of the European Commission's Sokrates-Comenius project (2000) on human rights culture and TVET education found, "when scanning the curricula for technical education in vocational schools, human rights are next to non-existent"[1499]. If the objective underpinning HRET is to impart and amplify rights-based skills, knowledge, and attitudes necessary to realise a vision of a world where human rights violations cannot be committed with impunity, then incorporating these vital skills and attitudes into TVET learning is, as the Sokrates project suggested, "the best strategy for the dissemination" of human rights culture, as "[v]ocational schools represent a very promising platform for this objective: Due to their practical work as well as to their close links to technical subjects, students may be sensitised to reflect on how their products and their future work might be shaped in order to prevent human rights violations, to advocate and to actively support human rights"[1500].

Integrating HRET into TVET is a strategy to mitigate adverse human rights impact in the future and to ensure that human rights knowledge and advocacy skills are imparted to those directly working in the sectors where there is the potential for human rights to be adversely impacted. There is a growing number of professions where human rights considerations are relevant and human rights problems might emerge in the nature and day-to-day conduct of that job. The Plan of Action for the UN Decade for Human Rights Education specifically called for emphasis to be placed on training "police officers, prison officials, lawyers, judges, teachers and curriculum developers, the armed forces, international civil servants, development officers and peacekeepers, non-governmental organizations, the media, government officials, parliamentarians and other groups that are in a particular position to effect the realization of human rights"[1501]. Other, less obvious groups might include politicians, academics, think tanks, NGO or charity staff, communications

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[1499] Sokrates-Comenius 2.1 (Project of the Commission of the European Community, with the second phase commencing in the year 2000), The Human Rights Project: European Handbook of Human Rights Education in Technical Education and Vocational Training (Human Rights into the Technical Curricula of Vocational Schools and Further Education Teacher Training of "Human Rights Ambassadors"), Accessed at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.469.249&rep=rep1&type=pdf#page=17
[1500] *Ibid*
[1501] United Nations, Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education, A/51/506/Add 1 (1996), para 24

professionals, CEOs, corporate affairs or business administration professionals, fundraisers, researchers, interpreters, data analysts, campaign management staff, accountants, human resource teams, supply chain managers, energy workers, engineers and specialists working in most of the STEAM sectors.

There is a clear link between human rights and finance, international development, the civil service, economics, medicine, engineering, the sciences and other STEM courses, including supply chain management, software development and IT, on account of ever-expanding opportunities in AI, robotics, the Internet of Things (IoT), and blockchain technology[1502]. Many of the roles and industries that young people are set to enter into after formal education, as the World Economic Forum has noted, "did not exist ten or even five years ago, and the pace of change is set to accelerate", with one estimate finding that "65% of children entering primary school today will ultimately end up working in completely new job types that don't yet exist"[1503], making the 'future of human rights' in the context of labour rights and the world of work an entirely uncertain and largely undefinable milieu.

As the UNGP Reporting Framework's guidance notes, enterprises and the humans who power them ("employees and contract workers, their customers, workers in their supply chains, communities around their operations and end users of their products or services") can all "have an impact – directly or indirectly – on virtually the entire spectrum of internationally recognized human rights"[1504]. Flowers has previously suggested that as "some people urgently need to understand human rights because of the power they wield or the positions of responsibility they hold ... human rights courses should be fundamental to the curriculum of medical schools, law schools, business schools, universities, police and military academies and professional training institutions"[1505]. I believe that there is a clear argument to be made for integrating HRET into formal post-graduate, technical and vocational education, as a

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[1502] Joël Blit, Samantha St Amand and Joanna Wajda, Automation and the Future of Work: Scenarios and Policy Options, CIGI Papers No 174, May 2018, p 1, Accessed at
https://www.cigionline.org/static/documents/documents/Paper%20no.174lowres.pdf
[1503] World Economic Forum, Chapter 1: The Future of Jobs and Skills in The Future of Jobs, Accessed at https://reports.weforum.org/future-of-jobs-2016/chapter-1-the-future-of-jobs-and-skills/
[1504] UNGP Reporting Framework, How Can Businesses Impact Human Rights?, Accessed at https://www.ungpreporting.org/resources/how-businesses-impact-human-rights/
[1505] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 18

mandatory part of vocational study and in the same way that ethics teaching is already integrated into the medical or engineering curriculum. This approach tallies well with evidence unveiled by Kwon et al that suggests that the more highly educated a learner becomes, the more likely they are to care about human rights, where "higher levels of education are associated with more positive attitudes toward both human rights and civic engagement, particularly when an aspect of that education includes formal content related to civic engagement skills and social justice"[1506]. By imbuing TVET learners – the workers, the researchers, the managers, entrepreneurs and future leaders of industry – with the knowledge, awareness, self-accountability and advocacy skills to mitigate adverse human rights impact in their working lives, in the products they launch, the supply chains they contract with, the contracts they negotiate, and the labour they employ, they are empowered to contribute meaningfully to the protection and realisation of human rights in the world of work (which is covered in depth in the following chapter and which relates directly to Principle 4 of the R*b*D Framework on human rights and dignity at work). They are also better able to hold themselves and other individuals accountable and responsible for promoting, defending, and respecting human rights in the spheres where they can exercise their agency and power (or what is known in the language of business and human rights as 'leverage'[1507]), which is vital to creating and maintaining human rights culture and an intrinsic part of learning *for* human rights.

This chapter will elaborate that argument by examining, firstly, the integration of HRET in law schools; secondly, in business schools and MBA or other executive education programmes; and finally, through non-formal NGO- and entrepreneur-led digital learning. Following the arguments outlined in the previous chapter, it is a core recommendation of this work that HRET should become a mandatory, core module offering within both the undergraduate law degree and postgraduate / vocational legal practice courses, because of the inherent link between various areas of legal

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[1506] Ilan Kwon, Jaewon Lee, Cristy E Cummings, Daria P Shamrova, Catherine A Macomber, Edita Milanović, Amanda T Woodward & Anne K Hughes, Human Rights Attitude and Civic Engagement Behaviour Among University Students, Journal of Human Rights and Social Work 2020, pp 174-184, p 176-177, citing T Barrows, College students' knowledge and beliefs: a survey of global understanding, Change Magazine Press 1981
[1507] Shift Project, Using Leverage in Business Relationships to Reduce Human Rights Risks, 01 November 2013, Accessed at https://shiftproject.org/resource/using-leverage-in-business-relationships-to-reduce-human-rights-risks/

practice and human rights, and the golden thread of human dignity which underscores these practice areas (recalling the previous characterisation of human rights earlier in this thesis as being representations of human dignity). The need for an international standard of teacher training in HRET is also discussed, as is a somewhat controversial proposal that first emerged at a University of Exeter law symposium in 2008 on whether the legal profession needed a Hippocratic-style oath that mandates legal practitioners to respect rule of law and human rights in their professional practice.

The chapter then moves on to discuss the need to integrate HRET into business schools, just as ethics teaching is already integrated into medical, software development or engineering programmes. In doing so, this work contributes to growing calls to imbue business leaders with human rights education at the outset of their leadership journey so that it becomes an ingrained part of their professional development, and therefore ensures that business and policy decisions of the future are made by people who understand the importance of promoting, defending and respecting human rights in the overlapping private and economic spheres of our lives and in our social order which exists, according to Berger and Luckmann, exclusively as a "product of human activity"[1508]. At this time of writing, very few MBA programmes have explicitly embedded human rights into their programme design, and those that have typically do so as a minute part of a wider, more politically and ideological palatable sustainability track. Business and human rights is not a compulsory module in the modern MBA programme, although the foundations are already there in that sustainability, corporate citizenship, diversity, and inclusion have been embedded into business education for at least the last decade, in response to the SDGs[1509].

The chapter moves on to discuss the role of emerging digital technologies for HRET, a core recommendation of the 2011 UN Declaration on Human Rights Education and Training in Article 6, which provided: "Human rights education and training should capitalise on and make use of new information and communication technologies, as

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[1508] Peter L Berger and Thomas Luckmann, The Social Construction of Reality: A Treatise in the Sociology of Knowledge, Penguin 1991, p 70
[1509] Global Business School Network, The Case for Human Rights in Business Education – A Tool Kit, November 2020, p 6, Accessed at https://gcbhr.org/backoffice/resources/toolkit.pdf

well as the media, to promote all human rights and fundamental freedoms"[1510]. Even before the pandemic, law teachers, academic entrepreneurs, NGOs, and institutional bodies were making path-breaking progress in the use of technology for law teaching and the inclusion and innovative integrations of digital platforms for learning into the study of law. These have included (among many other formats) podcasts, videos / webinars / other online content delivery, quizzes, apps, animation, interactive reading materials such as e-books and infographics, and Massive Open Online Courses (MOOCs), "free online courses available for anyone to enrol" which offer "an affordable and flexible way to learn new skills, advance your career and deliver quality educational experiences at scale"[1511]. These innovations were not necessarily designed for the enjoyment and benefit of lawyers, but for the international development community, academic networks, highly specialised NGO and civil society audiences, or policymakers, and with a clear emphasis on open access.

However, HRET still lags well behind in its use of edtech in comparison to other subject areas and disciplines, and the approach to edtech in the HRET space is scattershot, standards inconsistent, and outcomes incoherent and immeasurable. HRET lags even further behind in its adoption of immersive edtech, which according to Pagano, encompasses games, simulation, virtual worlds, mobile learning, augmented reality, alternate reality games, 3D environments, and in the future, holograms[1512]. The digital information revolution has empowered learners to engage in online, self-directed learning, although it should be noted that HRET is *already* largely heutagogical for activists who have traditionally sought to educate

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[1510] United Nations, United Nations Declaration on Human Rights Education and Training, A/RES/66/137, Article 6(1)

[1511] According to mooc.org: "Millions of people around the world use MOOCs to learn for a variety of reasons, including career development, changing careers, college preparations, supplemental learning, lifelong learning, corporate eLearning & training, and more." One of the most successful and prolific MOOC sites is Harvard University's edX - see https://www.edx.org, which claims to have nearly half a million students learning on the edX site on any one day.

[1512] Koreen Olbrish Pagano, Immersive Learning, American Society for Training and Development, 10 Sept 2013, p 16; see also Karl M Kapp, The Gamification of Learning and Instruction: Game-based Methods and Strategies for Training and Education, John Wiley & Sons 2012; Patrick E Connolly, Virtual Reality & Immersive Technology in Education, Purdue University 2008; Joseph Psotka, Immersive training systems: Virtual reality and education and training, Instructional Science 1995, Vol 23 Issue 5–6, pp 405–431; Jan Herrington, Thomas C Reeves, Ron Oliver, Immersive learning technologies: Realism and online authentic learning, Journal of Computing in Higher Education 2007, Vol 19 Issue 1, pp 80–99; Laura Freina and Michela Ott, A Literature Review on Immersive Virtual Reality in Education: State Of The Art and Perspectives, Accessed at: https://ppm.itd.cnr.it/download/eLSE%202015%20Freina%20Ott%20Paper.pdf; Lisa Dawley, Chris Dede, Situated Learning in Virtual Worlds and Immersive Simulations, Handbook of Research on Educational Communications and Technology pp 723-734; and Enrique Piracés, The Future of Human Rights Technology: A Practitioner's View, In Molly K Land and Jay D Aronson (eds), New Technologies for Human Rights Law and Practice, Cambridge University Press 2018, p 289-308.

themselves about human rights inaction, "informing themselves because they care about an issue" and recognising that "the more they know, the more committed they become to working for change … recognising that the better informed the activists, the more effective their activism"[1513]. As this chapter argues, the possibilities for HRET for mainstream public learners outside of formal education are as yet unrealised, and exploring these spaces further would, as the Plan of Action for the UN Decade for Human Rights Education recommended, help with "expanding human rights education in new directions so that human rights values may become more effectively integrated throughout society"[1514].

8.2 Learning *for* human rights in postgraduate and vocational legal education

Legal qualifications, in most countries in the world, are recognised as incredibly versatile, as valuable to aspiring lawyers as they are to students gravitating towards careers in international relations, politics, and development. As Beattie-Moss writes:

> *"It is a common misconception that a law school education leaves graduates prepared only to engage in traditional law practice when, in fact, a law degree gives students the requisite skills and training to contribute and thrive in many law-related, or non-legal, careers. While some have difficulty getting past the idea that law students are specifically trained to understand and apply the law as practicing lawyers, they are missing the fact that a legal education prepares students to think logically and analytically; to apply problem-solving strategies and work creatively; to be precise and articulate writers and speakers; and to understand the interaction of law, government, international affairs, and society at an extremely sophisticated level"*[1515].

As law graduates are increasingly finding employment in politics, government, education, business, technology, and other sectors outside of the legal professions, university law schools are responding by offering joint degree or joint honours programmes (such as law and business, law and international relations, or law and languages). Those who intend to enter legal practice will currently need to graduate with a QLD, which the University of Exeter defines as "an undergraduate law degree that is currently recognised in England and Wales by the Solicitors Regulatory

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[1513] Nancy Flowers, Marcia Bernbaum, Kristi Rudelius-Palmer, Joel Tolman, The Human Rights Education Handbook: Effective Practices for Learning, Action and Change, Human Rights Resource Center, University of Minnesota 2000, p 15
[1514] UN, Plan of Action for the United Nations Decade for Human Rights Education 1995-2004 (1996), para 36
[1515] Melissa Beattie-Moss, Probing Question: Is a law degree versatile?, Penn State News, 04 June 2013, Accessed at https://news.psu.edu/story/278411/2013/06/04/research/probing-question-law-degree-versatile

Authority (SRA) and Bar Standards Board (BSB) as the first stage of professional qualification which enable graduates to proceed to the vocational stage of training"[1516]. Human rights as a standalone module is not offered as a core, compulsory part of the UK QLD or GDL[1517], the Bar Practice Course, the Legal Practice Course, nor on the more recently developed Solicitors Qualifying Examination (a missed opportunity in my view to meaningfully embed HRET into legal practice training at a time when legal education was being considered and there was appetite for wide-ranging reform)[1518]. There is clear emphasis across all legal professional training programmes in what are believed to be more lucrative commercial law modules and skills development is limited to 'commercial awareness' (or more cynically, the ability to see law as a business)[1519]. As Berman has written, human rights law at both undergraduate and postgraduate level is typically taught as part of a broader international law module, "frequently compartmentalised and treated as marginal to the great global issues of war and peace and international economic relations which are at the heart of the international legal system … tacked on to the curriculum, so to speak"[1520]. Where universities and vocational training providers do give students the option of studying either international or European (regional) human rights law, these courses tend to be undersubscribed.

For law students aspiring to go into academia or non-practicing professions, the Master of Laws (LLM) route is commonly undertaken to specialise in areas of law that fit into an overarching pathway. Module offerings will typically include commercial law, international human rights, European (or other regional) human rights law, entertainment / media law, medical law, intellectual property, or technology law, among other examples. LLM programmes are a bridge between

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[1516] University of Exeter, Law LLB Entry, Accessed at https://www.exeter.ac.uk/undergraduate/courses/law/law/; in the UK, vocational training for legal practice is the Bar Training Course for aspiring barristers or the Legal Practice Course (and, from 2021, the Solicitors Qualifying Exam) for future solicitors

[1517] Although human rights is not a standalone core module on either the UK QLD of the GDL, the mandatory public law module covering constitutional and administrative law, by its nature, touches upon domestic human rights legislation and case law – see Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS), Legal Education and Training Review 2013, p 19 and 67, Accessed at https://letr.org.uk/wp-content/uploads/LETR-Report.pdf

[1518] The University of Law, The SQE Explained, Accessed at https://www.law.ac.uk/study/postgraduate/sqe/

[1519] Interestingly, in a ranking of importance of knowledge items by various legal service providers, human rights ranked fifth as the most important knowledge area for barristers but as the tenth most important knowledge area for solicitors. See Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS), Legal Education and Training Review 2013, p 34-36, Accessed at https://letr.org.uk/wp-content/uploads/LETR-Report.pdf

[1520] Howard R Berman, Teaching Human Rights Law, Journal of Legal Education, Vol 35 No 3 (September 1985), pp 428-444, p 436

undergraduate legal education and doctoral studies in law at PhD level, and so the modules on offer tend to be less commercial and more well-rounded than module offerings on vocational courses preparing students for practice at the Bar or as a solicitor. Whilst LLM students often have ample opportunity to select human rights modules as part of an International Human Rights Law or other pathway, students preparing for legal practice have limited opportunities to engage with human rights as a subject either as part of their law degrees or on postgraduate or vocational training courses.

The most obvious reason for this is that human rights is not considered to be a lucrative area of law to enter into in terms of legal practice, and there is a distinct preference for the majority of law graduates to enter corporate firms where the emphasis is very much on commercial, contract, insurance, maritime, property, taxation, IP, or family law. I would argue that many of these specialisms, in one way or another, are linked with human rights and human dignity; as Draghici has noted, "[h]uman rights law has pervaded all other legal disciplines, whether approached from an academic or forensic perspective"[1521]. With international law firms articulating a clear preference for well-rounded candidates who can demonstrate advanced knowledge of global business and institutional structures, powers and systems, there is a clear benefit to future corporate, commercial and in-house lawyers in acquiring advanced knowledge of how international human rights law intersects with sustainability, globalisation and global business and being able to confidently respond to business and human rights-related challenges that might arise for their clients or firms[1522].

Similarly, aspiring legal practitioners inclined towards careers in criminal law will need to be guided in their practice by domestic human rights legislation that is derived from international human rights law, such as the right to a fair trial and *habeas corpus* due process, or the right to protection from arbitrary arrest or torture[1523]. In private practice specialisms such as family law or even media law,

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[1521] Rabah Kherbane, Why every aspiring lawyer should study human rights law, The Guardian, 9 February 2015, Accessed at https://www.theguardian.com/law/2015/feb/09/students-why-study-human-rights-law
[1522] *Ibid*
[1523] These rights are transposed into UK law via the Human Rights Act 1998; see specifically Article 3 (Freedom from torture and inhuman or degrading treatment); Article 4 (Freedom from slavery and forced labour); Article 5 (Right to liberty and security); Article 6 (Right to a fair trial); and Article 7 (No punishment without law).

heavily grounded in the countervailing balance between the right to privacy in Article 8 and freedom of expression and information in Article 10 of the HRA / ECHR in privacy / misuse of private information practice, it is clearly necessary to have a strong understanding of the dynamic interplay between the rights provided by the HRA 1998, the ECHR, and the UDHR (to give a UK-centric example)[1524]. Engaging and invigorating law students to promote, defend and respect human rights from the earliest stages of their legal education journey is easier said than done because it requires systemic, institutional change to the structure and culture of legal education and of the law school itself, which has in recent decades been intensely focused on delivering commercially viable modules that support student preferences for entry into highly competitive and perceptibly glamorous commercial and corporate law careers.

Arguably, not enough is done to make students aware of various human rights pathways and humanitarian and international development careers where legal qualifications are prized and desperately needed, and of how sought after and prestigiously regarded roles in international human rights NGOs are, in organisations such as Amnesty International, Human Rights Watch, or Article 19, or the international institutions and human rights institutes situated in Geneva or The Hague. In my view, HRET would be seen as more valuable to legal education if there were more meaningful opportunities for law students to become involved in human rights advocacy with these and similar organisations and institutions, both at undergraduate and postgraduate / vocational stages. I believe that all law students, whether they intend to enter into legal practice, academia, or the professions, need to be made more fully aware of how human rights education can enrich their legal training no matter what their chosen specialism, given that the international human rights framework is both influenced *by* and influential *to* all of the major institutions and omnipresent in some way in virtually all of the professions. There is no specific pathway for legal trainees to become human rights lawyers as such, and opportunities to specialise in human rights need to be more abundantly promoted as heavily by NGOs and national human rights institutions as the commercial and

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[1524] In the UDHR, freedom of expression is articulated in Article 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

corporate specialism pathways are by the private sector law and professional forms. Career roles in human rights are every bit as competitive and challenging to land as roles in the major law firms, and so the lack of a clear pathway and limited opportunities for law students to undertake specialisms in human rights at both undergrad and postgraduate levels (with the exception of human rights LLM programmes) is baffling. As Stauffer writes:

> "Despite the air of mystery and vague superiority that some of us can be accused of cultivating, there is no special test or bar exam you have to complete in order to become a 'human rights lawyer'. Rather, you just become a lawyer (or a solicitor, or a barrister, or a jurist) according to the prerequisites of the jurisdiction where you want to practice … and then you choose to take on human rights cases. That's all there is to it: you get to define yourself as a human rights lawyer. There's no global regulatory authority acting as gatekeeper, no worldwide bar association that decides whether you get to take part in this rarefied profession."[1525]

For law students interested in human rights academia, or law teachers looking to upskill with a qualification to teach human rights, there is no 'gold standard' training programme or universally recognised certification that ensures that future HRET educators are adequately equipped with the specialist knowledge, pedagogical understanding, and well-attuned interpersonal and soft skills that are integral to imparting human rights knowledge and engaging with students of human rights in an empathetic, sensitive, and emotionally intelligent way. In any given classroom around the world, there will likely be individuals who have in some way in their lifetime had their rights grievously violated by the state they live in or the state they have fled. There is the possibility that without specialised, trauma-informed training[1526], law teachers may limit their engagement with HRET because of what Kant called 'imperfect obligations'[1527] (or "positive commitments that have practical limits", per Robinson[1528]). In other words, law teachers who may feel intrinsically

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[1525] Hilary Stauffer, So, You Want To Be a Human Rights Lawyer ..., LinkedIn, 23 October 2014, Accessed at https://www.linkedin.com/pulse/20141023144709-13974479-so-you-want-to-be-a-human-rights-lawyer/

[1526] Trauma-informed teaching practice is "to understand how violence, victimization, and other traumatic experiences may have figured in the lives of the individuals involved and to apply that understanding to the provision of services and the design of systems so that they accommodate the needs and vulnerabilities of trauma survivors", although teaching about trauma is *not* the same as trauma-informed teaching – see Janice Carello and Lisa D Butler, Potentially Perilous Pedagogies: Teaching Trauma Is Not the Same as Trauma-Informed Teaching, Journal of Trauma & Dissociation, Vol 15 2014 Issue 2, pp 153-168, p 155-156

[1527] Florian Wettstein, CSR and the Debate on Business and Human Rights: Bridging the Great Divide, Business Ethics Quarterly, Vol 22, No 4 (October 2012), pp 739-770, p 748

[1528] Richard Robinson, The Management Nexus of Imperfect Duty: Kantian Views of Virtuous Relations, Reasoned Discourse, and Due Diligence, Journal of Business Ethics, Vol 157 2019, pp 119–136, p 119

motivated to teach human rights may avoid doing so simply because they lack training in trauma-informed teaching which emphasises the creation of safe spaces, a culture of empowerment, peer support and collaboration, and a critical approach to human rights, historical, race- and gender-related issues[1529]. Teachers may also fear saying the wrong thing or inadvertently causing offence because of their own imperfect understanding of the lived experiences of human rights victims, or feel too unfamiliar with the subject matter to teach it, given the perceived complexity that accompanies the history, principles and the mechanics of the international, regional and domestic human rights frameworks, or the limited knowledge in general of how the UN operates, confusion over the non-binding nature of soft international law, and the multi-polar – and highly polarised – ways in which human rights interact with the political, legal, social and economic dynamics of the world in which we live.

For this reason, it is my view that postgraduate law LLM / PhD programmes or vocational legal training courses should culminate in an oath for newly trained lawyers, no matter whether they intend to go into academia, civil society, the private sector or legal practice, to pledge that they will use their legal education to promote, respect and defend the rule of law, human rights and human dignity in their conduct, research, advocacy and practice in the future. An oath for lawyers, used as a "rite of passage, mythical or otherwise … as a person becomes transformed into a professional"[1530], is an opportunity for serious reflection at the point that one leaves vocational or postgraduate legal training on what it means to *be* a lawyer (with no distinction made between 'practicing' lawyers and 'non-practicing', ie academic or advocacy-based lawyers). As Economides has stated, the "question as to what it means to be a lawyer is one rarely posed by lawyers, and also ignored in most law schools, primarily because we spend most of our time absorbed in the tasks of applying and mastering legal rules"[1531]. Vladeck has also observed that "law schools teach students to 'think like lawyers' … by teaching students how to engage in legal

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[1529] Harper and Neubauer's model for trauma-informed teaching recognises "four types of intersectional traumas and stressors that can occur at multiple socioecological levels: pandemic-related trauma and stressors; other forms of individual, group, community, or mass trauma and stressors; historical trauma; and current general life stressors". Guiding principles for a trauma-informed teaching approach emphasise "safety; trustworthiness and transparency; peer support; collaboration and mutuality; empowerment, voice, and choice; and cultural, historical, and gender issues" - see Gary W Harper and Leah C Neubauer, Teaching During a Pandemic: A Model for Trauma-Informed Education and Administration, Pedagogy in Health Promotion, Vol 7 Issue 1, pp 14-24, p 14-15
[1530] Symposium: A Hippocratic Oath for Lawyers?, Legal Ethics, Vol 11, 2008, pp 41-66, p 43
[1531] *Ibid*, p 45-46

analysis and reasoning", but what law schools *don't* do terribly well is "teach students how to *be* lawyers"[1532].

Law societies and bar associations around the world generally require new entrants to the profession to pledge an oath[1533], but law students who undertake vocational training as barristers or solicitors in England and Wales are not currently required to take any such oath on entry into the profession, much less one that calls for them to protect, respect and defend human rights and human dignity in their future conduct and practice. Although judges, tribunal judges and new KCs (or 'silks') are required to take an oath on appointment[1534] and there are codes of conduct by which legal practitioners are expected to comply which contain numerous references to upholding the rule of law (which implicitly refers to human rights), none of these contain any specific pledge to uphold, protect or be guided by the values and principles of fundamental human rights and human dignity in their legal practice[1535].

The idea that newly qualifying lawyers should take an oath as a condition of entry into the legal profession, like the Hippocratic oath that medical students are required to take at medical school graduation ceremonies as a rite of passage, a "moral compass", and a "serious and appropriate initiation into medicine"[1536], is an interesting idea and by no means a novel one[1537]. The idea of lawyers taking a Hippocratic-style oath upon qualification was the subject of a symposium at the University of Exeter in 2008, chaired by the then-Chair of the Law Society to

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[1532] David C Vladeck, Law School 2.0: Course Books in the Digital Age, in Legal Education in the Digital Age, ed Edward Rubin, Cambridge University Press 2012, pp 185-199, p 185-186

[1533] In the US, lawyers take an oath of admission in which they pledge to promote, uphold and defend the Constitution of the United States, again with clear emphasis on personal conduct and professional ethics of the lawyer and, unsurprisingly, with no mention of any responsibility to promote, uphold and defend the rule of law, human rights or human dignity. Each of the US states has its own variation of the attorney's oath; as an example, see the State of Texas' Attorney's Oath of the Texas Courts at https://www.txcourts.gov/media/1436354/oath.pdf

[1534] Judicial oaths are listed here – Courts and Tribunals Judiciary, Oaths, Accessed at https://www.judiciary.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/oaths/

[1535] For an example of the SRA Code of Conduct, see Solicitors Regulation Authority, SRA Code of Conduct for Solicitors, RELs and RFLs, Accessed at https://www.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/

[1536] See Kathy Oxtoby, Is the Hippocratic oath still relevant to practising doctors today?, BMJ 2016, Accessed at https://www.bmj.com/content/355/bmj.i6629; also see the 'Bristol Promise', the oath taken by University of Bristol medical graduates (University of Bristol, The Promise, https://www.bristol.ac.uk/media-library/sites/medical-school/migrated/documents/promise.pdf), and the University of Exeter Medical School's oath here: University of Exeter, Hippocratic Oath: Declaration of a New Doctor, https://www.exeter.ac.uk/students/graduation/bmbs/hippocraticoath/

[1537] There is evidence that a lawyers' oath was taken upon qualification in the Victorian era, but the wording of this oath has been lost and, as the then-President of the Law Society noted in 2008, this oath was discontinued sometime before the 20th century – see Symposium: A Hippocratic Oath for Lawyers?, Legal Ethics, Vol 11, 2008, pp 41-66, p 43

"question of the wisdom of a Hippocratic Oath for use in the legal profession"[1538]. During the symposium, Pinching acknowledged both the importance of a rite of passage by which "a person becomes transformed into a professional", and society's "need for some special process through which someone becomes a member of a profession and ceases to be an ordinary person" beyond "just the acquisition of a qualifying degree"[1539]. As Pinching stated, the taking of an oath is "not about competence, it is not about capability and it is certainly not about regulation. We have plenty of those sorts of things already in other domains of our professional development and work. This is about values, it is about virtues, and it is about integrity"[1540].

Sulmasy has defined oaths as "collections of specific moral rules"[1541] which can "change the meaning of the future"[1542] and "often invite or prescribe consequences for failure to carry out the content of the oath"[1543]. Oaths have been used since the Roman and Anglo-Saxon times; they are used in court to hold witnesses to truthful testimony[1544] and as Salmusy writes, must be composed of "moral content" which "should be very broad, rather than overly specific, but an oath should nonetheless have real moral weight [and] cannot be trivial"[1545]. It is prudent to note here, as Salmusy has pointed out, that an objection to the idea of one taking an oath is not the same as an objection to the ethics underpinning the oath itself[1546]. However, it should also be acknowledged that sceptics of human rights with influence over how the legal profession is regulated might be expected to object, on ideological or practicality grounds, to the idea of attaching a duty to newly qualified lawyers to be bound in any way to honour, respect, and defend human rights in their professional conduct or practice. In view of this argument, what should a lawyer's oath include to be relevant to legal practice today and circumnavigate inevitable objections?

[1538] Symposium: A Hippocratic Oath for Lawyers?, Legal Ethics, Vol 11, 2008, pp 41-66, p 41
[1539] *Ibid*, p 42
[1540] *Ibid*, p 45
[1541] Daniel P Sulmasy, What Is an Oath and Why Should a Physician Swear One?, Theoretical Medicine and Bioethics, Volume 20 1999, pp 329–346, p 329
[1542] Symposium: A Hippocratic Oath for Lawyers?, Legal Ethics, Vol 11, 2008, pp 41-66, p 43
[1543] Daniel P Sulmasy, What Is an Oath and Why Should a Physician Swear One?, Theoretical Medicine and Bioethics, Volume 20 1999, pp 329–346, p 332
[1544] Crown Prosecution Service, Giving evidence, Accessed at https://www.cps.gov.uk/publication/giving-evidence
[1545] Daniel P Sulmasy, What Is an Oath and Why Should a Physician Swear One?, Theoretical Medicine and Bioethics, Volume 20 1999, pp 329–346, p 343
[1546] *Ibid*, p 338

One excellent example of an oath taken by new entrants to the legal profession is identified by Economides and comes from Brazil, where lawyers are required to pledge to "work as a lawyer with dignity and independence, to respect ethics, professional duties and responsibilities, to uphold the Brazilian constitution, the democratic legal order, human rights, social justice, fair and expeditious procedures, and the reform of both legal culture and legal institutions"[1547]. Economides acknowledges that this form of oath in our own jurisdiction would be considered "far more aspirational, socially aware and deep cutting … an entirely different and far broader, almost radical, conception of what it means to be a lawyer"[1548]. Although there is recognition that lawyers themselves may not see the sense or value of requiring new entrants to the profession to commit to an 'abstract' obligation to promote human rights in principle and in practice, the problem, as Economides finds, is that of 'value devaluation', in that the concept of lawyers as defenders of human rights and champions of justice, just does not resonate with lawyers today in the same way that it might have in the past. She writes:

> *"A basic problem confronting legal (and other) professions … is not that ideas of justice are absent from the legal world, indeed quite the opposite … we are almost overwhelmed by the ubiquity of the term "justice". We frequently use this word all the time, in every law court, in every law school, and practitioners use "justice", not simply as a term of art to determine liability but also to refer to a quite different set of ideas ranging from natural justice to the administration of justice. One of the by-products of this over-familiar usage is that we become, if not contemptuous, then almost immune to a deep engagement with that concept. Many lawyers have no meaningful relationship with the notion of justice, or even professionalism, perhaps because they are so much absorbed in their day-to-day lives – and this is true both of academic lawyers and practitioners –with the business of communicating and applying rules, or handling disputes and whatever other managerial pressures govern modern professionals, that there really isn't the time, space, energy or inclination for deep reflection on concepts such as justice"[1549].*

Economides' assertion that lawyers have lost their way and no longer have a "meaningful relationship with the notion of justice" because the term has been overused might seem like unfair criticism to level at lawyers in such general terms,

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[1547] Symposium: A Hippocratic Oath for Lawyers?, Legal Ethics, Vol 11, 2008, pp 41-66, p 47
[1548] *Ibid*
[1549] Symposium: A Hippocratic Oath for Lawyers?, Legal Ethics, Vol 11, 2008, pp 41-66, p 47

when many, regardless of their specialism, are acutely aware of the importance of human rights and the rule of law to their practice or academic area as recently demonstrated by the groundswell of immediate pro-bono support offered by solicitors, attorneys and barristers following the withdrawal of UK and US forces from Afghanistan in 2021 and the resulting exodus of displaced and at-risk Afghan lawyers, judges, military support personnel, translators and their families[1550]. Beyond pro-bono work, however, and excepting those who specialise already in human rights practice or education, it is worth measuring in future research whether law graduates feel any affinity with notions of 'justice' at the early, idealistic, and optimistic stage of their careers when they have not yet become 'jaded' by the gruelling realities of the legal profession. If – as Economides argues – "there really isn't the time, space, energy or inclination for deep reflection on concepts such as justice", this can only spell trouble for the legal profession overall, as lawyers disengaged from the concept of justice, rooted in rule of law and human rights, may inevitably become deficient in empathy as well as, she writes, in "courage and integrity"[1551]. It is my view, and a core recommendation of this thesis, that integrating HRET as part of the QLD (and international equivalents) would send the clearest signal possible both within the law school ecosystem and the legal profession overall that an inextricable part of *being* a lawyer, no matter the specialism that one goes into, is the responsibility to promote, defend and respect human rights and the rule of law.

Although I appreciate that this would entail seismic structural change to the law school curriculum, major reviews are already underway in many law schools focused on reforming the traditional law school model in the post-Covid competitive landscape, and in preparation for the 2030 SDG watershed. The timing, therefore, couldn't be more perfect if we are to have any hope of spurring cultural change within the legal profession / education continuum, and could be our best chance of normatively entrenching the 'gold standard' of meaningful engagement with human

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[1550] John Hyde, Lawyers co-ordinate effort to help Afghans desperate to escape, Law Gazette, 6 September 2021, Accessed at https://www.lawgazette.co.uk/news/lawyers-co-ordinate-effort-to-help-afghans-desperate-to-escape-/5109681.article; Max Mitchell, 'Lawyers Can Save Lives': As Afghanistan Reels, Attorneys Look to Help With Pro Bono Services, 24 August 2021, Accessed at https://www.law.com/thelegalintelligencer/2021/08/24/lawyers-can-save-lives-as-afghanistan-reels-attorneys-look-to-help-with-pro-bono-services/
[1551] Symposium: A Hippocratic Oath for Lawyers?, Legal Ethics, Vol 11, 2008, pp 41-66, p 47

rights knowledge, teaching, probono work and practice as the ultimate indicator of professional excellence.

8.3 HRET in the business school: Bringing business and human rights to life for future business leaders

As the subject of human rights is not even a mandatory module in the standard law degree, then the certainty of introducing HRET as a mandatory subject in STEM, humanities, or business programmes at either undergraduate or postgraduate / vocational training is slim, especially in disciplines where the links between the profession and its potential for adverse human rights impact are less obvious. However, this appears to be changing, largely due to the impetus created by the business and human rights ('BHR') movement and the landmark UN Guiding Principles on Business & Human Rights ('UNGPs') to go right to "the belly of the beast" and integrate BHR education into the business school curriculum[1552].

The BHR movement, as the term suggests, relates to the relationship, tension, and interdependence between business and human rights, and refers to the "roles and responsibilities of [business] actors with regard to human rights", to borrow the definition of the OHCHR which recognises the unprecedented reach and potential for transnational businesses to adversely impact human rights in jurisdictions which might be institutionally and legally weak[1553]. BHR has become a fast-growing area of legal practice and consultancy, and a flourishing research discipline in its own right[1554], situated at the intersection of the international human rights order, transnational commercial law (which "governs international commercial

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[1552] See Andrew Jack, Human rights climb the business school curriculum, The Financial Times, 6 September 2021, Accessed at https://www.ft.com/content/2a2ef5b5-fc65-456c-9248-b689e17f9cf0. The UNGPs were endorsed in June 2011 to "move CSR beyond voluntary requirements that allow corporations to self-define what they will be responsible for". Under a three-pillar 'Protect, Respect and Remedy' framework, the UNGPs call for businesses to "avoid infringing on the human rights of others and … address adverse human rights impacts with which they are involved".

[1553] OHCHR, OHCHR and business and human rights, Accessed at https://www.ohchr.org/en/business-and-human-rights

[1554] Jack, writing for The Financial Times, cites as examples of BHR becoming a flourishing research discipline, the Business and Human Rights Catalyst for BHR research and policy development at Alliance Manchester Business School, and the Global Network of Business Schools for Human Rights created by Alliance, NYU Stern, and the Geneva School of Economics and Management which has created a toolkit for BHR teaching in business schools – see Andrew Jack, Human rights climb the business school curriculum, The Financial Times, 6 September 2021, Accessed at https://www.ft.com/content/2a2ef5b5-fc65-456c-9248-b689e17f9cf0 and https://gbsn.org/gbsn-for-bhr/. Also see the Principles for Responsible Management Education (PRME) initiative of the UN Global Compact at https://www.unprme.org

transactions"[1555]), international trade (the import and export of goods, per the OECD[1556]), and globalisation[1557]. The BHR framework recognises that of all business models, transnational businesses are most likely to commit human rights violations simply because they operate in multiple markets, across numerous regulatory grey zones and legal jurisdictions where Rule of Law, legislative structure and democratic oversight is weak, whilst bribery and corruption are endemic. Global calls to integrate BHR teaching within MBA courses represent a fundamental shift from the 'profit over purpose' and 'profit over people' ethos that has dominated business school culture for decades. With most corporations now wealthier and more powerful than the states in which they operate, per Nolen, transnational business operations more than any other business structure typically engage a broad spectrum of rights that can be potentially adversely impacted and violated by the failure of corporate actors to respect human rights in their business operations, including "rights to work, welfare, food and shelter, health and education, to freedoms involving speech, association and movement"[1558].

Although the BHR movement is considered in more depth in the following, and final, chapter on *Human Rights at Work*, it is relevant here to acknowledge that global calls for the inclusion of BHR teaching in the business school curriculum are growing[1559], and stem from civil society-led BHR discourse on ways of effectively ensuring implementation and mainstreaming of BHR values, principles and practice. As McPhail has written, there is growing recognition that "the role that business plays in society is changing rapidly and yet most of the teaching at business schools, the breeding ground for our future leaders, is based on out-of-date thinking from the 60s and 70s"[1560]. Human rights, he finds, is "a subject which receives little, if any,

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[1555] Roy Goode, Herbert Kronke, and Ewan McKendrick, Transnational Commercial Law – Texts, Cases, and Materials, Oxford University Press 2015, p lxv
[1556] OECD, Glossary of Statistical Terms - International Trade, Accessed at https://stats.oecd.org/glossary/detail.asp?ID=1405
[1557] Globalisation is defined by the OECD as "increasing internationalisation of markets for goods and services, the means of production, financial systems, competition, corporations, technology and industries … giv[ing] rise to increased mobility of capital, faster propagation of technological innovations and an increasing interdependency and uniformity of national markets" – see OECD, Glossary of Statistical Terms - Globalisation, Accessed at https://stats.oecd.org/glossary/detail.asp?ID=1121
[1558] Justine Nolan, Business and Human Rights in Context, In Business and human rights: From principles to practice, Routledge 2016, p 3
[1559] Andrew Jack, Human rights climb the business school curriculum, The Financial Times, 6 September 2021, Accessed at https://www.ft.com/content/2a2ef5b5-fc65-456c-9248-b689e17f9cf0
[1560] Ken McPhail, Human rights should be on the MBA curriculum, Financial Times, 20 February 2017, Accessed at https://www.ft.com/content/21f1fa54-8aa1-11e3-9465-00144feab7de

teaching in the classroom", where free market thinking still "forms the basis of much of the theory currently taught"[1561].

There is growing recognition that human rights and their social, geopolitical, environmental, technological and ethical dimensions are no longer the exclusive concern of the state, but a responsibility shared between governments and global corporations[1562]. Equally, universities recognise that BHR and sustainability belongs as much in the business school curriculum as they do in the law school's course offering, largely thanks to the research and advocacy of prominent academics who have attained 'rock star' status in the BHR community. In very recent years, as the FT reported in September 2021, "business and human rights as an area of research and teaching in business schools has expanded significantly, taking in topics as diverse as outsourcing, land rights and privacy. Academics cite a focus on migrant workers' conditions in the Gulf, cobalt mining in the Democratic Republic of Congo and the responsibilities of Facebook around disinformation in social media"[1563]. Further, business schools are being more consistently and rigorously challenged to revise and rethink their curricula so that it more acutely addresses changing skills needs and directly considers the many salient issues confronting both business and global society, in nearly every region of the world – among them, climate change, labour rights and forced labour, migration and the refugee crisis, food security and water scarcity, gender equality, diversity and inclusion, global health, the future of work, peace and security, and youth empowerment[1564].

MBA programmes – where tomorrow's 'activist CEOs' and corporate human rights defenders are made – have long been criticised for misplaced prestige[1565], for being "intellectually fraudulent places, fostering a culture of short-termism and greed", as Parker writes[1566]; overpromising but underserving the private sector, failing to impart

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[1561] *Ibid*
[1562] Dorothee Baumann-Pauly and Michael Posner, Doing Business in the 21st Century: The Relevance of Human Rights for Companies, In Business and human rights: From principles to practice, Routledge 2016, p 11
[1563] Andrew Jack, Human rights climb the business school curriculum, 6 September 2021, Accessed at https://www.ft.com/content/2a2ef5b5-fc65-456c-9248-b689e17f9cf0
[1564] This is a non-exhaustive list of challenges to business and society based on and building upon the UN's 22 identified Global Issues - see https://www.un.org/en/global-issues. Many of these issues are replicated in the 17 Sustainable Development Goals - see https://sdgs.un.org
[1565] Warren Bennis and James O'Toole, How Business Schools Lost Their Way, Harvard Business Review, May 2005, Accessed at https://hbr.org/2005/05/how-business-schools-lost-their-way
[1566] Martin Parker, Why we should bulldoze the business school, The Guardian, 27 April 2018, Accessed at https://www.theguardian.com/news/2018/apr/27/bulldoze-the-business-school

the skills people need to compete in the global economy (whilst failing to instil "norms of ethical behaviour"[1567]), and prioritising a culture of profit at any cost to the planet and to people in adherence to the 'Friedman doctrine'[1568]. Datar has also highlighted the failure of MBA programmes to provide learners with the "heightened cultural awareness and global perspectives" they need to compete in the global economy, with graduates of MBA programmes emerging from business schools without adequate leadership skills or essential soft skills, especially creative and critical thinking[1569]. As the Global Business School Network has recognised, there is clear alignment between human rights and the development of 21st century skills ("critical thinking, cultural awareness, and learning agility"[1570]).

Recognising that businesses leave themselves vulnerable to devastating financial, reputational, and existential risk through failure to address human rights issues in their global business operations, there is a strong argument to be made that business graduates must be equipped with BHR intelligence at the outset of their leadership journey – while they are still in business school – and before they embark on "increasingly complex organisations and careers"[1571]. Without this training, we encounter the risk that future CEOs and industry leaders with significant sway over political policy and discourse will enter the economic world entirely unprepared to deal with the significant human rights challenges that can very rapidly upend a major transnational corporation in the social media age. As Wettstein notes:

> *"… [t]he vast majority of corporate executives simply aren't very good at understanding the various nuances of human rights controversies. As a result, they are unlikely to be effective as vocal critiques of general human rights conditions in their host countries. For multinational corporations, actions speak louder than words … achieving purpose in business requires business leaders with a professional identity, that is, leaders with a sense of purpose …*

[1567] Warren Bennis and James O'Toole, How Business Schools Lost Their Way, Harvard Business Review, May 2005, Accessed at https://hbr.org/2005/05/how-business-schools-lost-their-way

[1568] Milton Friedman's 'The Social Responsibility of Business is to Increase its Profits' in 1970 advanced the now-dominant view that in a 'free' global economy, the only 'social responsibility' a business bears is to be as profitable as possible – see Milton Friedman, The Social Responsibility Of Business Is to Increase Its Profits, The New York Times, 13 September 1970, Accessed at https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html

[1569] Srikant M Datar, David A Garvin, and Patrick Cullen, Rethinking the MBA: Business Education at a Crossroads, Journal of Management Development, Vol 30 No 5 (2011), pp 451–462, 451

[1570] Global Business School Network, The Case for Human Rights in Business Education – A Tool Kit, November 2020, p 7, Accessed at https://gcbhr.org/backoffice/resources/toolkit.pdf

[1571] Srikant M Datar, David A Garvin, and Patrick Cullen, Rethinking the MBA: Business Education at a Crossroads, Journal of Management Development, Vol 30 No 5 (2011), pp 451–462, p 451

> *[w]e, as scholars and teachers, can make our biggest contributions through fostering and promoting such professional identities in our MBA classrooms"*[1572].

Thus far, as Waddock finds, "few businesses or b-schools are as yet making the necessary transformation that could stop the destructive impacts of today's dominant narrative of neoliberalism"[1573]. The Covid-19 crisis has lent added urgency to the need for business schools to fundamentally rethink their purpose, their value proposition, their positioning, and programme design in order to stay competitive and relevant[1574]. Baumann-Pauly has warned business schools against the temptation to simply 'tack on' HRET to existing programmes, suggesting instead that BHR education should become "the new way of teaching to create value for business and society. We don't just want to produce UN employees but those who will work in business and take on the human rights challenge"[1575]. Most of all, business schools recognise the need to "meet the grand challenges of the era", per Waddock, by "changing the economics paradigm that informs both business practice and business / management education"[1576]. Paradigms, she writes, "shape narratives. Changing core narratives is a powerful level for transformation … [a] new/next economics paradigm is needed that shifts away from an emphasis on only financial wealth and constant economic growth on a finite plant towards life-centred economies that foster wellbeing and flourishing for all"[1577]. Waddock envisages a future for business education based on "collaboration and competition, stewardship of the whole system, a cosmopolitan to local sensibility, and recognition of humanity's deep embeddedness and connection with other people, other beings, and nature"[1578], which is a clear call for business schools to take a more holistic, human-centred, skills-based approach to shaping future leaders, from the earliest stages of their leadership journey, and instilling within them the human-centred values and principles that underpin the business and human rights movement and the broader

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[1572] Florian Wettstein, CSR and the Debate on Business and Human Rights: Bridging the Great Divide, Business Ethics Quarterly, Vol 22 No 4 (October 2012), pp 739-770, p 760
[1573] Sandra Waddock, Will Businesses and Business Schools Meet the Grand Challenges of the Era?, Sustainability 2020, Vol 12, p 2
[1574] Srikant M Datar, David A Garvin, and Patrick Cullen, Rethinking the MBA: Business Education at a Crossroads, Journal of Management Development, Vol 30, No 5 (2011), pp 451–462, p 452
[1575] Andrew Jack, Human rights climb the business school curriculum, 6 September 2021, Accessed at https://www.ft.com/content/2a2ef5b5-fc65-456c-9248-b689e17f9cf0
[1576] Sandra Waddock, Will Businesses and Business Schools Meet the Grand Challenges of the Era?, Sustainability 2020, Vol 12, p 1
[1577] *Ibid*
[1578] *Ibid*

sustainability commitment – humility, empathy, fairness, equality, and respect for human dignity. To do otherwise would constitute a continued failure to recognise "humanity's deep embeddedness and connection with other people, other beings, and nature"[1579], and risk leaving the next generation of business leaders poorly equipped to deal with the wide spectrum of human rights challenges that they will almost certainly encounter in their future leadership.

8.4 Learning *for* human rights: The future of HRET is dialogic

Before the pandemic, human rights in education technology ("edtech")[1580] was vastly underdeveloped, although there were several notable (but isolated) digital projects and initiatives creating valuable momentum for HRET as 'human rights education technology', much of it created by academics or as a result of university / private sector collaboration, and typically contributing to the open access MOOC phenomenon, in which HRET has been vastly underrepresented in the global education offering online according to the Global Campus of Human Rights[1581], and which involves, as Mayersen put it, 'adopting a transformative human rights education methodology in an online educational space'[1582]. One example is Harvard's EdX MOOC platform which has, for over a decade, hosted a growing catalogue of human rights courses from the world's most respected universities, among them 'Asylum and Refugee Law', 'International Humanitarian Law', 'Rule of Law and Democracy in Europe', and 'Human Rights, Human Wrongs: Challenging Poverty, Vulnerability and Social Exclusion'[1583]. The Global Campus of Human Rights maintains a growing library of live and on-demand MOOCs, on 'Scientific Freedom and Responsibility', 'Social and Economic Justice through Human Rights', 'Children's Rights and Technology in the Digital Age', 'Citizenship and Human Rights

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[1579] *Ibid*

[1580] Education technology refers to the "effective use of technological tools for learning" and as a sector, 'incorporates a range of arenas including: e-learning, infrastructure, devices, apps, curriculum platforms, e-assessment, mobile learning, digital skills, massive open online courses, collaboration tools, classroom management, digital learning, student monitoring systems, digital making and badging, professional learning, adult basic education, exam preparation, career planning, coaching, tutoring, games for learning, informal learning, corporate learning and much more": London & Partners, Edtech: London capital for learning technology (2015), Accessed at http://www.ednfoundation.org/wp-content/uploads/EdtechUK_LP_report.pdf

[1581] Global Campus of Human Rights, MOOC on Citizenship and Human Rights Education for Change, Accessed at https://gchumanrights.org/news-events/latest-news/news-detail-page/mooc-on-citizenship-and-human-rights-education-for-change.html

[1582] Deborah Mayersen, Teaching Human Rights Online: An Open Access Approach, International Journal of Human Rights Education 2018, Vol 2 Issue 1, Retrieved from https://repository.usfca.edu/ijhre/vol2/iss1/16

[1583] edX Law Courses, Accessed at https://www.edx.org/learn/law

Education for Change', and 'Disability as a human rights issue: global and national perspectives'[1584]. In April 2020, the UN Institute for Training and Research ("UNITAR") and microlearning platform EdApp announced the 'Educate All' global learning initiative, "designed to democratise and increase access to free, high-quality adult education", with free access to courses on sustainability, leadership, and business[1585]. Regionally, institutions such as the EU and the Council of Europe, to give just two examples, already host several programmes aimed at encouraging developers, entrepreneurs, and tech innovators to use open data and technology to create new apps, projects and platforms that will support the promotion of democracy, citizenship, and human rights[1586].

Edtech has long revolutionised education for the world's refugee and displaced populations, making education available and accessible to some of the world's most vulnerable people in an agile, on-demand way[1587]. Edtech can offer refugees living in camps temporary escape from the physical, physiological, and psychological or cognitive effects of their traumatic experiences, "particularly damaging when experienced during the sensitive periods of brain development", per Teicher[1588]. Edtech can similarly deliver much-needed hope to resettling or asylum-seeking refugees once they arrive in their host countries and anticipate a better life, or what Kant called the "unexpected offering of the prospect of immeasurable good fortune"[1589], and the opportunity to actively ready themselves for the hope, safety, and community that might await them in new schools, workplaces, and vocations. In fragile states, where learning is "essential for conflict-resolution, peace-building and development", education for refugee populations can be considered a "humanitarian

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[1584] Global Campus of Human Rights, Ongoing MOOCs, Accessed at https://gchumanrights.org/education/e-learning/moocs.html
[1585] UNITAR, UNITAR and EdApp announce 'Educate All' to mobilise access to free, adult educational courses, 21 April 2020, Accessed at https://unitar.org/about/news-stories/press/unitar-and-edapp-announce-educate-all-mobilize-access-free-adult-educational-courses
[1586] Data Europa EU, Open Data and Entrepreneurship, 28 February 2018, accessed at https://data.europa.eu/en/highlights/open-data-and-entrepreneurship; open data and legal education technology was the subject of a final year LLB dissertation that this researcher authored for her Qualifying Law Degree at the University of the West of England in 2016, and as part of her research, she attended a major conference at the European Commission in February 2016 on open access to EU legal materials to promote data-driven enterprise and innovation, apps, and platforms using open data and benefiting rule of law and democratic engagement.
[1587] UNICEF, How EdTech plus teachers are breaking down language barriers for refugee and migrant children in Greece, 04 December 2020, Accessed at https://www.unicef-irc.org/article/2075-how-edtech-plus-teachers-are-breaking-down-language-barriers-for-refugee-and-migrant-children-in-greece.html
[1588] UNICEF Global Education Monitoring Report Team, Education as healing: Addressing the trauma of displacement through social and emotional learning, Policy Paper 38, 2019, p 1
[1589] Immanuel Kant, Anthropology, Accessed at https://plato.stanford.edu/entries/hope/#ImmaKant

response", per Moser-Mercer, and "the most promising prospect for bettering their lives and for improving their livelihoods"[1590]. As such, digital refugee education for adults typically includes languages, civic integration, and employability skills[1591], whereas for children, the emphasis is on "transformations from rote, discipline-centred to learner-centred approaches" and constructing what Maber has called a "creative alternative space of becoming" where identity can be reconstructed and children living with 'unknowable' futures can look to "creating … rather than simply inheriting" those futures[1592].

Although literature on HRET is predominantly focused in its application and implementation through formal education systems, some of the most transformational education is happening *outside* of formal education, powered by technology and led by NGOs, activist groups, progressive media outlets, and individual campaigners. As Coysh notes, the "key sites of human rights education are the informal community spaces created by NGOs to 'educate' adults. Historically spaces of political resistance, these sites of struggle become critical interfaces between the global and local institutions and society where power is exercised and social relations can be determined"[1593]. Technology has helped NGOs and human rights educators to, at the same time, both localise and internationalise human rights learning among some of the world's most vulnerable people. During the pandemic, it also filled an access gap for people working in, around and with human rights, helping human rights defenders to keep up efforts to raise awareness of human rights challenges and opportunities to engage with HRET through successive lockdowns, during which we saw a marked increase in institutions using Zoom and other video / virtual conferencing technologies to host peer learning webinars designed to keep dialogue flowing in the absence of in-person conferences and seminars. These virtual events were able to attract far more diverse speakers and participants in-person events pre-pandemic, where visa restrictions and the cost of

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[1590] Barbara Moser-Mercer, MOOCs in fragile contexts, European MOOCs Stakeholders Summit 2014, p 115

[1591] Elizabeth Colucci, Hanne Smidt, Axelle Devaux, Charalambos Vrasidas, Malaz Safarjalani and Jonatan Castaño Muñoz, Free Digital Learning Opportunities for Migrants and Refugees: An Analysis of Current Initiatives and Recommendations for their Further Use, JRC Science for Policy Report 2017, p 12

[1592] Sarah Dryden-Peterson, Refugee education: Education for an unknowable future, Curriculum Inquiry, Vol 47, Issue 1 2017, pp 14-24, p 21-22, citing EJT Maber, Cross-border transitions: Navigating conflict and political change through community education practices in Myanmar and the Thai border, in Globalisation, Societies and Education, Vol 14 (2016), pp 374-389

[1593] Joanne Coysh, The Dominant Discourse of Human Rights Education: A Critique, Journal of Human Rights Practice, Vol 6 No 1, March 2014, pp 89 – 114, p 91

travel and accommodation often prohibited grassroots organisations and academics from taking part[1594]. Virtual events and remote learning made it possible for human rights defenders with internet access to engage with peers all over the world and for facilitators of HRET to deliver courses online to new and far more diverse audiences, so that learners *beyond* the hyper-professionalised human rights bubble in Geneva were able to access HRET as offered by international human rights institutions and by civil society organisations that were remarkably adept at transitioning to virtual only events and advocacy in response to the urgency of needing to stay relevant and visible in order to ensure that commitments to funders and causes equally continued to be met.

As Roda and Perry have argued, there is a clear need for a framework for digital HRET "as a tool that accompanies, rather than replaces, the face-to-face learning we consider a cornerstone for the development of critical thinking", one which can help course designers "identify the conditions under which online learning is more likely to be successful"[1595]. In non-formal education settings, the flexibility and agility of digital learning caters well for learners who are engaging in HRET not because they want a degree or a vocational / professional qualification in human rights, but to satisfy an innate interest and keenness for knowledge. As we have already identified that legal materials and concepts can be dense and elephantine, 'stackable' microlearning is a 'one bite at a time' approach to 'eating the elephant', microlearning being defined by Dolasinski as "an approach that focuses on a single concept, utilizing multisensory and multimodality in a focused short amount of time"[1596]. In stackable learning models, micro-learners undertake a progressive series of bite-sized courses that

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[1594] In various consultancy roles over the last two years, organising virtual seminars and training sessions for NGO clients on the rule of law, business and human rights, freedom of expression and assembly, digital authoritarianism, and judicial independence (with a focus on Asia and the Middle East), I have personally observed that virtual events held during the Covid-19 pandemic attracted exceptionally high attendance from international practitioners and researchers. Although there are of course limitations to social interaction and the ability to decipher all-important social cues in a virtual environment, video conferencing technologies have made human rights events and training opportunities available to brand new, diverse and truly global audiences in unprecedented ways and these global perspectives deeply enrich event proceedings and outcomes. This is a view shared by many of my professional contemporaries and other consultants who also work in human rights events, communications and programme design, and the common assumption is that virtual and hybrid training and events are here to stay.

[1595] Roda and Perry have recommended that digitised distance learning be "re-tooled to enhance attention and intellectual engagement, ensure access anywhere in the world, adapt to students' diverse social and economic contexts and take into account that not all students have the required digital capital to master distance learning" – see Claudia Roda and Susan Perry, Learning in Lockdown: Teaching Human Rights Practice During the COVID-19 pandemic, Journal of Human Rights Practice, Vol 13, Issue 3, November 2021, pp 690–702, p 700

[1596] Mary Jo Dolasinski and Joel Reynolds, Microlearning: A new learning model, Journal of Hospitality & Tourism Research, Vol 44, Issue 3, pp 551-561, p 551

ultimately add up to a complete subject or module which they can undertake at their own pace, learning one concept, rule, principle or right at a time that, once 'passed', moves the learner on to the next level. In my view, the microlearning model, already commonly used in workplace learning and estimated to be 18% more effective as a teaching method than "lengthy and tedious" traditional teaching methods[1597], could well improve the accessibility and engagement of non-lawyer learners with HRET.

Digital learning could also herald a new, dialogic approach to HRET which has been largely absent in primarily didactic HRET pedagogies of the past. Because HRET is, as Norlander notes, typically "government-sponsored" and therefore "subject to serious limitations"[1598], both in terms of its content and in its delivery, HRET has "long been based on an authoritarian model, where an expert conveys information to students rather than engaging co-learners in participatory exercises"[1599]. In Simpson's analysis, "curriculum and the pedagogical techniques reduce or reinforce authoritarianism through emphasising didactic and rote learning"[1600]; for this reason, Norlander writes, the didactic teaching method when used for HRET "runs the risk of feeling imposed from the top, where rights are granted rather than developed and experienced collectively"[1601]. In other words, HRET delivered didactically reinforces – even unintentionally – the outdated and harmful narrative that as human rights are granted by the state (or other powerful authority or entity) they can be withdrawn at the whim of the state in question, or that human rights only mean what the state (or the educator) intends for them to mean. Using an 'authoritarian' method to teach content and concepts that are highly critical of authoritarianism and its adverse effect on human rights is counterintuitive and inherently confusing to learners; as Roberts notes in his analysis of Freirean pedagogy, authoritarian teaching "forms part of a wider oppressive social system, where the interests of some groups are favoured over others"[1602].

[1597] *Ibid*, p 551-552; also see GS Mohammed, K Wakil and SS Nawroly, The effectiveness of microlearning to improve students' learning ability, International Journal of Educational Research Review 2018, Vol 3 Issue 3, pp 32-38

[1598] Rebecca Joy Norlander, A Digital Approach to Human Rights Education?, Peace Review 2012, Vol 24 Issue 1, pp 70-77, p 71

[1599] *Ibid*, p 71

[1600] Miles Simpson, Authoritarianism and Education: A Comparative Approach, Sociometry, March 1972, Vol 35 No 2 (March 1972), pp 223-234, p 230

[1601] Rebecca Joy Norlander, A Digital Approach to Human Rights Education?, Peace Review 2012, Vol 24 Issue 1, pp 70-77, p 71

[1602] Peter Roberts, Paulo Freire, Oxford Research Encyclopaedias, 29 March 2017, Accessed at https://oxfordre.com/education/view/10.1093/acrefore/9780190264093.001.0001/acrefore-9780190264093-e-10

Didactic teaching, as a top-down, one-way teaching method, is a fixed, hierarchical, and entirely outdated style that Freire described as 'monologic' and which recognises and values only the flow of knowledge from teacher to student, from the powerful to the powerless, or from the learned to the learner, with limited interactivity or exchange of experiences or knowledge between teacher and student[1603]. If the flow of knowledge originates solely with those who are, as Freire put it, "too certain of their certainties", then learning is limited for both the educator and their students[1604]. In Roberts' analysis of Freirean pedagogy, Freire saw this as the 'banking' concept of education as an 'instrument of oppression'[1605], or "a one-way, monological process of transmission from a teacher to students", with students "expected to listen passively and to receive and accept the content of the teacher's narration without question", and where knowledge and learning is merely "a gift possessed by teachers, to be bestowed upon – banked into – ignorant students"[1606].

By contrast, dialogic teaching ("the essence of education as the practice of freedom", per Freire[1607]) humanises education by placing greater emphasis on respect for the autonomy, expression, creativity, and contributions of learners, and less emphasis on the knowledge, power, authority, or position of the teacher. Freire, the founder of critical pedagogy who favoured a "critical, problem-posing, dialogical approach to teaching and learning"[1608], advanced "an ideal of humanisation through transformative reflection and action, and stresse[d] the importance of developing key epistemological, ethical, and educational virtues, such as openness, humility, tolerance, attentiveness, rigor, and political commitment"[1609] – all values that are intrinsic to HRET. Freire, a lawyer by training before becoming an educationist,

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[1603] Léon-Henri provides an excellent comparison of didactics and pedagogy as follows: "While didactics is a discipline that is essentially concerned with the science of teaching and instruction for any given field of study, pedagogy is focused more specifically on the strategies, methods and various techniques associated with teaching and instruction". In addition, "didactics is teacher-centered and based on the sum of theoretical knowledge and practical experience. In comparison, pedagogy is learner-centred, since the teaching must be adapted to respond to the complexity of student needs." - See Dana Di Pardo Léon-Henri, What is the Difference between Didactics and Pedagogy?, Reflective Teaching Journal, Accessed at https://reflectiveteachingjournal.com/difference-between-didactics-and-pedagogy/
[1604] Paulo Freire, Pedagogy of the heart, Continuum 1977
[1605] Paulo Freire, Pedagogy of the oppressed, Continuum 1972, p 71
[1606] Peter Roberts, Paulo Freire, Oxford Research Encyclopedias, 29 March 2017, Accessed at https://oxfordre.com/education/view/10.1093/acrefore/9780190264093.001.0001/acrefore-9780190264093-e-10
[1607] Paulo Freire, Pedagogy of the oppressed, Continuum 1972, p 87
[1608] Peter Roberts, Paulo Freire, Oxford Research Encyclopedias, 29 March 2017, Accessed at https://oxfordre.com/education/view/10.1093/acrefore/9780190264093.001.0001/acrefore-9780190264093-e-10
[1609] *Ibid*

believed that exploring the "connection to the lived realities of learners" was more important than the subject matter itself, with the concept of humanisation[1610] underpinning Freire's work, and as Roberts put it, "linking the different elements of his philosophy, politics, and pedagogy together"[1611].

Humanisation as Freire explains in *Pedagogy of the Oppressed* is the "process of becoming more fully human, [with] both ontological and historical dimensions ... ontological because it is essential to what it means to be human"[1612]. For Freire, humanisation is our "universal human ethic"[1613] and "the people's vocation"[1614], "something we are all meant to pursue ... in a social context; it is pursued not in isolation, or merely as an intellectual process, but through our actions, with others, in the world"[1615]. Dialogue, for Freire, was constituted of two components: "reflection and action, in such radical interaction that if one is sacrificed – even in part – the other immediately suffers"[1616]. In Freirean pedagogy dialogue is also a means of challenging the "neoliberal fatalism" that he feared was becoming dominant at the turn of the century. This fatalism, he wrote, was "informed by the ethics of the market, an ethics in which a minority makes most profits against the lives of the majority. In other words, those who cannot compete, die. This is a perverse ethics," he concluded, "that, in fact, lacks ethics"[1617].

Dialogic education is not merely engaging a student in dialogue, as Freire wrote, so that the student can follow instructions or as "a mere tactic to involve students in a particular task"; rather, dialogue is "an indispensable component of the process of both learning and knowing", because it facilitates what he called "the *social* and *not merely the individualistic* character of the *process of knowing*"[1618]. The social character of knowing can be linked with social learning theory, in which learners –

[1610] Per Roberts, Freire's concept of humanisation was greatly influenced by Hegel, Marx, Husserl, Erich Fromm, the Frankfurt School of critical theory, and "elements of existentialist thought" – *Ibid*
[1611] *Ibid*
[1612] *Ibid*
[1613] Paulo Freire, Pedagogy of freedom: Ethics, democracy, and civic courage, Rowman and Littlefield 1998
[1614] Conversely: "Dehumanization, which marks not only those whose humanity has been stolen, but also (though in a different way) those who have stolen it, is a distortion of the vocation of becoming more fully human." – Paulo Freire, Pedagogy of the oppressed, Continuum 1972, p 43-44
[1615] Peter Roberts, Paulo Freire, Oxford Research Encyclopedias, 29 March 2017, Accessed at https://oxfordre.com/education/view/10.1093/acrefore/9780190264093.001.0001/acrefore-9780190264093-e-10
[1616] Paulo Freire, Pedagogy of the oppressed, Continuum 1972, p 87
[1617] Paulo Freire and Donaldo Macedo, Ideology Matters, Rowman & Littlefield 1999
[1618] Paulo Freire and Donaldo Macedo, A Dialogue: Culture, Language, and Race, in Harvard Educational Review 1995, Vol 65 No 3, p 379

according to Bandura – are "neither driven by inner forces nor buffeted helplessly by environmental influences" but are instead influenced by "a continuous reciprocal interaction between behaviour and its controlling conditions", with "special emphasis on the important role played by vicarious, symbolic, and self-regulatory processes"[1619]. Social learning in the digital space happens at the interface between the learner and learning technology, and relies upon reciprocal interaction between learner behaviour and increasingly intelligent technologies that both manipulate and articulate human behaviours, influencing learners' choices and their cognitive and psychological functioning. Learning technologies, still in their relative infancy when Bandura's *Social Learning Theory* was published in 1971, have evolved so rapidly in the post-digital age and to such an omnipotent and manifestly all-consuming extent that these technologies have replaced much of our psychological functioning, clouded much of our cognitive clarity, legitimised biases, and compromised our ability to make decisions that have not already been made for us by algorithms, which are – as Günther and Kasirzadeh note – designed by AI researchers, based on Machine Learning[1620], and riddled with implicit 'algorithm bias' which describes "systematic and repeatable errors in a computer system that create unfair outcomes, such as privileging one arbitrary group of users over others [and] when an algorithm produces results that are systemically prejudiced due to erroneous assumptions in the machine learning process"[1621]. So intense is the problem of algorithm bias in the social media age that it has given rise to a new area of interdisciplinary research, algorithmic justice, which in the definition of the Berkman Klein Center for Internet & Society at Harvard, "explores ways in which government institutions incorporate artificial intelligence, algorithms, and machine learning technologies into their decision-making"[1622].

[1619] Albert Bandura, Social Learning Theory, General Learning Corporation 1971, p 2, accessed at http://www.asecib.ase.ro/mps/Bandura_SocialLearningTheory.pdf

[1620] As Günther and Kasirzadeh write: "Machine Learning (ML) algorithms do not encode a set of specific rules designed by the programmer to solve a class of problems. Rather such algorithms learn hidden patterns and structures from observed data about how to perform the task at hand, and then show some success in making accurate predictions of unobserved data in some domains." - see Mario Günther & Atoosa Kasirzadeh, Algorithmic and human decision making: for a double standard of transparency, AI & Society 2021, p 1

[1621] 'Implicit bias' has been defined as "bias that results from the tendency to process information based on unconscious associations and feelings, even when these are contrary to one's conscious or declared beliefs" – see 'Algorithm Bias' on Florida State University Libraries Research Guides and Safiya Noble: Challenging the Algorithms of Oppression (15 June 2016, YouTube), Accessed at https://guides.lib.fsu.edu/algorithm

[1622] Berkman Klein Center for Internet & Society at Harvard University, 'AI: Algorithms and Justice', Accessed at https://cyber.harvard.edu/projects/ai-algorithms-and-justice

Dialogic education might seem a natural fit for the digital world, given how manifestly reliant social media, video conferencing and edtech platforms are on dialogue, two-way interaction, and communication. It is also, certainly, a natural fit for HRET. To Wegerif, dialogic education is the "logic of the internet age"[1623], "a disruptive technology for education"[1624], and a "new logic of education … and characterises education as learning to learn, think and thrive in the context of working with multiple perspectives and ultimate uncertainty"[1625]. Wegerif makes a clear link between dialogic education and emotional intelligence, which, as we have already established earlier in this thesis and throughout the education-related chapters, is integral to the ability to meaningfully absorb and actively apply HRET. There is also an inherent link between global dialogue and global citizenship, with education technology as creator of "dialogic spaces and consciousness"[1626]. For Wegerif, dialogic education is about "develop[ing] a new understanding of education that holds the potential to transform educational policy and pedagogy in order to meet the realities of the digital age"[1627].

In his analysis of Freirean pedagogy, Wegerif recalls that education, in Freire's 'banking model', is about "oppressing people through manipulation in which the words and meanings of the oppressors are inserted into the heads of the oppressed"[1628]. Dialogic education, on the other hand, is rooted in "empowering the oppressed to speak their own words and so to name the world in their own way"[1629], through what Oakeshott called "the conversation of mankind … the appropriate image of human intercourse, appropriate because it recognises the qualities, the diversities, and the proper relationships of human utterances"[1630], with 'dialogue' firmly linked by Habermas with finding consensus and achieving common understandings between peoples and recognised as a central concept in Vygotsky's

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[1623] Rupert Wegerif, Dialogic: Education for the Internet Age, Routledge 2013, p 1
[1624] *Ibid*, p 3
[1625] *Ibid*, Abstract
[1626] *Ibid*
[1627] *Ibid*
[1628] *Ibid*, p 25
[1629] *Ibid*
[1630] On the interface between civilisation and conversation, Oakshott wrote: "As civilized human beings, we are the inheritors, neither of an inquiry about ourselves and the world, nor of an accumulating body of information, but of a conversation, begun in the primeval forests and extended and made more articulate in the course of centuries. It is a conversation which goes on both in public and within each of ourselves" – see Michael Oakeshott, The voice of poetry in the conversation of mankind: An essay, Bowes & Bowes 1959, also cited in Richard Rorty, Philosophy and the Mirror of Nature, Princeton University Press 1979, p 264

theory of cognitive development[1631]. In *Pedagogy of the Oppressed*, as Wegerif notes, Freire offered "three key elements that can contribute to an understanding of dialogic education: first, the importance of starting with the lived experience of students; secondly, the idea that dialogic education is about making a real difference in the world through empowerment or giving a voice to those initially without a voice and finally the importance of genuine respect and collaboration between educator and student so that meaning can be co-constructed rather than imposed"[1632]. Fundamentally, writes Wegerif: "In dialogic education it is not always possible to say who is learning and who is teaching"[1633]. Dialogic learning spaces can therefore be imagined as safe spaces, vessels for what Mihalyi Csıkszentmihalyi called the 'flow state', which occurs when the learner as creator becomes so deeply enmeshed within their activity that they lose all concept of time, that special space where real, lasting, meaningful, numinous learning happens[1634].

Human rights values are manifestly modelled in this equality between educator and learner, realised when interaction is based on 'equal difference', which Becker defines as a situation in which both are "defined as someone – unique, dignified and irreplaceable", both equally able to "disrupt, deconstruct and re-imagine" the traditional relationship between educator and learner, and between Self and Other[1635]. Dialogic education rooted in difference is altogether a more egalitarian, meritocratic, dignified, and inclusive teaching model than the monologic, print-based model, one which respects agency and identity, counters narratives that seek to 'Other' and make those who are different 'sub-human', and allows for creative thinking, as Wegerif notes, to be "augmented" and globalised[1636]. All of these conditions are cumulatively the perfect incubator for a future of HRET that is inclusive, impact-driven, and transformative in its impact and its potential to resonate

[1631] Rocío García-Carrión, Garazi López de Aguileta, Maria Padrós and Mimar Ramis-Salas, Implications for Social Impact of Dialogic Teaching and Learning, Frontiers in Psychology, 05 February 2020, https://doi.org/10.3389/fpsyg.2020.00140

[1632] Rupert Wegerif, Dialogic: Education for the Internet Age, Routledge 2013, p 25

[1633] Rupert Wegerif, Dialogic: Education for the Internet Age, Routledge 2013, p 31

[1634] Dimitri van der Linden, Mattie Tops and Arnold B Bakker, The Neuroscience of the Flow State: Involvement of the Locus Coeruleus Norepinephrine System, Frontiers in Psychology, 14 April 2021, Accessed at https://www.frontiersin.org/articles/10.3389/fpsyg.2021.645498/full#B12, citing Mihalyi Csikszentmihalyi, Flow: The Psychology of Optimal Experience, Harper and Row 1990

[1635] Josephine Annie Becker, Curriculum and intra-dialogic spaces: consciousness and becoming in identity construction based on human rights values, Boloka Institutional Repository (PhD thesis), May 2013, Accessed at http://repository.nwu.ac.za/handle/10394/8791

[1636] Rupert Wegerif, Dialogic: Education for the Internet Age, Routledge 2013, p 74

with diverse, mainstream audiences. However, the know-how for creating and practically implementing a future culture of HRET based on an empowerment-focused and pedagogically-sound curriculum that is dialogic, interdisciplinary, and driven to deliver positive social impact is largely underexplored in existing literature (and so is identified here as an area for future research post-PhD and directly linked to Principle 3 in the R*b*D Framework on human rights education as transformative, empowering lifelong education)[1637].

8.5 Conclusion

For human rights educators who are experienced in teaching HRET in extreme situations, in conflict or reconstruction zones, or in environments where HRET is considered subversive and an aggressive affront to national security, technology has always played a significant role in the delivery of HRET. Digital education technology expands the breadth and reach of HRET outside of the formal education system, which is vital for the growth of HRET given how much of formal education is state-sponsored and therefore subject to interference and censorship. As Bajaj has noted, there has been an emphasis in previous HRET models on the "nation-state as determinant of the type of HRE[T] adopted", but the technology is now so widely and openly available that "NGOs, education entrepreneurs and activists can now, thanks to education technology and the power of immersive tech, do their own thing and bypass the nation state entirely"[1638].

For this to happen, technology will need to become more intuitive to enable learners to flex their human skills, and more dialogic, because that is where real, lasting learning happens. The internet might well be "disrupting democracies" and "destabilising dictatorships"[1639], but it is also capable of facilitating unprecedented amplification of human rights learning and scalability for human rights teaching, in that one online course delivered on an open, on-demand basis could potentially

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[1637] As a starting point, see Rocío García-Carrión, Garazi López de Aguileta, Maria Padrós and Mimar Ramis-Salas, Implications for Social Impact of Dialogic Teaching and Learning, Frontiers in Psychology, 05 February 2020, https://doi.org/10.3389/fpsyg.2020.00140, which recognises that the "socially relevant results" of dialogic education should be more closely examined in research.

[1638] Monisha Bajaj, Human Rights Education: Ideology, Location, and Approaches, Human Rights Quarterly, Vol 33 No 2 (May 2011), pp 481-508, p 494

[1639] Freedom House, Freedom on the Net 2018: The Rise of Digital Authoritarianism, https://freedomhouse.org/report/freedom-net/2018/rise-digital-authoritarianism

reach many more students in the same duration of time, using the same material, and at a fraction of the cost – to both educator / educational institution and the learners themselves – of attending a residential (in-person) course. This has important and highly positive implications for inclusion in HRET, with the challenge now resting with education technologists to find new ways to ensure that learners can interact in ever more meaningful and dialogic ways with their peers in hierarchically 'flat' virtual settings.

Although the benefits of technology to HRET are clear, there are several risks that need to be addressed at the outset of planning for a HRET course that will be delivered digitally by default, to avoid shuffling learners into counterproductive "passive technologisation"[1640]. On the practical level, the main problem for HRET (ideology aside), is that there is no 'gold standard', and no universally recognised teacher training programme for human rights educators and trainers. Not only do teachers lack the necessary technical expertise to deliver education virtually, but they are also classically trained to teach face-to-face only, which gives rise to the recommendation that teacher training courses (for school and university teachers, for law teachers and for HRET educators alike) should be updated to incorporate emerging virtual teaching pedagogies, so that teachers are equipped to effectively align subject matter and online assessment using the most appropriate platforms and technologies, and utilise new teaching skills and strategies to engage students meaningfully in online learning activities and dialogue.

Teachers at all levels, from early years education to tertiary and vocational teachers who are able to take a formal qualification in HRET are arguably more likely to embed human rights teaching, whether consciously or more abstractly, within their classroom, blended and online teaching. In doing so, they are best positioned to encourage young learners to engage with each other in ways that honour human rights values and virtues and support the learners' development of, as Roberts writes in his analysis of Freirean pedagogy, " key epistemological, ethical, and educational virtues, such as openness, humility, tolerance, attentiveness, rigor, and political

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[1640] José Augusto Pacheco, The "new normal" in education, Prospects, September 2020, Accessed at https://link.springer.com/content/pdf/10.1007/s11125-020-09521-x.pdf

commitment"[1641], and so the feasibility of making such a qualification available on an open source basis, at no cost to the educator, should be explored further.

Human rights teacher training should not be limited to new recruits to the teaching profession; teachers who have already qualified and may already be years into their teaching practice should also be able to access opportunities for continued professional development (CPD) on human rights for teachers. A good practice example is Amnesty International's CPD teacher training programme which helps teachers "contribute to a rights-respecting learning space", with course assignments mandating them to deliver HRET to children and young people and then, to deliver HRET with two other education professionals[1642], thus amplifying the reach and power of the training programme. For legal learners more generally and human rights learners more specifically, growth in digital HRET courses means more choice to indulge personal interest or to professionally specialise in a specific area of law (such as modern slavery / forced labour, refugee law, freedom of expression or media freedom, to give just a few examples), or conversely, to broaden knowledge and skills in multiple legal sub-disciplines, potentially addressing gendered and race-based barriers to some more 'male-dominated' legal specialisms as identified by Sommerlad et al[1643]. The 'train the teacher' or 'human rights education for educators' approach fulfils a key recommendation in the World Plan for Action on Human Rights Education, which called for:

> *"[p]roviding human rights education and training for educators in formal and non-formal education and training, in particular those working with children and youth … in both formal and non-formal settings. … This may require the adoption of a comprehensive human rights training policy, the introduction of human rights and human rights education principles and standards into the training curriculum, the use and fostering of participatory, learner-centred and experiential methodologies and of appropriate assessment methods, and the development of related resources"[1644].*

[1641] Peter Roberts, Paulo Freire, Oxford Research Encyclopedias, 29 March 2017, Accessed at https://oxfordre.com/education/view/10.1093/acrefore/9780190264093.001.0001/acrefore-9780190264093-e-10
[1642] Amnesty International UK, Continuing Professional Development for teachers and educators, Accessed at https://www.amnesty.org.uk/teacher-training-course-cpd-human-rights-continuous-professional-development
[1643] Hilary Sommerlad, Lisa Webley, Liz Duff and Daniel Muzio, Diversity in the Legal Profession in England and Wales: A Qualitative Study of Barriers and Individual Choices, October 2013, University of Westminster Law Press, p 25-27
[1644] UNHCR and UNESCO, World Programme for Human Rights Education (Third Phase): Plan of Action 2017, p 5, Accessed at https://www.ohchr.org/Documents/Publications/ThirdPhaseWPHREducation.pdf

At this time, there is no bespoke taxonomy for HRET, no coherent pedagogical framework for HRET teaching using "participatory, learner-centred and experiential methodologies"[1645], and limited literature on (i) how educators can become qualified as 'HRET teachers', and (ii) how HRET teacher training can be viably and meaningfully assessed or accredited. There is, this thesis argues, a clear need for a 'universal' curriculum for human rights education, a 'gold standard' or 'best practice' blueprint that guides the training of teachers and other human rights educators, with a standardised benchmark for assessment and accreditation. Although no international organisation other than the UN would feasibly be so wide-reaching as to be able to produce a curriculum template or framework that could legitimately be considered a universal standard or benchmark, a mixed consortium of public, private and individual stakeholders could come together to produce this collaboratively, and there is already clear support at the level of the UN Human Rights Commissioner-level for the use of "evaluation approaches through all stages of education and training development — from design to delivery and follow-up" in order to measure impact, on learners and on communities[1646]. In the hopes of sparking inspiration and igniting vital conversations about a cohesive approach to HRET pedagogy and to mainstreaming rights education across all disciplines, I intend to create a model curriculum and author a handbook for human rights educators within and outside of the law school, as one of the key projects to emerge from this research and as detailed in the concluding chapter of this thesis[1647].

In conclusion, and with Principle 5 of the R*b*D Framework in mind, I believe that more should be done to inspire innovation in HRET and more broadly, in human rights culture, communications, and programming. We already know that legal education and HRET lag well behind other disciplines in their adoption of immersive edtech, although there is a growing body of intriguing projects and initiatives that represent exciting innovation in using technology to transform HRET through 'entertainment-education' or 'edutainment'; 'serious' gaming (commonly used in

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[1645] *Ibid*

[1646] OHCHR, Evaluating Human Rights Training Activities: A Handbook for Human Rights Educators, Equitas – International Centre for Human Rights Education & Office of the United Nations High Commissioner for Human Rights (OHCHR), 2011, p iii

[1647] Please see section 10.3.1 Handbook & Model Curricula for Human Rights Education and Training

language learning[1648]); or virtual reality (such as the VR 'experience' *Blindfold*, which simulates the torture of journalists in Iran's notorious Evin prison and was developed by the Committee to Protect Journalists and The Center for Human Rights in Iran to bring attention to the persecution, torture and disappearing of journalists amid an increasingly febrile global climate for media freedom[1649]). Collating and case studying examples of innovation in human rights education, communication, and culture from all countries of the world, in a Springwise-style, open access online directory, would provide inspiration and collaboration opportunities for innovators in this space, and this platform becomes a significant tangible outcome of this research, already in development and due for launch on International Human Rights Day 2022 as *Rights Reimagined*[1650]. This project, which actualises and is aligned with Principle 5 of the R*b*D Framework, is also detailed further in the concluding chapter of this thesis[1651].

In addition, a major award-based global initiative with the backing of a significant entity or personality, similar to the Varkey Foundation's US$1 million Global Teacher Prize[1652] or the Duke of Cambridge's Earthshot Prize[1653], given for HRET disruptors and innovators would be phenomenally motivating for those contemplating a project or platform in the HRET space, because recognition (defined by Sebrechts et al as "right to be recognised, appreciated, and valued"[1654]) and the ceremonies and rituals that surround recognition are intrinsically linked with the celebration of diversity, and "feeling socially and culturally included and … being valued for one's contributions", per Todorov[1655]. For this reason, award ceremonies (and conferences), according to

[1648] Holm Sørensen, Concept of Educational Design for Serious Games, Research, Reflections and Innovations in Integrating ICT in Education, 2009, Accessed at:
https://pdfs.semanticscholar.org/b69c/521e47348225229a8f277ee339d9fe8d982a.pdf;
[1649] Stephanie Chan, Blindfold is a disturbing VR tale about the torture of journalists, 26 GamesBeat, July 2017, Accessed at https://venturebeat.com/2017/07/26/blindfold-is-a-disturbing-vr-tale-about-the-torture-of-journalists/
[1650] As an outcome of this research, this website is currently under development and will be launched post-PhD under www.rightsreimagined.com. Please see the Thesis Conclusion for further discussion on this key project.
[1651] Principle 5 in the R*b*D Framework: Individuals should be supported as innovators, creatives, communicators and programme-makers in advancing and mainstreaming human rights culture
[1652] See Varkey Foundation, Global Teacher Prize at https://www.globalteacherprize.org for more information on the Global Teacher Prize, "set up to recognise one exceptional teacher who has made an outstanding contribution to the profession as well as to shine a spotlight on the important role teachers play in society."
[1653] See Earthshot Prize (https://earthshotprize.org), "a new global prize for the environment, designed to incentivise change and help to repair our planet over the next ten years".
[1654] Melissa Sebrechts, Evelien Tonkens & Christian Bröer, Rituals of recognition: Interactions and interaction rules in sheltered workshops in the Netherlands, European Journal of Cultural and Political Sociology 2018, Vol 5 Issue 4, pp 455-475, p 455
[1655] *Ibid*, p 456, citing Tzvetan Todorov, Life in common: An essay in general anthropology, University of Nebraska Press 2001, p 76

Andersson and Cook, are "commonly used means through which 'best practices' are anointed and showcased … playing important roles in shaping best practice and promoting the selected few as transportable and effective"[1656]. Enhanced visibility for human rights innovators in education, together with the other recommendations that have emerged in this part of the research, could together progress vital visibility and mainstream endorsement of HRET, which is fundamentally the key to universalising human rights culture and integrating HRET into the lifelong learning journey as a cornerstone of the R*b*D vision.

[1656] See Ida Andersson and Ian R Cook, Conferences, award ceremonies and the showcasing of 'best practice': A case study of the annual European Week of Regions and Cities in Brussels, Environment and Planning C: Politics and Space, Vol 37 Issue 8, pp 1361-1379, p 1362

Chapter Nine

Human Rights at Work: Why Dignity in Labour Matters

9.1 Chapter Introduction

In her famous speech on human rights, Eleanor Roosevelt described human rights as beginning in "the world of the individual person", in "the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works"; these are the places, she said, "where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there", she wrote, they will have "little meaning" anywhere else[1657]. Earlier chapters have articulated the R*b*D vision for the mainstreaming of human rights culture in our families and local communities, in our digital worlds, in education and as part of lifelong learning, and so it is fitting that this thesis should conclude with an articulation of Principle 4 of the R*b*D Framework (that individuals should be empowered to promote and defend human rights in the world of work and the economy). As such, the chapter explores how we might interact with human rights *after* we progress past formal education, in our worlds of work where our status and circumstances in life are largely determined and where most of us desire to meaningfully exercise our creativity, autonomy and agency in our economic lives and in society[1658].

This discussion is central to and well-placed within this thesis because work represents the stage in our lives that we enter *post*-education, where we apply our education, skills, knowledge and realise our ambitions and potential towards the attainment of rewards and recognition (in the ideal scenario). Our places of work are, in this sense, as integral to human flourishing and wellbeing to us as individuals as the homes and families in which we live or the relationships and attachments we form to nourish our romantic and sexual lives. Therefore, I argue that when our rights are violated in our worlds of work, the impact ripples through to so many other parts

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[1657] Eleanor Roosevelt, 1958
[1658] Gilabert defines work as "an intentional activity of production of goods or services that can satisfy needs or desires" – see Pablo Gilabert, Labor human rights and human dignity, Philosophy and Social Criticism 2016, Vol 42 No 2, pp 171–199, p 176

of our being, strengthening or decimating our ability to flourish and impacting our pursuit of meaning in life, or the "pursuit of the highest good" in the Kantian sense[1659]. Uniquely in the field of BHR scholarship[1660], this chapter will explore how human rights, and specifically labour rights, intersect with human dignity in the world of work, as well as how human rights at work are linked with the realisation of other rights. Hahn has shared his "astonish[ment]" at the limited exploration of the human dignity dimension in the existing body of business and human rights, corporate responsibility and business ethics literature[1661], and so this chapter will aim to examine that interface in some depth and contribute to what is identified as a clear gap in BHR research.

The UDHR, as the "baseline" instrument that informs "policy, legal or judicial consideration of human rights 'elements' in economic, political, and social institutional action"[1662], provides in Article 23 that everyone has the right to work, "to free choice of employment, to just and favourable conditions of work and to protection against unemployment"[1663]. It further declares that everyone has the right to equal pay for equal work[1664], the right to "just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection"[1665], and the right to unionise "for the protection of his interests"[1666] – the very inclusion of which, as Kolben notes, is testament to the tenacity of the labour movements that campaigned vociferously alongside the drafting of the UDHR to ensure "an explicit articulation of the right to organize unions in the text of the document"[1667]. In Article 4, the UDHR

[1659] See Terry F Godlove, Kant and the meaning of life, in The Meaning of Life and the Great Philosophers, Routledge 2018

[1660] 'Business and human rights' as used in this thesis refers to the growing body of scholarship that examines "the responsibility of corporations for abuses caused directly by corporations and their subsidiaries as well as for various forms of complicity in human rights abuses along their value chains" – see Judith Schrempf-Stirling and Harry J Van Buren III, Business and Human Rights Scholarship in Social Issues in Management: An Analytical Review, Business and Human Rights Journal 2020, Vol 5 Issue 1, pp 28-55, p 28-29

[1661] Rüdiger Hahn, Inclusive business, human rights and the dignity of the poor: a glance beyond economic impacts of adapted business models, Business Ethics: A European Review, Vol 21 No 1, January 2012, p 47-63, p 47

[1662] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 2

[1663] Article 23, Universal Declaration of Human Rights 1948

[1664] Article 23(1), Universal Declaration of Human Rights 1948

[1665] Article 23(3), Universal Declaration of Human Rights 1948

[1666] Article 23(4), Universal Declaration of Human Rights 1948; see also Article 8, International Covenant on Economic, Social and Cultural Rights 1966

[1667] Kevin Kolben, Labour Rights as Human Rights?, 50 Virginia Journal of International Law 2009-2010, p 456

prohibits slavery, servitude, and the slave trade in all its forms, and in Article 24, it guarantees workers the right to rest and leisure, including reasonable limitations of working hours, and holidays with pay[1668]. Workers have the right to social security "in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control"[1669], and to the realisation, "in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality"[1670]. But it is Article 23 that represents the most "substantial transformation in the conceptual baselines for developing legal and normative frameworks respecting work and workers", effectively "cement[ing] an understanding, long in the making, that labour rights were central to the scope and understanding of human rights emerging after 1945"[1671]. The most significant contribution of Article 23, as Backer has noted, was that it focused labour rights distinctly on the individual "rather than on the conditions in which individuals might find themselves when hiring out their labour"[1672], and effectively set out what the post-war world would come to understand as "the core of the human rights of labour" under four central principles which have become the "benchmark" for how state legal systems approach labour rights[1673]. These are the principles of noncoercion ("free choice in employment … and work conditions that are favourable" as protection against slavery[1674]); non-discrimination (which is, per the ILO's definition, that "all workers and job seekers have the right to be treated equally, regardless of any attributes other than their ability to do the job"[1675]); the living wage principle (that calls upon employers to pay a fair wage and for the state to make up the difference between 'fair' wages that are "determined by markets or otherwise" and living wages determined by the economic

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[1668] Articles 4 and 24, Universal Declaration of Human Rights 1948

[1669] Article 22 and 25, Universal Declaration of Human Rights 1948; see also Article 9, International Covenant on Economic, Social and Cultural Rights 1966

[1670] Article 22, Universal Declaration of Human Rights 1948

[1671] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 1 and 4

[1672] *Ibid*, p 7

[1673] *Ibid*, p 4

[1674] *Ibid*, p 4

[1675] ILO, Business, Non-discrimination and Equality, Accessed at https://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_BDE_EN/lang--en/index.htm; also see Article 21, The EU Charter of Fundamental Rights 2009, which defines non-discrimination as: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited".

conditions of the state[1676]); and collection action, under which individuals have the right to "aggregate their capital and to aggregate their labour"[1677].

There is evidence that labour rights were a "matter of international concern" under the International Labour Organisation (ILO) well before human rights entered post-war global discourse[1678], and that the drafters of the UDHR took inspiration from the ILO's 1919 founding constitution[1679] which in its Preamble, recognised the existence of "conditions of labour … involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled"[1680]. Strikingly, the Constitution observed that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries"[1681]. Specifically, the ILO's endorsement of collective action was a revolutionary position for the fledgling international organisation to have taken[1682], with Leary suggesting that the international human rights movement itself "may be said to have begun with the founding of the ILO in 1919 and the adoption soon thereafter of the first international labour conventions"[1683].

Whilst the ILO Constitution of 1919 and the landmark 1944 ILO Philadelphia Declaration greatly influenced the drafting and inclusion of Article 23 within the UDHR, Article 23 would go on to inform much of the ILO's post-war work on labour rights as the lead organisation within the UN system for the advancement of social

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[1676] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 4

[1677] *Ibid*

[1678] Virginia Mantouvalou, Are Labour Rights Human Rights?, European Labour Law Journal, Vol 3 Issue 2, pp 151-172, p 154

[1679] The ILO's 1919 constitution was drafted after the First World War when labour was considered a "function of domestic stability, and therefore, an important element in minimising the risk of war" – see Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 6

[1680] Preamble, Constitution of the International Labour Organization 1919

[1681] Preamble, Constitution of the International Labour Organization 1919

[1682] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 6; see also Preamble, Constitution of the International Labour Organization 1919

[1683] Virginia A Leary, The Paradox of Workers' Rights as Human Rights, in Human Rights, Labour Rights and International Trade, Lance A Compa & Stephen F Diamond (eds) 1996, p 25

justice and the promotion of decent work[1684]. After the UDHR was proclaimed in 1948 labour rights and international human rights would converge to cement a dignity-based concept of labour, and with the transposition of Article 23 into the ICESCR (as part of "the great project of legalizing the UDHR"[1685]), the right to work had become "the right of everyone to … gain his living by work which he freely chooses or accepts"[1686]. International instruments and frameworks continued to build upon Article 23, including the ILO Declaration on Social Justice for a Fair Globalization, which envisaged decent work though four key pillars: employment[1687], social protection, social dialogue, and fundamental principles and rights at work[1688]; and the OECD Guidelines for Multinational Enterprises, which sought to "operationalise" the key principles of Article 23 for corporations operating in multiple jurisdictions[1689] (but neglected to mention human rights except for a brief mention in one paragraph)[1690]. Regionally, the EU's binding Charter of Fundamental Rights (the EUCFR, legally binding since the Lisbon Treaty in 2009) comprehensively set out "labour rights as human rights"[1691], prohibiting forced labour, slavery and trafficking in Article 5 and providing the right to vocational training in Article 14, the right to "engage in work and to pursue a freely chosen or accepted occupation" in Article 15, to found a business (in Article 16), the right to information (Article 27) and collective bargaining and action (Article 28), the provision of fair and just working conditions (Article 31) and the right to protection from unfair dismissal (in Article 30)[1692]. Article 32 of the EUCFR also prohibited the use of child labour, affirming Article 32 of the

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[1684] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 7. See also International Labour Organisation, https://www.ilo.org
[1685] *Ibid*, p 10
[1686] Article 6(1), International Covenant on Economic, Social and Cultural Rights 1966
[1687] Kurtessis et al define employment as "essentially a social exchange relationship where employees help the organization achieve its goals and objectives while at the same time the organization provides a supportive environment to fulfill the employees' needs for self-enhancement, belonging, and other socioemotional needs" - see James N Kurtessis, Robert Eisenberger, Michael Ford, Louise C Buffardi, Kathleen Stewart, Cory S Adis, Perceived organizational support: A meta-analytic evaluation of organizational support theory, Journal of Management 2017, 43(6), pp 1854-1884, also cited in Rong Wang, Organizational Commitment in the Nonprofit Sector and the Underlying Impact of Stakeholders and Organizational Support, Voluntas, Accessed at https://doi.org/10.1007/s11266-021-00336-8
[1688] ILO Declaration on Social Justice for a Fair Globalization 2008, Accessed at https://www.ilo.org/global/about-the-ilo/mission-and-objectives/WCMS_099766/lang--en/index.htm
[1689] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 12
[1690] David Weissbrodt, Business and Human Rights: Eighteenth Annual Corporate Law Symposium: Corporate Social Responsibility in the International Context, University of Cincinnati Law Review 74, p 55-74, p 62
[1691] Virginia Mantouvalou, Are Labour Rights Human Rights?, European Labour Law Journal, Vol 3 Issue 2, pp 151-172, p 154-155
[1692] The EU Charter of Fundamental Rights 2009, https://www.europarl.europa.eu/charter/pdf/text_en.pdf

UN Convention on the Rights of the Child on the protection of children from economic exploitation[1693].

Through various voluntary soft law instruments and non-binding initiatives[1694], such as the UN Global Compact, the world's "largest corporate sustainability initiative"[1695] unveiled by the UN in June 2000, labour rights became embedded into corporate social responsibility ("CSR") discourse, a turn of the century buzzword and further gelled sustainability and ethics, but not necessarily human rights, into the corporate communications agenda. Despite high take-up of Global Compact membership and corporate commitments to the Sustainable Development Goals or SDGs[1696] designed to "promote compliance with international human rights"[1697], both these initiatives rely on voluntary compliance and self-reporting and so their legitimacy has always been undermined by claims of 'corporate virtue signalling' and cherrypicking[1698]. Langford identifies that the SDG Agenda, whilst certainly having made a positive impact in embedding sustainability concerns into global development and economic discourse, has only delivered "moderate" improvement in real terms to the incorporation of human rights into core operating practices, with primary end users of the Global Goals being "the sectorial web of UN agencies, national departments, NGOs, and private sector actors focused on singular themes"[1699]. He notes that the Goals are "weak on global partnership" and "corresponding targets … rarely quantified", and that the language used within (and more specifically, the language omitted *from*) certain goals have succeeding in "constrain[ing] the reach of the agenda" (citing China's intervention to ensure that the word 'democracy' did not appear in the draft), with the result being that commitments are vague and ultimately, "open to different interpretations"[1700].

[1693] Article 32, UN Convention on the Rights of the Child 1990

[1694] David Weissbrodt, Business and Human Rights: Eighteenth Annual Corporate Law Symposium: Corporate Social Responsibility in the International Context, University of Cincinnati Law Review 74, p 55-74, p 63

[1695] Georg Kell, The Global Compact: Origins, Operations, Progress, Challenges, in Business, Capitalism and Corporate Citizenship, Routledge 2017, p 191-209; also see UN Global Compact, What is the UN Global Compact, Accessed at https://www.unglobalcompact.org/what-is-gc

[1696] The SDGs are "an urgent call for action by all countries - developed and developing - in a global partnership" – see https://sustainabledevelopment.un.org/?menu=1300

[1697] Kevin Kolben, Labour Rights as Human Rights?, 50 Virginia Journal of International Law 2009-2010, p 465

[1698] UN News Centre, Warning against 'cherry-picking' among Global Goals, UN experts say human rights cannot be ignored, 12 Jul 2016, Accessed at https://www.un.org/sustainabledevelopment/blog/2016/07/warning-against-cherry-picking-among-global-goals-un-experts-say-human-rights-cannot-be-ignored/

[1699] Malcolm Langford, Lost in Transformation? The Politics of the Sustainable Development Goals, Ethics & International Affairs, Volume 30, Issue 2 Summer 2016, pp 167-176, p 174

[1700] *Ibid*, p 173

Despite the limitations of voluntary codes and coalition-based initiatives, Kolben points out that they have been largely successful at raising awareness of the impact of unregulated neoliberal business growth on human rights, decisively linking workers' rights in the supply chain with international human rights norms in global development and economic discourse. Through these frameworks, principles of the UDHR have been distilled both "into the discourse of social norms overseen by international public organisation, and … into the language, discourse and emerging structures of business and human rights", according to Backer[1701]. And although (generally speaking) human rights treaties have always "at least provided for indirect human rights responsibilities of businesses"[1702] according to Weissbrodt, the concept of a corporate responsibility to 'protect, respect and remedy' human rights was only formally clarified in 2011 in the UN Guiding Principles on Business and Human Rights (UNGPs)[1703], which expanded the obligation to respect human rights to non-state corporate actors (where international law had always focused predominantly on state actors[1704]) in an effort to embed human rights compliance as 'a global standard of expected conduct for all business enterprises' in the international, and often borderless, jurisdictions in which they operate[1705]. The corporate responsibility to respect human rights, as set out in the UNGPs, "exists independently of States' abilities and / or willingness to fulfil their own human rights obligations", it does not interfere with those obligations, and it "exists over and above compliance with national laws and regulations protecting human rights"[1706].

The UNGPs, which call for businesses to respect human rights, "avoid infringing on the human rights of others and … address adverse human rights impacts with which

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[1701] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 2
[1702] David Weissbrodt, Business and Human Rights: Eighteenth Annual Corporate Law Symposium: Corporate Social Responsibility in the International Context, University of Cincinnati Law Review 74, p 55-74, p 62
[1703] Dorothee Baumann-Pauly and Michael Posner, Doing business in the 21st century: the relevance of human rights for companies, In Business and Human Rights: From Principles to Practice, eds Dorothee Baumann-Pauly and Justine Nolan, Routledge 2016, p 12
[1704] David Weissbrodt, Business and Human Rights: Eighteenth Annual Corporate Law Symposium: Corporate Social Responsibility in the International Context, University of Cincinnati Law Review 74, p 55-74, p 62
[1705] Although the UN Guiding Principles on Business and Human Rights is currently a voluntary framework, the UN Working Group on Business and Human Rights is in advanced stages of making human rights a binding concern of corporations through a binding treaty – see the Business & Human Rights Resource Centre, Binding Treaty, Accessed at https://www.business-humanrights.org/en/big-issues/binding-treaty/
[1706] UN Guiding Principles on Business and Human Rights 2011

they are involved"[1707], were designed as a framework to "move CSR beyond voluntary requirements that allow corporations to self-define what they will be responsible for"[1708]. Modelled on a three-pillar 'Protect, Respect and Remedy' framework[1709], the UNGPs are situated at the heart of the Business & Human Rights (BHR) movement, which as the term suggests, relates to the relationship, tension, and interdependence between business and human rights, and refers to the "roles and responsibilities of [business] actors with regard to human rights" as outlined in the second pillar ('Corporate Responsibility to Respect'). The third pillar ('Access to Remedy if Rights are not Respected') clarifies both the state's responsibility to provide access to remedy ("through judicial, administrative and legislative means") *and* the responsibility of corporations to "prevent and remediate any infringement of rights that they contribute to"[1710]. This was groundbreaking for the time, coming so soon after the global financial crash of 2008, to the extent that Wettstein has called the UNGPs the "state of the art in the human rights debate"[1711].

It should be noted that as a non-binding framework, the UNGPs have been widely criticised for the lack of an enforcement mechanism; as Human Rights Watch put it, the UNGPs "cannot actually require companies to do anything at all. Companies can reject the principles altogether without consequence – or publicly embrace them while doing absolutely nothing to put them into practice"[1712]. That said, CEOs today know that ignoring adverse human rights impact in their global value chains leaves the corporation vulnerable to huge reputational and financial damage[1713], and so BHR has become a "strategic consideration" in that it is "good business" to uphold

[1707] Principle 11, UN Guiding Principles on Business and Human Rights (2011)

[1708] Resolution adopted by the Human Rights Council, Human rights and transnational corporations and other business enterprises, 6 July 2011 (UN doc. A/HRC/RES/17/4); Ken McPhail, Human rights should be on the MBA curriculum, Financial Times, 20 February 2017, Accessed at https://www.ft.com/content/21f1fa54-8aa1-11e3-9465-00144feab7de

[1709] UNHRC, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie - Guiding Principles on Business and Human Rights 2011, Accessed at http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf; OHCHR, Guiding Principles on Business and Human Rights implementing the United Nations 'Protect, Respect and Remedy' Framework' 2011, Accessed at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[1710] OHCHR, Guiding Principles on Business and Human Rights implementing the United Nations 'Protect, Respect and Remedy' Framework' 2011, Accessed at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

[1711] Florian Wettstein, CSR and the Debate on Business and Human Rights: Bridging the Great Divide, Business Ethics Quarterly, Vol 22 No 4 (October 2012), pp 739-770, p 740

[1712] Chris Albin-Lackey, Without Rules: A Failed Approach to Corporate Accountability, p 4, Accessed at https://www.hrw.org/sites/default/files/related_material/business.pdf

[1713] Dorothee Baumann-Pauly and Michael Posner, Doing Business in the 21st Century: The Relevance of Human Rights for Companies, In Business and human rights: From principles to practice, Routledge 2016, p 11

human rights[1714]. The concept of powerful multinational businesses bearing 'responsibility' for their own behaviours which may adversely impact human rights in the jurisdictions in which they operate is controversial because it contradicts entrenched views that human rights are the problem of the state, or that some businesses are simply 'too big to fail' in some cases, and in others, 'too powerful to touch'. However, the stakes for human rights could not be higher in the hyper-globalised modern economy; as the UNGP Reporting Framework reminds us, "employees and contract workers, their customers, workers in their supply chains, communities around their operations and end users of their products or services" can all "have an impact – directly or indirectly – on virtually the entire spectrum of internationally recognized human rights"[1715]. It is precisely those businesses that are deemed too big to fail, too powerful to touch that are most likely to adversely impact human rights, with the resultant impact on the individual worker being that these businesses are employers to thousands, if not hundreds of thousands, of workers worldwide[1716].

The responsibility of corporations to respect human rights is the subject of intense debate and a rich and established body of literature, and it is not the intention of this chapter to contribute to existing research on the extent of corporate human rights obligations or whether companies' responsibility is limited to merely *respecting* human rights or if positive obligations to *protect* and *fulfil* might also exist[1717]. Whilst the UDHR, which principally focused on human rights obligations of states, expressly entailed responsibilities for individuals and "every organ of society" towards the realisation of human rights, there is broad enough consensus that businesses are 'organs of society'[1718] and growing recognition in the international business community that human rights and social, geopolitical, environmental, technological,

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1714 Florian Wettstein, CSR and the Debate on Business and Human Rights: Bridging the Great Divide, Business Ethics Quarterly, Vol 22 No 4 (October 2012), pp 739-770, p 744
1715 UNGP Reporting Framework, How Can Businesses Impact Human Rights?, Accessed at https://www.ungpreporting.org/resources/how-businesses-impact-human-rights/
1716 See CNN Money's Global 50 annual ranking of the world's largest corporate employers at https://money.cnn.com/magazines/fortune/global500/2012/performers/companies/biggest/ - the top four corporations listed each employ over 1,000,000 employees globally (these are 2012 figures).
1717 Surya Deva and David Bilchitz, The human rights obligations of business: a critical framework for the future, Human Rights Obligations of Business: Beyond the Corporates Responsibility to Respect?, Cambridge University Press 2013, pp 1-26, p 3
1718 See David Weissbrodt, Business and Human Rights: Eighteenth Annual Corporate Law Symposium: Corporate Social Responsibility in the International Context, University of Cincinnati Law Review 74, p 55-74, p 61

sustainability and ethical challenges are no longer the exclusive concern of the State but a responsibility shared between governments and global corporations[1719]. Fundamentally, as Baumann-Pauly and Posner point out, the academic debate around business and human rights after the adoption of the UNGPs in 2011 has largely centred on the 'business case', or "measuring the link between a company's broad commitment to corporate responsibility … and financial performance (at least for Western companies)"[1720]. I agree that this is the "wrong starting point to motivate and justify the engagement of corporations in human rights"[1721] – primarily because this approach emphasises the economic benefits of respecting human rights norms and standards – or at least, being *seen* to be respecting such standards – over the need to humanise big business and create what Quintelier et al call "a moral community of stakeholders"[1722], one that moves the emphasis of the BHR argument away from the bottom line and towards "real people who deserve moral consideration"[1723].

In order to fill a clear gap in existing literature on how human dignity and human rights interact in our worlds of work, the chapter examines labour rights in the context of human rights more generally, arguing that even before the pandemic, there were growing calls for what Nolan has called a "reappraisal of the appropriate role for business in an increasingly globalised world"[1724], for recognition of a new global paradigm where big businesses ("the primary beneficiaries of an increasingly borderless economic order", per Bratspies[1725]) assume their fair share of responsibility towards human rights wherever they operate in the world[1726]. Furthermore, there is a direct correlation between respect for labour rights and respect for human rights more generally, with "[t]he status of workers' rights in a country … a bellwether for the status of human rights in general", in that "[t]he first sign of a deteriorating situation is often the violation of freedom and of association,

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[1719] Dorothee Baumann-Pauly and Michael Posner, Doing Business in the 21st Century: The Relevance of Human Rights for Companies, Business and human rights: From principles to practice, Routledge 2016, p 11
[1720] *Ibid*, p 13
[1721] *Ibid*, p 14
[1722] Katinka JP Quintelier, Joeri van Hugten, Bidhan L Parmar, and Inge M Brokerhof, Humanizing Stakeholders by Rethinking Business, Frontiers in Psychology 2021, doi: 10.3389/fpsyg.2021.687067
[1723] *Ibid*
[1724] Justine Nolan, Business and Human Rights: From Principles to Practice, eds Dorothee Baumann-Pauly and Justine Nolan, Routledge 2016, p 2
[1725] Rebecca Bratspies, Organs of Society: A Plea for Human Rights Accountability for Transnational Enterprises and Other Business Entities, Michigan State Journal of International Law, Vol 13 Issue 9, pp 9-37, p 9-10
[1726] *Ibid*

the most fundamental or workers' rights"[1727]. This section supports Wang's argument that labour rights, and human rights more generally, will be more effectively realised in democratic states where there is, overall, greater respect for and compliance with international human rights norms and standards[1728].

In the Western view of the modern workplace, individualising action around human rights and labour rights consciousness starts with employees, a 'bottom-up' approach to facilitating normative and narrative shifts around dignity and decent work. For those in the Global South, arguments about workplace democracy and intrapreneurship are largely academic and almost nonsensical in the face of extreme inequality and often brutal and punitive treatment levied at workers, especially migrant workers from Africa and the Asian subcontinent. Here, it is argued, human dignity is the 'great equaliser', and the chapter moves on to discuss the doctrine of human dignity in the context of our worlds of work, acknowledging the criticisms of the doctrine as a whole before moving on to explain that regardless of whether one agrees with the concept of dignity being universal, some things are almost universally accepted to constitute "grave moral wrongs"; this would, as Mantouvalou has noted, include torture, exploitation and trafficking[1729]. However, for as long as there has been work, exploitation has arguably existed as one of the "disastrous" (but not inevitable) consequences of capitalism[1730]. As workers become dehumanised, they become easier for powerful corporate bosses to control and profit from, and they become expendable, and the dignity of work – the achievement and recognition that is derived from meaningful, intrinsically motivated work – is entirely diminished. This section therefore explains how, as dignity is connected with human feelings of belonging, satisfaction, agency, aspiration and self-respect ("a confidence in one's ability, so far as it is within one's power, to fulfil one's intentions", according

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[1727] Virginia A Leary, The Paradox of Workers' Rights as Human Rights, in Human Rights, Labour Rights and International Trade, Lance A Compa & Stephen F Diamond (eds) 1996, p 22; also Jude Howell and Tim Pringle, Shades of Authoritarianism and State-Labour Relations in China, British Journal of Industrial Relations 2019, pp 223–246, p 223

[1728] Democratic states characteristically empower workers with their fundamental rights to peacefully protest through freedom of association and assembly and enable workers' participation in elections in which politicians and governments that fail to respect rights and conditions for workers run a real risk of being voted out of office. See Zhiyuan Wang, Democracy, Policy Interdependence, and Labor Rights, Political Research Quarterly, Vol 70 No 3 (September 2017), pp 549-563, p 550 and 552

[1729] Virginia Mantouvalou, Are Labour Rights Human Rights?, European Labour Law Journal, Vol 3 Issue 2, pp 151-172, p 165

[1730] Robert Ware, Marx, The Division of Labor, and Human Nature, Social Theory and Practice, Vol 8 No 1 (Spring 1982), pp 43-71, p 50

to Rawls[1731]), what happens to us in the world of work can have a profound impact on our wellbeing when those worlds become troubled or traumatic.

The chapter then moves on to briefly discuss the welfare state and human rights, and calls for more responsible reporting and narrative building around recipients of welfare whilst acknowledging that the negative and harmful stereotypes levied against those on state benefits are linked with the continued acceptance of many states to recognise social and economic rights as human rights. It concludes by emphasising our power as individuals – as employers and as consumers – to hold corporations to account when they fail to deliver on their sustainability and human rights pledges and when they diminish the dignity of their workers through unfair employment practices or unjust conditions.

9.2 Labour rights as a 'bellwether' for the status of human rights

In the last half century, unchecked corporate growth, rampant globalisation, and the dehumanisation of labour through automation have all greatly exaggerated the level and political, social, and economic power held by corporate entities since the Second World War. Globalisation, per Hujo, has been "marked by increasing power of elite actors and rising inequalities at multiple levels"[1732] and an 'unravelling' of the social contract that began in the 1980s, ushering in a market-oriented era[1733], "legitimised by a general ideological shift towards market-liberal approaches"[1734], and fuelled by extreme consumerism[1735]. The last few decades have represented "an era of intensifying globalisation, which is characterised by states' deep involvement in

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[1731] John Rawls, The Theory of Justice, Harvard University Press 1971, p 440; also Cynthia A Stark, Rawlsian Self-Respect, Oxford Studies in Normative Ethics: Volume 2, eds Mark Timmons, Oxford University Press 2012, p 240

[1732] Katja Hujo, Social protection and inequality in the global South: Politics, actors and institutions, Critical Social Policy, Vol 41, Issue 3, pp 343-363, p 346

[1733] *Ibid*

[1734] Katja Hujo, Social protection and inequality in the global South: Politics, actors and institutions, Critical Social Policy, Vol 41, Issue 3, pp 343-363, p 347

[1735] Schor acknowledges that literature on consumption in the latter part of the 20th century has "positioned itself against" traditional accounts of consumption (Veblen, Adorno and Horkheimer, Galbraith and Baudrillard), and that these accounts "lack a critical approach to the subject matter", are "totalising" and "depoliticised", and characterise consumers as "too passive", whereas "the emergence of a new production system, ecological degradation, and new findings on wellbeing" create a need for "reengagement with the critical tradition" which should be "revisited in light of the changing political power of transnational corporations". See Juliet B Schor, In Defense of Consumer Critique: Revisiting the Consumption Debates of the Twentieth Century, The Annals of the American Academy of Political and Social Science, Vol 611, The Politics of Consumption/The Consumption of Politics (May 2007), pp 16-30, p 16

fiercer global economic competition", writes Wang, with a "global deterioration of labour rights – a race to the bottom"[1736].

In the world of work, per Rimlinger, "in a global economy of mass unemployment and widespread poverty, with worker organisations under severe pressure, we have witnessed the repeat of human tragedy and the spread of abuse – migrant labour, sex trafficking, forced labour, harsh discrimination and more"[1737] – such is the tension between human rights and capitalism[1738]. Borderless global trade is powered by vast, interconnected and often opaque supply chains linking "individual workers with large and small companies across national, political and cultural boundaries"[1739]. As Nolan notes, "large companies [in most industries] now rely on a series of contractors and suppliers in a range of countries to produce and transport their products" and typically, they neither "own [n]or operate the factories in which their goods are produced and they may contract with hundreds, sometimes thousands, of different suppliers annually"[1740]. Workers are faceless, anonymous, and expendable, and workers at home have been commoditised via zero hours contract culture and by sharing / on-demand / gig platforms that act as 'brokers' in the digital economy and contribute to what Aloisi calls the "efficient exploitation (and expropriation) of work at the detriment of security, education and skills development of workers"[1741].

The modern transnational corporation as a "product of the post-World War II era" has been – as Bratspies puts it – "largely insulated from the parallel evolution of human rights norms and expectations"[1742] whilst at the same time undergoing huge transformation in influence, power, and size that has not kept pace with the level of responsibility assumed. To put the power of some of these companies into

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[1736] Zhiyuan Wang, Democracy, Policy Interdependence, and Labor Rights, Political Research Quarterly, Vol 70, No 3 (September 2017), pp 549-563, p 549

[1737] Barbara Shailor, Workers' rights in the business and human rights movement, In Business and Human Rights: From Principles to Practice, eds Dorothee Baumann-Pauly and Justine Nolan, Routledge 2016, p 196

[1738] Gaston V Rimlinger, Capitalism and Human Rights, Daedalus, Vol 112 No 4, Human Rights (Fall 1983), pp 51-79, p77

[1739] Justine Nolan, Business and Human Rights: From Principles to Practice, eds Dorothee Baumann-Pauly and Justine Nolan, Routledge 2016, p 4

[1740] *Ibid*

[1741] Antonio Aloisi, Commoditised Workers: Case Study Research on Labour Law Issues Arising from a Set of 'On-Demand / Gig Economy' Platforms, Comparative Labor Law & Policy Journal 37 (2016), pp 653-690, p 657-658

[1742] Rebecca Bratspies, Organs of Society: A Plea for Human Rights Accountability for Transnational Enterprises and Other Business Entities, Michigan State Journal of International Law, Vol 13 No 9, pp 9-37, p 9-10

perspective, Baumann-Pauly and Posner point out that many of these corporations operate in jurisdictions where their annual revenues "match or exceed gross domestic product of nation states where they do business"[1743]. Corruption and grievous human rights abuses of labour rights are especially rife in authoritarian states, which are characterised by Howell and Pringle as having an "absence of multi-party elections for determining succession; a civil society subject to surveillance and control; government-controlled media; lack of an independent judiciary and courts; hence weak rule of law, and restrictions on civil and political rights"[1744]. Kolben has also observed that international supply chains in developing states often operate in areas with extremely poor regulatory and legislative capacity that are dominated by informal sectors which makes organising impossible and has left unions "underdeveloped"[1745].

Corporate abuses of human rights are not a new phenomenon; as Weissbrodt notes, from "Nazi industrialists using slave labour from concentration camps or Central African rebels exploiting local farmers and natural resources to supply international businesses, human rights atrocities are all too often committed in the name of corporate profitability"[1746], often with catastrophic consequences for human dignity and nature[1747]. As many companies in the extractives, fast fashion, food production and the electronics sectors have discovered in the last few decades, human rights abuses – wherever in the global supply or value chain they occur – carry astronomical levels of financial and reputational risk if internal stakeholders neglect to address them. Corporate avoidance of the responsibility to respect global human rights norms and standards (especially for large and publicly listed companies that are very closely watched by the media) is "no longer an option"[1748], and feigning ignorance or claiming distance through extraterritoriality no longer works in the light

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[1743] Dorothee Baumann-Pauly and Michael Posner, Doing business in the 21st century: the relevance of human rights for companies, In Business and Human Rights: From Principles to Practice, Routledge 2016, p 12
[1744] Jude Howell and Tim Pringle, Shades of Authoritarianism and State–Labour Relations in China, British Journal of Industrial Relations, June 2019, pp 223–246, p 225
[1745] Kevin Kolben, Labour Rights as Human Rights?, 50 Virginia Journal of International Law 2009-2010, p 467
[1746] David Weissbrodt, Business and Human Rights: Eighteenth Annual Corporate Law Symposium: Corporate Social Responsibility in the International Context, University of Cincinnati Law Review 74, p 55-74, p 55
[1747] Some of the most prolific BHR disasters of recent years include: the Bhopal disaster, the Nike 'sweatshop labour' scandal, the employee suicides at Apple Foxconn factory scandal, the Shell oil spill in the Niger Delta and its complicity in the execution of Nigerian environmental activist Ken Saro-Wiwa, the horrific abuse of migrant construction and domestic workers in the GCC under the kafala system, and the collapse of the Rana Plaza building in Bangladesh in 2013 which resulted in the deaths of over 1000 workers.
[1748] Dorothee Baumann-Pauly and Michael Posner, Doing business in the 21st century: the relevance of human rights for companies, Business and Human Rights: From Principles to Practice, Routledge 2016, p 12

of the doctrine of foreign direct liability, which has been successfully used to force parent companies to accept liability for harm caused by overseas subsidiaries[1749]. However, there is some evidence that there has been a mindset shift among major corporations, and that on some level at least, there is genuine resolve to do the right thing by people and planet. As Baumann-Pauly and Posner write:

> *"Leading companies that are beginning to address human rights challenges consider their firms as part of an increasingly integrated global community. They incorporate human rights into their core business strategies and see their engagement as part of their future business models. They acknowledge both the challenges and opportunities that come with doing business globally in the 21st century. They also recognise that their companies will be most likely to thrive in increasingly healthy, rights-respecting societies"[1750].*

The BHR movement aims to achieve precisely this, to compel businesses to take responsibility for their human rights footprint both at home and abroad. Ultimately, this entails private corporations accepting that they now play a much more significant part ("financially, socially and politically") than they ever have before[1751]. One of the human rights responsibilities of corporations, to provide decent conditions of work is, as Jovanovic observes, especially *ad rem* for businesses in the globalised economy, particularly for the most powerful entities with operations that transcend borders and benefit from cheaper manufacturing and production that in some cases comes from slave or child labour[1752]. These are typically countries with poor regulatory, legislative and social protections around labour rights, states where "the vast number of workers in precarious jobs are left without protection even against the most severe forms of labour exploitation", as Jovanovic identifies[1753], and it is practically impossible for workers to exercise their rights to collective action, to a decent working environment, to safety, non-discrimination, non-coercion and protection from

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[1749] Florian Wettstein, CSR and the Debate on Business and Human Rights: Bridging the Great Divide, Business Ethics Quarterly, Vol 22 No 4 (October 2012), pp 739-770, p 743
[1750] Dorothee Baumann-Pauly and Michael Posner, Doing business in the 21st century: the relevance of human rights for companies, Business and Human Rights: From Principles to Practice, Routledge 2016, p 16
[1751] Justine Nolan, Business and Human Rights: From Principles to Practice, eds Dorothee Baumann-Pauly and Justine Nolan, Routledge 2016, p 3
[1752] Marija Jovanovic, Chapter 15 - The Business Sector and the Rights to Work and Just and Favourable Conditions of Work, The Cambridge Companion to Business and Human Rights Law, Cambridge University Press 2021, p 331; see also Richard M Locke, The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy, Cambridge University Press 2013, p 10
[1753] Marija Jovanovic, Chapter 15 - The Business Sector and the Rights to Work and Just and Favourable Conditions of Work, The Cambridge Companion to Business and Human Rights Law, Cambridge University Press 2021, p 332

exploitation at work, or to assert their right to a fair, never mind living, wage. The lived experiences of factory workers in South East and Central / East Asia; of child labourers working in the production of bricks in India and Pakistan, in amber extraction in Ukraine, bamboo production in Burma, or banana cultivation in Belize or Brazil; of fast-fashion sweatshop workers; or of migrant construction workers in the GCC working under the *kafala* system[1754] – all of these abuses expose what Jovanovic calls "the traditional paradigm of human rights protection" as being "manifestly out of touch with modern life"[1755], and they speak to a distinctly uncomfortable truth: that globalisation has gone badly, brutally wrong for billions around the world.

As Leary notes, there is a direct correlation between respect for labour rights and respect for human rights more generally, with "[t]he status of workers' rights in a country … a bellwether for the status of human rights in general", in that "[t]he first sign of a deteriorating situation is often the violation of freedom and of association, the most fundamental or workers' rights"[1756]. As states descend into repression and authoritarianism, Leary identifies that one of the first moves is "inevitably [an] attempt to suppress or control trade unions", with trade union leaders often among "the most frequent victims of repression"[1757]. Not only are labour rights a 'bellwether' for the state of human rights more broadly, they are also an indicator of where on the spectrum of extremity an authoritarian state falls[1758]; as Howell and Pringle, writing in the context of China, identify: "Given that the prospect of a well-organised and independent labour movement is anathema to authoritarian regimes, state-labour

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[1754] US Department of Labor, List of Goods Produced by Child Labor or Forced Labor, Bureau of International Labor Affairs, Accessed at https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods-print

[1755] Marija Jovanovic, Chapter 15 - The Business Sector and the Rights to Work and Just and Favourable Conditions of Work, The Cambridge Companion to Business and Human Rights Law, Cambridge University Press 2021, p 332

[1756] Virginia A Leary, The Paradox of Workers' Rights as Human Rights, in Human Rights, Labour Rights and International Trade, Lance A Compa & Stephen F Diamond (eds) 1996, p 22; Jude Howell and Tim Pringle, Shades of Authoritarianism and State-Labour Relations in China, British Journal of Industrial Relations 2019, pp 223–246, p 223

[1757] Virginia A Leary, The Paradox of Workers' Rights as Human Rights, in Human Rights, Labour Rights and International Trade, Lance A Compa & Stephen F Diamond (eds) 1996, p 22; Thea Lee, Empowering Workers Worldwide, US Department of Labor Blog, 14 December 2021, Accessed at https://blog.dol.gov/2021/12/14/empowering-workers-worldwide

[1758] Howell and Pringle define an 'authoritarian state' as "an illiberal regime with a concentration of power in a single despot or party that is not subject to democratic electoral processes and is propped up by a range of repressive security agencies" – see Jude Howell and Tim Pringle, Shades of Authoritarianism and State-Labour Relations in China, British Journal of Industrial Relations, June 2019, pp 223–246, p 225

relations serve well as a barometer to gauge shades of authoritarianism"[1759]. Leary evidences Pinochet's overthrow of President Allende in 1973 in Chile which was accompanied by "widespread killings and arrests of trade union leaders", as well as the "maintenance of apartheid in South Africa [which] required the subjection and harassment of trade unions and labour leaders"[1760].

The link between authoritarian regimes and labour rights violations is further evidenced in the situation of the Muslim Uyghur people in Xinjiang, at least a million of whom have been rounded up for extrajudicial internment in mass detention camps where they are undergoing 'religious re-education' and, according to evidence obtained by Human Rights Watch, "mass arbitrary detention, torture, forced political indoctrination, and mass surveillance" as well as "systematic rape" and forced sterilisation[1761], with those who have 'graduated' from the re-education camps being moved to forcibly work as free labour in factories across China[1762]. These factories are, according to the Business & Human Rights Resource Center, engaged in numerous supply chains spanning electronics, textiles, and the automotive sectors, serving trans- and multi-national entities and brands including Abercrombie & Fitch, Apple, Amazon, adidas, BMW, Gap, H&M, Marks & Spencer, Nike, North Face, Puma, and Samsung[1763].

Negative, even harmful, state-labour relations and the ineffective realisation of socioeconomic rights, with labour rights at their core, in 'other' (typically Global South) countries is typically 'justified' with cultural and practical relativist argument that structural weaknesses in those states' economies and systems of governance prevent the enjoyment of socioeconomic rights in general. However, as Selebi has

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[1759] The four shades of authoritarianism, per Howell and Pringle, are "exploitative, protective, open and encapsulating" – see Jude Howell and Tim Pringle, Shades of Authoritarianism and State-Labour Relations in China, British Journal of Industrial Relations, June 2019, pp 223–246, p 223-224
[1760] Virginia A Leary, The Paradox of Workers' Rights as Human Rights, in Human Rights, Labour Rights and International Trade, Lance A Compa & Stephen F Diamond (eds) 1996, p 23
[1761] UK Parliament, Uyghur forced labour in Xinjiang and UK value chains, 17 March 2021, Accessed at https://publications.parliament.uk/pa/cm5801/cmselect/cmbeis/1272/127204.htm
[1762] Helen Davidson, Clues to scale of Xinjiang labour operation emerge as China defends camps, The Guardian, 18 September 2020, Accessed at https://www.theguardian.com/world/2020/sep/18/clues-to-scale-of-xinjiang-labour-operation-emerge-as-china-defends-camps
[1763] Business & Human Rights Resource Centre, China: 83 major brands implicated in report on forced labour of ethnic minorities from Xinjiang assigned to factories across provinces; Includes company responses, 1 March 2020, Accessed at https://www.business-humanrights.org/en/latest-news/china-83-major-brands-implicated-in-report-on-forced-labour-of-ethnic-minorities-from-xinjiang-assigned-to-factories-across-provinces-includes-company-responses/

argued, human rights are intended to be "pre-political" and are therefore meant to be "unchangeable and unaffected by cultural or political variation"[1764]; in other words, the starting assumption, in the ideal, is that human rights are available to everyone and not only those who are citizens or residents of states that can 'afford' them. In practice, as Tharoor and others argue, socioeconomic rights in many parts of the world are unrealised, unrealistic and unattainable, considered to be a 'perk' afforded only to the privileged citizens of a few wealthy and powerful countries, and not to those on "the lowest rungs of the ladder"[1765]. These workers, it is assumed, are unconcerned with rights and norms considered 'irrelevant' in their societies or in their economic strata, such as – as Tharoor identifies – "political pluralism, the right to paid vacations (always good for a laugh in the sweatshops of the Third World), and, inevitably, the rights of women"[1766]. In Tharoor's analysis, there is an unavoidable validity to the issue of practical relativism (the doctrine that rights are only culturally acceptable where they are economically and practically achievable), and in trying to address the challenge of 'imposing' blanket values and ideals in a "pluri-cultural, multipolar world", he warns against dismissing the concerns of those who consider those rights irrelevant or out of practical reach. He writes:

> *"Can the values of the consumer society be applied to societies that have nothing to consume? Isn't talking about universal rights rather like saying that the rich and the poor both have the same right to fly first class and to sleep under bridges? Don't human rights as laid out in the international covenants ignore the traditions, the religions, and the socio-cultural patterns of what used to be called the Third World? And at the risk of sounding frivolous, when you stop a man in traditional dress from beating his wife, are you upholding her human rights or violating his?"*[1767]

The practicalities of giving effect to social and economic rights in developing countries that cannot afford to do so either because of world aside, it must be factored into this analysis that whilst some states are genuinely unable to guarantee or give effect to the full suite of rights for their citizens on economic grounds, there are countries in the wealthier Global North that simply refuse to acknowledge that

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[1764] Matthew Lower, Can and Should Human Rights Be Universal? E-International Relations Students, 01 December 2013, Accessed at http://www.e-ir.info/2013/12/01/can-and-should-human-rights-be-universal/)
[1765] Shashi Tharoor, Are Human Rights Universal?, World Policy Journal, World Policy Institute, Volume XVI, No4, 1999/2000, http://www.worldpolicy.org/tharoor.html
[1766] *Ibid*
[1767] *Ibid*

socioeconomic rights are human rights at all, such as the United States which has long held an alternately 'ambivalent' and 'hostile' view of social, economic and cultural rights and has long considered the ICESCR to be – according to Hope Lewis – a "most controversial human rights treaty for the United States"[1768]. Mantouvalou aptly recalls the stinging criticism of political philosopher Maurice Cranston on the inclusion of social rights in the UDHR[1769] as the Soviets having succeeded in contaminating the UDHR with communist principles as evidence, if any were needed, that the "climate of the Cold War … continues to haunt social and labour rights"[1770].

Yet in the last decade especially, in the wake of the Arab Spring and other uprisings across the globe protesting deep-rooted economic inequality, social and economic rights have become inexorably linked with the fight for democracy[1771], because labour rights, and human rights more generally, will be more effectively realised in democratic states where there is greater respect for and compliance with international human rights norms and standards[1772]. The link between income inequality and democracy is also well-established; as Cingranelli has found, states with more oppressive governments tend to also have wider gaps in income equality that disproportionately impact minority ethnic, religious and racial groups[1773], whereas countries that lack democratic maturity when they undergo rapid economic liberalisation experience wider disparities in income and wealth, greater incidences

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[1768] Gillian MacNaughton and Mariah McGill, Economic and Social Rights in the United States: Implementation Without Ratification, Northeastern University Law Journal, Vol 4 No 2, pp 365-406, p 367-368; Hope Lewis, "New" Human Rights? U.S. Ambivalence Toward the International Economic and Social Rights Framework, in Bringing Human Rights Home: A History of Human Rights in the United States 100, p 121. Also see Philip Alston, Putting Economic, Social, and Cultural Rights Back on the Agenda of the United States, in The Future of Human Rights: US Policy for a New Era, ed William F Schultz, University of Pennsylvania Press 2008, p 121-123

[1769] Maurice Cranston, on the inclusion of social rights in the UDHR, stated: "What the modern communists have done is to appropriate the word 'rights' for the principles that they believe in" – see Conor Gearty and Virginia Mantouvalou, Debating Social Rights, Hart 2010, p 92, citing Maurice Cranston, Human Rights Today, Ampersand 1962, p 38-39

[1770] Virginia Mantouvalou, Are Labour Rights Human Rights?, European Labour Law Journal, Vol 3 Issue 2, pp 151-172, p 155

[1771] Barbara Shailor, Workers' rights in the business and human rights movement, In Business and Human Rights: From Principles to Practice, eds Dorothee Baumann-Pauly and Justine Nolan, Routledge 2016, p 194

[1772] Democratic states characteristically empower workers with their fundamental rights to peacefully protest through freedom of association and assembly, and enable workers' participation in elections in which politicians and governments that fail to respect rights and conditions for workers run a real risk of being voted out of office. See Zhiyuan Wang, Democracy, Policy Interdependence, and Labor Rights, Political Research Quarterly, Vol 70, No 3 (September 2017), pp 549-563, p 550, 552

[1773] David Cingranelli, Democracy and Human Rights in Less Developed Countries, paper presented at the Annual Meeting of the American Political Science Association, Chicago, 1992, as cited in Todd Landman and Marco Larizza, Inequality and Human Rights: Who Controls What, When, and How, International Studies Quarterly, Vol 53 No 3 (Sep 2009), pp 715-736, p 719

of civil unrest and political conflict, and reduced protection for civil and political rights, per Cingranelli and Abouharb[1774]. Wang points to further evidence that higher wages are available to workers in democratic economies ("suggesting stronger bargaining power on the part of labour"[1775]), but also warns that this should not be taken to mean that labour rights are perfectly protected in democratic states – they are not, it is simply that these rights are markedly less vulnerable under democratic governance which on the whole is more rights-respecting in ways that autocratic or authoritarian rulers are not[1776].

In the 'workplace' as those in wealthier economies might know it, there is a clear need to explore strategies that advance 'workplace democracy' and 'human rights intrapreneurship', as the business and human rights movement in its next phase needs to move *beyond* state obligations and corporate responsibility and *toward* the individual right to labour rights and dignity in work – and each of us can start with the organisations where we ourselves work, taking a 'bottom-up' approach to facilitating normative and narrative shifts around dignity and decent work. In the corporate 'sustainability' sphere, there have been calls for companies to develop progressive human rights policies, genuinely engage stakeholders, and "ensure that their internal organisational structures and procedures are aligned with their broader commitment to human rights"[1777], as BHR "doesn't stop with corporate obligations merely to respect human rights, as notably the [UNGPs) suggests, but [should] include a duty for corporations also to take pro-active and positive steps toward the protection and realization of human rights"[1778]. In practice, as Baumann-Pauly and Posner point out, this requires the "full support of senior management, global dissemination by training employees and a clear articulation of the real consequences if these policies and procedures are not followed. Such measures help to ensure that respecting human rights becomes part of a company's internal culture and those human rights risks are

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[1774] Rod Abouharb and David Cingranelli, Human Rights and Structural Adjustment, Cambridge University Press 2007, as cited in Todd Landman and Marco Larizza, Inequality and Human Rights: Who Controls What, When, and How, International Studies Quarterly, Vol 53 No 3 (Sep 2009), pp 715-736, p 719

[1775] Zhiyuan Wang, Democracy, Policy Interdependence, and Labor Rights, Political Research Quarterly, Vol 70, No 3 (September 2017), pp 549-563, p 552

[1776] *Ibid*

[1777] Dorothee Baumann-Pauly and Michael Posner, Doing business in the 21st century: the relevance of human rights for companies, Business and Human Rights: From Principles to Practice, Routledge 2016, p 20

[1778] Florian Wettstein, CSR and the Debate on Business and Human Rights: Bridging the Great Divide, Business Ethics Quarterly, Vol. 22 No 4 (October 2012), pp 739-770, p 740

indeed effectively mitigated"[1779]. Companies have an important role to play in educating consumers and not just investors or other internal / external stakeholders; "clear industry standards, metrics and benchmarks will create meaningful reference points for reporting and evaluating company performance … increase transparency over corporate conduct and promote a race to the top, which will benefit industry leaders and enable consumers and investors to make informed purchasing and investing decisions"[1780].

For those in developing economies, many in the Global South and some in repressive authoritarian states, the problem of integrating BHR into workplace culture is of course largely academic when serious human rights violations are a daily occurrence, part of local 'culture', and simply shrugged off as unfortunate experiences that migrant workers who travel to such places in order to be able to repatriate money to their families back home should expect. CSR codes are largely ineffective in addressing serious abuses of international human rights law, especially when these abuses are normatively embedded in both the global political economy and in labour conditions in these countries, considering that "inequalities can be particularly extreme in developing countries (and more often in middle-income countries)"[1781]. If economic conditions vary too vastly to offer the security and dignity of decent work equally to workers based in California and Calcutta, for instance, then human dignity surely is the great equaliser, the commonality that gives workers in hugely disparate working conditions the right to each be afforded with respect on the basis of their status as a human being, if not a worker.

9.3 Dignity at Work: Why does 'work' matter?

Kant's famous dictum that people should be treated as ends and never as means to an end is understood as explicitly linking human dignity with the idea that *all* human beings have "unconditional, intrinsic value"[1782]. The Kantian doctrine of human

[1779] Dorothee Baumann-Pauly and Michael Posner, Doing business in the 21st century: the relevance of human rights for companies, Business and Human Rights: From Principles to Practice, Routledge 2016, p 20
[1780] Dorothee Baumann-Pauly and Michael Posner, Doing business in the 21st century: the relevance of human rights for companies, Business and Human Rights: From Principles to Practice, Routledge 2016, p 20
[1781] Katja Hujo, Social protection and inequality in the global South: Politics, actors and institutions, Critical Social Policy, Vol 41 Issue 3, pp 343-363, p 344
[1782] Michael Rosen, Dignity: Its history and meaning, Harvard University Press 2012, p 10

dignity, clearly "rooted in human moral agency"[1783], holds that "all persons, regardless of rank or social class, have an equal intrinsic worth or dignity … which elevates us above animals and mere things"[1784]. It is "the legal concept that precedes all other rights"[1785], per Ziebertz, and – according to Rosen – it is "by reference to Kant ... that attempts have been made to turn the principle of respect for dignity into practical moral and legal decisions"[1786], largely through the embedment of dignity into human rights discourse. As Ziebertz et al find, people's perceptions towards social inequality are relative to their own economic, social, or cultural situation, and most heavily influenced by "the context in which people live [which] impacts their perception and evaluation of human rights"[1787]. I argue that the same can be said for the concept of dignity, in that our perception of human dignity will be coloured by our world view, itself largely influenced by our social, economic, and political strata. Whilst it is not the intention of this chapter to debate the universality (or not) of human dignity, it is correct to say that some things are almost universally accepted to constitute "grave moral wrongs"; in the context of the world of work this would include the prohibition of torture or the exploitation of migrant workers who endure serious physical, psychological and sexual abuse under extremely poor working conditions[1788]. In her analysis of *Siliadin v France*, Mantouvalou noted:

> *"Keeping someone in servitude and forcing her to work in such conditions is a negation of all aspects of personhood and human dignity, core values of the ECHR. That individual's complete isolation and social exclusion is unavoidable, and her chance to change her life hopeless. It is not only the domestic worker's labour that is commodified, but her existence as a whole"*[1789].

[1783] Mark D Linville, A Defense of Human Dignity, Faith and Philosophy: Journal of the Society of Christian Philosophers, Vol 17, Issue 3, pp 320-332, p 321

[1784] Thomas E Hill, Kantian perspectives on the rational basis of human dignity, Part III - Systematic conceptualization, The Cambridge Handbook of Human Dignity, Cambridge University Press 2015, p 215

[1785] Hans-Georg Ziebertz and Carla M Ziebertz, Labour Rights and the Impact of Human Dignity, Religious Belief and Perception of Society: An Empirical Study among Youth in Germany, Journal of Empirical Theology 29, 2016, pp 45-77, p 48

[1786] Michael Rosen, Dignity: Its history and meaning, Harvard University Press 2012, p 10

[1787] Hans-Georg Ziebertz and Carla M Ziebertz, Labour Rights and the Impact of Human Dignity, Religious Belief and Perception of Society: An Empirical Study among Youth in Germany, Journal of Empirical Theology 29, 2016, pp 45-77, p 50

[1788] Virginia Mantouvalou, Are Labour Rights Human Rights?, European Labour Law Journal, Vol 3 Issue 2, pp 151-172, p 165

[1789] Virginia Mantouvalou, Servitude and Forced Labour in the 21st Century: The Human Rights of Domestic Workers, Industrial Law Journal 2006, 35(4), pp 395-414, p 412; see also Siliadin v France, App No 73316/01, Judgment of 26 July 2005 ([2005] ECHR 545 (available only in French)

In Wright et al's study of mental health interventions required to help the survivors of modern slavery (who are usually young, migrants or living in poverty), survivors typically report having experienced "extreme physical and psychological abuse, rape and deprivation of liberty and material needs"[1790], all situations that are devastating to the human spirit and which, if unresolved through trauma-focused therapies, can manifest in significant and harmful intergenerational trauma. When grave moral wrongs occur in the world of work, the injustice – as Kolben puts it – "becomes something greater than just a personal sense of unfairness: it is a violation of one's human rights" because "[p]ersonal injustice is understood to be a violation of a set of universally accepted standards that enjoy a broad moral consensus"[1791].

For as long as there has been work, exploitation has arguably existed. Marx in *Capital* detailed how the manufacturing era had created "a definite organisation of social labour … by the formation of specialised workers"[1792], creating a distinction between classes of workers and entrenching division and alienation between the workers *and* between workers and their work. This made it easier, in Marx's view, for capitalist 'bosses' to divide and conquer their workforces whilst dismantling standards for what could constitute 'fair' and healthy working conditions, with those at the very top of the ladders of power and influence making life-changing decisions for those on the very lowest rungs. As Russell noted in his notorious *In Praise of Idleness* essay in 1932: "Work is of two kinds: first, altering the position of matter at or near the earth's surface relatively to other such matter; second, telling other people to do so. The first kind is unpleasant and ill paid; the second is pleasant and highly paid"[1793]. Marx saw this kind of inequity as one of the "disastrous effects of ... machinery and ... division of labour" under capitalism[1794], where work becomes fragmented, with workers alienated from the process and from each other, and ultimately from their own sense of self. Marx accused capitalism of converting workers into a "crippled monstrosity"[1795] when he wrote that "each worker is riveted

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[1790] Nicola Wright, Melanie Jordan, and Runa Lazzarino, Interventions to support the mental health of survivors of modern slavery and human trafficking: A systematic review, International Journal of Social Psychiatry, Vol 67 Issue 8, pp 1026-1034, p 1027
[1791] Kevin Kolben, Labour Rights as Human Rights?, 50 Virginia Journal of International Law 2009-2010, p 467
[1792] Karl Marx, Capital: A Critique of Political Economy, Vol 1, Ben Fowkes (transl), Harmondsworth 1976, p 486
[1793] Bertrand Russell, In Praise of Idleness, Harper's Magazine, October 1932, Accessed at https://harpers.org/archive/1932/10/in-praise-of-idleness/
[1794] Robert Ware, Marx, The Division of Labor, and Human Nature, Social Theory and Practice, Vol 8 No 1 (Spring 1982), pp 43-71, p 50
[1795] Karl Marx, Capital: A Critique of Political Economy, Vol 1, Ben Fowkes (transl), Harmondsworth 1976, p 481

to a single fraction of the work as his or her lifelong destiny"[1796]; when that fraction of the work is swallowed up by "large-scale industry" and becomes obsolete in the face of technological advancement, then this "raises the degree for exploitation"[1797].

As Ware puts it: "In order to preserve and increase profits through exploitation, the capitalist must secure control, maintain discipline, and minimise resistance"[1798]; for this to happen, the worker is systemically dehumanised (made 'less than human'). In the context of hyper-capitalist markets such as the US, the UK, and parts of Europe or Asia, this manifests in burnout and the breakdown of the human spirit. In more extreme cases, this dehumanisation is an incitement to modern slavery and human trafficking, human rights crimes that typically involve the worker being stripped of regulatory or any social protections, from the privileges of citizenship, and of their most basic rights – to protection from torture, to the enjoyment of family life, or to life itself. As workers are dehumanised from social institutions and subjugated from themselves, the numinosity of work and its facets of creativity, innovation, achievement, community, and progression – in short, the dignity of work – is decimated entirely.

This is because, as Ziebertz et al observe, "dignity is connected with personal achievement and moral behaviour (dignity of merit)"[1799] – in other words, with one's sense of self, and with feelings of wellbeing, security, belonging, and self-worth. Dignity is connected with one's capacity for aspiration, agency, and hope – the four basic components of hope being, per Wydick et al, "the capacity to aspire, a healthy conceptualization of personal agency and responsibility, and the ability to conceptualize pathways to a better state"[1800]. Through an Aristotelian lens, it can be connected with wellbeing, 'nature fulfilment' and the tendency of human beings to

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[1796] Robert Ware, Marx, The Division of Labor, and Human Nature, Social Theory and Practice, Vol 8, No 1 (Spring 1982), pp 43-71, p 50, citing Karl Marx, Capital: A Critique of Political Economy, Vol 1, Ben Fowkes (transl), Harmondsworth 1976, p 463, 464 and 459
[1797] Karl Marx, Capital: A Critique of Political Economy, Vol 1, Ben Fowkes (transl), Harmondsworth 1976, p 518
[1798] Robert Ware, Marx, The Division of Labor, and Human Nature, Social Theory and Practice, Vol 8, No 1 (Spring 1982), pp 43-71, p 52
[1799] Hans-Georg Ziebertz and Carla M Ziebertz, Labour Rights and the Impact of Human Dignity, Religious Belief and Perception of Society: An Empirical Study among Youth in Germany, Journal of Empirical Theology 29, 2016, pp 45-77, p 50
[1800] Bruce Wydick, Robert Dowd, and Travis J Lybbert, Hope and Human Dignity: Exploring Religious Belief, Hope, and Transition out of Poverty in Oaxaca, Mexico, 22 December 2016, p 1, Accessed at https://arefiles.ucdavis.edu/uploads/filer_public/e3/3e/e33e56e6-76e8-404d-82d7-1d51f347900d/hope__human_dignity_dowd_lybbert__wydick_12-27-16.pdf

look within for "optimal functioning"[1801]; and as Joseph notes, "the Aristotelian frame of understanding represents a perspective of a core human nature in which change towards something good, better, or more perfect comprises the fundamental aspect. The good," he writes, "is what everything strives toward"[1802].

"As individuals," writes Schultz, "our work provides us with a forum to realise at least some of our aspirations, to form bonds with others, to serve society, and to project ourselves into the larger world beyond our own families and friends. It also provides us with the wherewithal to sustain ourselves, economically and socially, so that we may enter into intimate relationships with the security that permits us to love (and leave) freely, without need of recompense"[1803]. Dignity is reinforced by these powerful, meaningful, loving human interactions that foster positive feelings of the self-esteem (*Selbstschätzung*) that Kant recognised as "one's duty to oneself" and the "*principium* of the self-regarding duties"[1804]. To Kant, nourishing one's self-esteem is "the most important of all duties" as "he who violates duties toward himself, throws away his humanity"[1805], with 'self-esteem' used interchangeably with 'self-respect' by Rawls in his definition of self-respect as a "primary social good" which "includes a person's sense of his own value, his secure conviction that his conception of the good, his plan of life, is worth carrying out"; it implies, he wrote, "a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions"[1806]. In *Political Liberalism*, Rawls wrote:

> "*Self-respect is rooted in our self-confidence as a fully cooperating member of society capable of pursuing a worthwhile conception of the good over a complete life ... The importance of self-respect is that it provides a secure*

[1801] Stephen Joseph, Positive Psychology in Practice: Promoting Human Flourishing in Work, Health, Education, and Everyday Life, John Wiley & Sons 2015, p 12, citing Aristotle, Book 1 - Nicomachean Ethics: "Every craft and every line of inquiry, and likewise every action and decision, seems to seek some good; that is why some people were right to describe the good as what everything seeks". Rawls describes the Aristotelian Principle as "a principle of motivation"; Wall takes this further with his definition of the principle as "a basic principle of human motivation, one that describes a strong, and not easily counterbalanced, tendency or desire" – see John Rawls, The Theory of Justice, Harvard University Press 1971, p 374-375, and Steven Wall, The Cambridge Rawls Lexicon, (eds) Jon Mandle and David A Reidy, Cambridge University Press 2015, p 17

[1802] Stephen Joseph, Positive Psychology in Practice: Promoting Human Flourishing in Work, Health, Education, and Everyday Life, John Wiley & Sons 2015, p 12

[1803] Vicki Schultz, Life's Work, Columbia Law Review, Vol 100, No 7, November 2000, pp 1881-1964, p 1883

[1804] Lara Denis, Proper self-esteem and duties to oneself, from Part III - Ethics, Kant's Lectures on Ethics: A Critical Guide, Cambridge University Press 2015, p 219-220

[1805] *Ibid*, p 220

[1806] John Rawls, The Theory of Justice, Harvard University Press 1971, p 440; also Cynthia A Stark, Rawlsian Self-Respect, Oxford Studies in Normative Ethics: Volume 2, eds Mark Timmons, Oxford University Press 2012, p 240

sense of our own value, a firm conviction that our determinate conception of the good is worth carrying out"[1807].

Self-esteem and self-respect are inseparable from motivation[1808], and a powerful motivator in our worlds of work is the ability that work gives us to provide for and sustain ourselves, and the people we love and are responsible for. Locke's philosophy of property, articulated in the *Second Treatise of Government* and based upon the protected right of man to acquire property from the earth through "[t]he labour of his body, and the work of his hands"[1809], held that human beings, "once born, have a right to their preservation, and consequently to meat and drink, and such other things as nature affords for their subsistence"[1810]. Hegel saw labour as "a distinctively human ('spiritual') activity" through which "we labour to create a product for consumption [and] fashion and shape the object, and give it a human form", thus "duplicat[ing]" ourselves in the world"[1811]. For Hegel, the "labour of the individual for his own needs is just as much a satisfaction of the needs of others as of his own"[1812].

Work allows the individual to secure and acquire what Locke called the "good things" that are "really useful to the life of man", to the "necessity of subsisting" are "generally of short duration" and will "if not consumed by use ... decay and perish by themselves"[1813]. Marx, whose own philosophy was deeply influenced by the Hegelian system[1814], saw labour as a "means of creating wealth"[1815], a "purposeful" activity or process by which man "through his own actions, mediates, regulates and controls the metabolism between himself and nature"[1816]; and in doing so, establishes and exercises autonomy and agency. In the Marxian view, labour is a "form-giving activity" through which, per Sayers, "human beings give form to

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1807 John Rawls, Political Liberalism, Columbia University Press 1993, p 318
1808 Roger C Mills, A New Understanding of Self: The Role of Affect, State of Mind, Self-Understanding, and Intrinsic Motivation, The Journal of Experimental Education, Vol 60, 1991 - Issue 1: Unraveling Motivation, pp 67-81, p 74
1809 John Locke, Chapter V Of Property, Second Treatise of Civil Government (1690), at 27
1810 *Ibid*, at 25
1811 Sean Sayers, The Concept of Labor: Marx and His Critics, Science & Society, Vol 71, No 4 (Oct 2007), pp 431-454, p 434
1812 Georg Wilhelm Friedrich Hegel, The Phenomenology of Spirit (1807), at 351
1813 John Locke, Chapter V Of Property, Second Treatise of Civil Government (1690), at 46, also cited in Hannah Arendt, The Human Condition, University of Chicago Press 1958, p 96
1814 Herbert Marcuse, Reason and Revolution: Hegel and the Rise of Social Theory, Routledge & Kegan Paul 1941, p vii, Accessed at https://www.marxists.org/reference/archive/marcuse/works/reason/reason-and-revolution.pdf
1815 Karl Marx, Grundisse, Penguin 1939, p 37, Accessed at https://www.marxists.org/archive/marx/works/download/pdf/grundrisse.pdf
1816 Karl Marx, Capital, Vol 1, Ben Fowkes (transl), Harmondsworth 1976, p 283-284

materials and thus objectify themselves in the world"[1817], and it is what distinguishes human beings from animals (although as Arendt points out, it was originally Hume and not Marx who made this distinction)[1818].

In Arendt's *The Human Condition*, in which she outlined a tripartite model for our 'being in the world' (which she called the *vita activa*, comprised of labour, work, action), labour is "the activity which corresponds to the biological process of the human body, whose spontaneous growth, metabolism, and eventual deal are bound to the vital necessities produced and fed into the life process by labour. The human condition of labour", she wrote, "is life itself"[1819]. Arendt warned that a danger of "future automation" was that "all human productivity would be sucked into an enormously intensified life process", perpetuating "ever-recurrent" and deadly cycles of labour and consumption, ultimately wearing down the "durability" of the world[1820]. This was a prescient warning from Arendt in 1958, not only as to the dangers of dehumanising workers through what Marx called the 'division of labour' through automation, but of the impact on the earth of overconsumption of its resources by the world's middle classes, which according to Doig is responsible for "draining the planet at a terrifying rate and making it increasingly inhospitable to everyone but especially the poorest people, who are most affected by the state of the natural environment"[1821]. Arendt, with reference to Marx, called this a "cycle of consumption", with labour being the "activity which provides the means of consumption"[1822] and which "assures not only individual survival, but the life of the species"[1823].

In the Hegelian view, per Sayers, labour is not merely an "instrumental activity" through which the individual can meet material needs, it is "always and necessarily a social activity [which] involves and sustains relations with others"[1824]. Thus, work is

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[1817] Sean Sayers, The Concept of Labor: Marx and His Critics, Science & Society, Vol 71 No 4 (Oct 2007), pp 431-454, p 432

[1818] Hannah Arendt, The Human Condition, University of Chicago Press 1958, p 86

[1819] *Ibid*, p 7

[1820] *Ibid*, p 132 and 136-137

[1821] Alison Doig, The rich, the poor and the future of the earth: equity in a constrained world, Christian Aid, 23 April 2012, Accessed at https://reliefweb.int/sites/reliefweb.int/files/resources/constrained-world.pdf

[1822] Hannah Arendt, The Human Condition, University of Chicago Press 1958, p 99

[1823] *Ibid*, p 8

[1824] Sean Sayers, The Concept of Labor: Marx and His Critics, Science & Society, Vol 71 No 4 (Oct 2007), pp 431-454, p 434

an important part of human flourishing through which the worker "develops philosophically and therefore personally as he overcomes the estrangement between the objective world and the subjective world; he transforms nature into an appropriate medium for his self-development"[1825]. The world of man, per Hegel, is constructed upon and developed through language, labour, and property[1826]; Marcuse, in *Reason and Revolution*, notes that labour is "the decisive force for the development of culture" and is "responsible for various types of integration, conditioning ... the family, civil society, and the state"[1827].

As human beings interacting with our work and with other human beings *at* work, we are motivated by others' achievements and the stability and purpose that work brings. Rawls writes: "As we witness the exercise of well-trained abilities by others, these displays are enjoyed by us and arouse a desire that we should be able to do the same things ourselves"[1828]. Through work, individuals seek recognition from other individuals for their contributions to the community and to society overall. Importantly, in the Hegelian view, labour is how one "becomes a member of a community. The individual, by virtue of his labour, turns into a universal; for labour is of its very nature a universal activity: its product is exchangeable among all individuals"[1829]. Self-esteem, motivation, and dignity, then, are inherently linked with the ability to realise our own value, which compels us to provide for and sustain ourselves and the people we love and are responsible for. In this sense, work is both an integral component of human flourishing, linked with human dignity, self-respect, social interaction, and sustenance. Even Marx conceived of situations "in which labour becomes attractive work", and part of "the individual's self-realization"[1830], where labour represents opportunities for one's own intellectual advancement, to reskill, retool, build capacity, specialise, and strengthen one's expertise amid the "ever increasing number of types of labour"[1831].

[1825] Herbert Marcuse, Reason and Revolution: Hegel and the Rise of Social Theory, Routledge & Kegan Paul 1941, p 77, Accessed at https://www.marxists.org/reference/archive/marcuse/works/reason/reason-and-revolution.pdf
[1826] *Ibid*, p 74
[1827] *Ibid*, p 75
[1828] John Rawls, The Theory of Justice, Harvard University Press 1971, p 375-376
[1829] Herbert Marcuse, Reason and Revolution: Hegel and the Rise of Social Theory, Routledge & Kegan Paul 1941, p 77
[1830] Robert Ware, Marx, The Division of Labor, and Human Nature, Social Theory and Practice, Vol 8, No 1 (Spring 1982), pp 43-71, p 45
[1831] Karl Marx, Capital: A Critique of Political Economy, Vol 1, Ben Fowkes (transl), Harmondsworth 1976, p 1040

In the Hegelian view, per Ashton, work "both enslaves and emancipates"[1832] in that it is a source of deep anxiety when it is lost, troubled or traumatic. As Gilabert puts it: "Most of us care deeply about work. If we do not have a job, we anxiously seek one. If we have one, we fear that we may lose it, or worry about the extent to which it enables us to live a decent life"[1833]. As Schultz has noted, "it should not be surprising that the strategies we use to succeed as workers become infused into our behaviour, thoughts, feelings, and senses of ourselves – our very beings – with real spillover effects in our so-called 'private' lives"[1834]. In its jurisprudence the ECtHR has held that those facing serious difficulties … as regards the possibility to earn their living" face "obvious repercussions on their enjoyment of their private life"[1835], clearly linking our lives at work and the enjoyment of the Article 8 right to a private and family life[1836]. It is, per Smith:

> "… hard not to be personally affected by work ... work (and the search for it) occupies the bulk of most adult people's waking life, shaping the sense of self in a myriad of conscious and unconscious ways … lack of work, or at least lack of meaningful, rewarding work, can have a devastating effect on one's quality of life … the sphere of work tests the sense of justice more habitually, and perhaps more profoundly, than any other"[1837].

Work matters because, as described by Schultz in her seminal 2000 essay *Life's Work*, it is a "site of deep self-formation offering rich opportunities for human flourishing or devastation"[1838], just as love, home and relationships are intrinsic to flourishing (as articulated in the earlier chapter within this thesis on human rights at home). Schultz defines the concept of 'life's work' as one where men and women can equally "pursu[e] our chosen projects and forg[e] connected lives"[1839]; "in the process," she writes, "we come to view each other as equal citizens and human

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[1832] Paul Ashton, 'Hegel & Labour', Legacy of Hegel Seminar at the University of Melbourne, 05 February 1999, Accessed at https://www.marxists.org/reference/archive/hegel/txt/ashton.htm

[1833] Pablo Gilabert, Labor human rights and human dignity, Philosophy and Social Criticism 2016, Vol 42(2), pp 171–199, p 171

[1834] Vicki Schultz, Life's Work, Columbia Law Review, Vol 100 No 7, November 2000, pp 1881-1964, p 1890-1891

[1835] Sidabras and Dziautas v Lithuania, ECtHR App Nos 55480/00 and 59330/00, Judgment of 27 July 2004, para 48

[1836] Article 8, European Convention on Human Rights 1953

[1837] Nicholas H Smith, Introduction: Philosophy of Work, In Revue internationale de philosophie 2016/4, No 278, pp 429-433, p 429

[1838] Vicki Schultz, Life's Work, Columbia Law Review, Vol 100 No 7, November 2000, pp 1881-1964, p 1881

[1839] *Ibid*, p 1883

beings, each entitled to equal respect and a claim on society's resources because of our shared commitments and contributions"[1840]. In the ideal, life's work for Schultz is about creating a "world of equal citizenship, stable community, and a strong, secure selfhood for everyone"[1841] (selfhood, as defined by Houldey, to mean "self-expression", "purpose" and "inner knowing"[1842]). Simply, human rights at work matter because for so many of us, our lives are spent at work, that place which Schultz so beautifully describes as that which "calls us to incorporate all the strands of our experience, to reach across time and place, into the depths of our hearts and psyches, for the self-understanding that will enable us to love and work more fully, to do whatever it is we are on earth to do. That is the meaning of a life's work"[1843].

9.4 Human dignity and the welfare state

In the 'Age of Austerity', one area where labour rights, social and economic rights, and politics most vociferously intersect is in the concept of welfare, and of the 'welfare state'[1844]. Hegel believed that it was the states' responsibility to provide, through the 'charity' of the state, the funding needed for welfare support, which would come from the wealthier classes in the form of taxation and making it "difficult [for them] to achieve high profits"[1845]. Yet as Ziebertz notes, and as we have seen in the aftermath of the 2008 global financial crash, the world's "worst economic crisis in 80 years"[1846], welfare has become a "scarce resource", with significant ideological conflict around the distribution of public spending on welfare and social protections which has had a brutalising effect on human rights, and specifically on the realisation of social, economic, and cultural rights. "When welfare is under pressure", Ziebertz writes, "so are human rights"[1847].

[1840] *Ibid*
[1841] *Ibid*
[1842] Gemma Houldey, The Vulnerable Humanitarian: Ending Burnout Culture in the Aid Sector, Routledge 2022, p 2
[1843] Vicki Schultz, Life's Work, Columbia Law Review, Vol 100, No 7, November 2000, pp 1881-1964, p 1964
[1844] Hans-Georg Ziebertz and Carla M Ziebertz, Labour Rights and the Impact of Human Dignity, Religious Belief and Perception of Society: An Empirical Study among Youth in Germany, Journal of Empirical Theology 29, 2016, pp 45-77, p 47-48, 50
[1845] Shlomo Avineri, Hegel's Theory of the Modern State, Cambridge University Press 1972, p 100
[1846] Austerity (and a blanket clampdown on public spending including and especially on welfare and social protections) was the ill-thought out response to the 2008 global financial meltdown which decimated the US, UK and European economies, which Schoenbaum has described as "the worst economic crisis in 80 years" - see Thomas J Schoenbaum, The Age of Austerity: The Global Financial Crisis and the Return to Economic Growth, Edward Elgar 2012, p ix
[1847] Hans-Georg Ziebertz and Carla M Ziebertz, Labour Rights and the Impact of Human Dignity, Religious Belief and Perception of Society: An Empirical Study among Youth in Germany, Journal of Empirical Theology 29, 2016, pp 45-77, p 50

This goes back to the stubborn and seemingly irresolvable issue of "whether protection against poverty and social deprivation is a human right[1848], which is linked with state reluctance to accept economic and social rights as human rights and the fact that the effective implementation of human rights requires economic resources that many states simply do not have or are basically unwilling to allocate to welfare spending (although Donnelly has previously pointed out the flaw in this argument in that, while the need for heavy resource allocation is typically cited as a reason *not* to honour social and economic rights, resource allocation is also a requirement of many civil and political rights[1849]). The reality is that in many states, Sweden and Denmark being notable exceptions, certain factions of the media (typically the right-leaning and heavily corporatized tabloid press) have spent decades crafting harmful, discriminatory and highly stereotypical narratives about the recipients of welfare through highly incendiary and polarising reporting about intergenerational welfare dependency and benefit fraud[1850], both fuelled by and opportunistically seized upon by populist leaders and governments who have very skilfully stoked great fear and distrust towards multiculturalism in society, calling it the "doom of national culture, welfare and value system"[1851]. Difficulties also arise when one considers, as Ziebertz et al point out, that rights concerning work and employment are still considered to be "so-called second generation of rights ... less frequently discussed in human rights discourse than, for example, civil rights of the so-called first generation of human rights"[1852].

[1848] Andrew Vincent, The Politics of Human Rights, Oxford University Press 2010, p 137

[1849] Jack Donnelly, Cultural Relativism and Universal Human Rights, Human Rights Quarterly, Vol 6 No 4 (Nov 1984), pp 400-419, p 408

[1850] Christian Albrekt Larsen, Negative portrayals of welfare recipients in the UK press are in contrast to the positive stories which dominate Swedish and Danish mass media, LSE Blogs, 15 November 2013, Accessed at https://blogs.lse.ac.uk/europpblog/2013/11/15/negative-portrayals-of-welfare-recipients-in-the-uk-press-are-in-contrast-to-the-positive-stories-which-dominate-swedish-and-danish-mass-media/; Tom Mould, Welfare, Politics, and Folklore: Overcoming the Narrative Bias Against Public Assistance in the US, Journal of Folklore Research, Vol 57, Number 2, May-August 2020, pp 1-39; and Stephanie Baker Collins, Tracy Smith-Carrier, Amber Gazso & Carrie Smith, Resisting the Culture of Poverty Narrative: Perspectives of Social Assistance Recipients, Journal of Poverty, Vol 24 Issue 1 2020, pp 72-93

[1851] Hans-Georg Ziebertz and Carla M Ziebertz, Labour Rights and the Impact of Human Dignity, Religious Belief and Perception of Society: An Empirical Study among Youth in Germany, Journal of Empirical Theology 29, 2016, pp 45-77, p 50

[1852] *Ibid*, p 47

Social protection ("broadly understood as social insurance", per Hujo), has been "largely neglected during three decades of neoliberal globalisation"[1853] and has only recently re-emerged in public, global economics discourse that is largely led by the international financial institutions such as the International Monetary Fund (IMF), the World Bank, or the Davos World Economic Forum. Although social protection is a fundamental human rights in the UDHR, Hujo identifies the potential for social programmes to "reinforce inequalities and exclusions or lack transformative impact" rather than "more equitable social outcomes and empowerment while also fostering cross-class coalitions", if they are not progressively designed, financed, and resourced[1854].

The pandemic compelled fiscally conservative governments such as ours in the UK to essentially adopt controversial Universal Basic Income-type strategies to meet the dire economic challenges of an unprecedented global public health crisis, providing furlough schemes, income supplements and other social protection measures to mitigate the economic impact of the pandemic on vulnerable workers. Until now, such schemes have only been seen as viable when implemented for a limited time as a response to a temporary national economic emergency, but the pandemic has demonstrated that there is a place in rights-respecting societies for the 'welfare state', and that there is a real need for narrative change when it comes to the recipients of welfare, the working poor, those navigating short-term life crises, the homeless, and the unemployed, disenfranchised and impoverished. We need to challenge derogatory narratives about 'benefit scroungers' which dominate *Daily Mail* clickbait, and we need to start thinking of society's most vulnerable people and families as *deserving*: deserving of basic sustenance, social protection and, importantly, of dignity.

[1853] Hujo identifies social protection as one of "the key instruments to address inequality, poverty and social exclusion", designed to "protect people from adverse market effects and lifecycle contingencies" – see Katja Hujo, Social protection and inequality in the global South: Politics, actors and institutions, Critical Social Policy, Vol 41 Issue 3, pp 343-363, p 344-345
[1854] *Ibid*, p 345

9.5 Conclusion

Labour rights are typically approached with cultural and practical relativistic arguments at the ready because for much of the world they are simply out of reach, just as other rights in the broader catalogue of fundamental rights and freedoms similarly seem abstractly unattainable to the world's poor and marginalised. As Kolben has stated, labour rights movements have historically framed problems as economic and social in nature, and solutions as being inherently political[1855], but he has also warned against the 'white saviour' approach of human rights activists and organisations who set out to 'save' workers and child labourers, rightly criticising the "philanthropic approach" to labour rights as being "in direct contrast to an agency approach to labour rights, whereby workplace emancipation and improved working conditions are not achieved as a gift from others, but rather through individual and collective action"[1856].

In theory, this means scaling up opportunities for future workers to train, upskill and reskill, to benefit from a quality education and an inclusive economy, especially those who have been marginalised from the economy for too long – women and young people key among them. There could be said to be an existing 'right to reskill' in the ICESCR, which in Article 6(2) asks States to make available "technical and vocational guidance and training programmes, policies, and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual"[1857]. As Gilabert has suggested, "there should be mechanisms that support people's development of talents and skills they could use in jobs. Thus, the right to education can be seen as importantly linked with the right to work"[1858]. This is a critical observation in the post-Covid economic milieu, when the need for workers to reskill and upskill gains urgent impetus as whole economies seek to recover from mass unemployment and severe instability to SMEs and to those working precariously in informal sectors.

[1855] Kevin Kolben, Labour Rights as Human Rights?, 50 Virginia Journal of International Law 2009-2010, p 476
[1856] *Ibid*, p 479
[1857] Article 6(2), International Covenant on Economic, Social and Cultural Rights 1966
[1858] Pablo Gilabert, Labor human rights and human dignity, Philosophy and Social Criticism 2016, Vol 42(2), pp 171–199, p 173

It is largely thanks to the BHR movement, academics, and civil society (including responsible media) that labour rights have become "part of the larger trajectory of international law and its search for both order and hierarchy in its relation to other legal frameworks"[1859]. The world of work is arguably undergoing an incremental transition towards humanisation with – mostly due to the efforts of NGOs working in this space – a heightened alertness to BHR issues, including and especially workers' rights issues in the Global South but increasingly, within wealthier Global North economies as well[1860]. As Kolben notes, human rights organisations such as Human Rights Watch, Amnesty International, and the Business and Human Rights Resource Center all employ researchers who focus on labour rights in various regions, using "traditional human rights methodologies as investigating, reporting and human rights advocacy"[1861]. Increasingly, Kolben finds, international labour movements and campaigns have leveraged the discourse and methodologies of international human rights law to bring labour rights issues in the global supply chain to the forefront of the international economic, development and human rights agenda[1862]. However, we need to do more to promote narrative change to end the distinction between labour rights and human rights, and "harness the hegemonic status of human rights discourse" to gain support for labour rights and mobilise action, sanctions and boycotts against the corporations that fail to respect[1863]. As Kolben points out, "[c]alling a particular right a 'human right' in both law and popular discourse, makes that right almost numinous"[1864], and so, "[f]raming labour rights as human rights thus shifts the labour discourse from economics and special interest politics to ethics and morality"[1865].

However, Russell famously cautioned against the romanticisation of labour as "the necessity of keeping the poor contented, which has led the rich for thousands of

[1859] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 14
[1860] Professor Tony Dobbins, COVID illuminates global inequalities in workers' rights and working conditions, University of Birmingham (Research Perspectives), Accessed at https://www.birmingham.ac.uk/research/perspective/covid-illuminates-global-inequalities-in-workers-rights.aspx
[1861] Kevin Kolben, Labour Rights as Human Rights?, 50 Virginia Journal of International Law 2009-2010, p 459
[1862] *Ibid*, p 451
[1863] *Ibid*, p 462
[1864] *Ibid*, p 461-462
[1865] *Ibid*, p 462

years to preach the dignity of labour, while taking care themselves to remain undignified in this respect"[1866]. Although Russell was writing in 1932, these words take on new poignancy today when the global economic and development agenda is awash with post-pandemic rhetoric about 'building back better' and refocusing corporate priorities towards people and planet over profit. There is a very real risk that the capitalist model, which has gone unchallenged for decades, will resurface in an emboldened, unforgiving iteration of the economic realities that preceded the pandemic, one that treated workers abysmally and as expendable 'ends'. The pandemic laid bare just how vulnerable both workers and whole economies are to sudden economic and social crises and clarified that social, economic, and cultural rights are much, much more than "aspirations" of wealthy states or a utopic impossibility in poorer economies. The pandemic forced us to look more honestly at the kind of world we want to live and work in, and importantly (albeit possibly temporarily) it forced policy makers to recognise the value of creative thinking and human-centred policy design, as demonstrated by the fiscal responses of many governments to the pandemic and the generous financial solutions that were put forth in wealthier countries towards workers in the form of furlough schemes, or towards the newly out of work in the form of simplified access to welfare and other extensions of social safety nets (in states, largely, where strong safety nets existed in the first place). The pandemic has given new impetus to emerging 'future of work' discourse and deliberations at international and state level on how to address growing social and economic inequalities through 'decent work', which per the ILO involves "opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men"[1867].

Here, the ILO's Decent Work Agenda, which encompasses job creation, workers' rights, social protection, social dialogue, and gender equality as "crosscutting objective[s]" might prove instructive as it recognises "an increased urgency among

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[1866] Bertrand Russell, In Praise of Idleness, Harper's Magazine, October 1932, Accessed at https://harpers.org/archive/1932/10/in-praise-of-idleness/
[1867] ILO, Decent work, Accessed at https://www.ilo.org/global/topics/decent-work/lang--en/index.htm

international policymakers, particularly in the wake of the global financial and economic crisis of 2008, to deliver quality jobs along with social protection and respect for rights at work to achieve sustainable, inclusive economic growth, and eliminate poverty"[1868]. In 2017, the ILO established the Global Commission on the Future of Work, which in its 2019 report called for the 'reinvigoration' of the social contract through "a human-centred agenda for the future of work that strengthens the social contract by placing people and the work they do at the centre of economic and social policy and business practice"[1869]. Recommendations included lifelong learning for all[1870], the strengthening of social protection, a 'transformative' approach to gender equality (in Pillar 1)[1871]; the revitalisation of collective action and the use of technology to support decent work (in Pillar 2)[1872]; and (in Pillar 3), 'disrupting' the business and economic model at state level to promote and prioritise "long-term, sustainable investments that favour human development and protect the planet"[1873] whilst establishing "more systemic and substantive working relations" between the relevant multilateral international institutions[1874].

It is extremely promising that in the years since the ILO's Future of Work report, 'decent work' (fairly paid work that is "meaningful") is a concept that has gained significant traction cutting across both international development and labour rights discourses; as Rombouts and Zekic acknowledge, 'decent work' has become "a central principle in international labour and human rights law … one of the main objectives of the international labour and human rights discourses", and "one of the central concepts in the 2030 Agenda for Sustainable Development ", given the "increasingly closer connection between decent work and global sustainability instruments and challenges"[1875], specifically in its alignment with Goal 8 of the SDGs

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[1868] *Ibid*

[1869] The ILO's tripartite framework for 'decent work' consists of three core pillars for action: 1) investing in people's capabilities; 2) investing in the institutions of work; and 3) investing in decent and sustainable work – see International Labour Organization, Work for a Brighter Future - Global Commission on the Future of Work, January 2019, p 11, Accessed at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf

[1870] See the earlier chapter in this thesis on human rights education and lifelong learning (Chapter 8)

[1871] International Labour Organization, Work for a Brighter Future - Global Commission on the Future of Work, January 2019, p 11-12, Accessed at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_662410.pdf

[1872] *Ibid*, p 12-13

[1873] *Ibid*, p 13-14

[1874] *Ibid*, p 14

[1875] SJ Rombouts & Nuna Zekic, Decent and Sustainable Work for the Future?, UCLA Journal of International Law and Foreign Affairs, Vol 24 No 2 2020, 317-358, p 317-318

on decent work and economic growth[1876]. It is also largely thanks to the BHR movement, academics, and civil society (including responsible media) that labour rights have become "part of the larger trajectory of international law and its search for both order and hierarchy in its relation to other legal frameworks"[1877]. However, we need to do more to promote narrative change to end the distinction between labour rights and human rights, and "harness the hegemonic status of human rights discourse" to gain support for labour rights and mobilise action, sanctions and boycotts against the corporations that fail to respect human rights[1878].

The future world of work, as Waddock imagines it, could very well be "a new or next economics that puts life or wellbeing itself, rather than wealth maximization, as the central goal"[1879]. Post-pandemic, we have a very real opportunity to ensure that any reimagined social contract takes greater care to embed human rights values, awareness, and action into the world of work on the basis that human dignity should be protected in one's working life. I argue that there is a very real need for lifelong opportunities to learn and retrain, for the right to reskill to be clarified and further explored as a human right in itself to mitigate exclusion of marginalised and vulnerable workers from the future of work. There is a need for us to finally recognise social and economic rights as human rights, and to ensure better social protection for all. Furlough and other income replacement schemes that the UK and many other countries funded during the pandemic can provide a very recent and illuminating baseline of data as to the link between economic prosperity, human dignity, and wellbeing, and it is proposed that further research should be conducted into the clear link between the realisation of social, economic and cultural rights and the rights-based implementation of Universal Basic Income schemes[1880].

[1876] Goal 8 of the SDGs calls for the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all – see https://sdgs.un.org/goals/goal8

[1877] Larry Catá Backer, From the Social to the Human Rights of Labor: Reflections on the Universal Declaration of Human Rights Art. 23, the ILO, and Working Rights Principles, Coalition for Peace and Ethics, Working Paper No 2/1, February 2019, p 14

[1878] Kevin Kolben, Labour Rights as Human Rights?, 50 Virginia Journal of International Law 2009-2010, p 462

[1879] Sandra Waddock, Will Businesses and Business Schools Meet the Grand Challenges of the Era?, Sustainability 2020, 12, p 2 of 11

[1880] As a starting point, see Karl Justus Bernhard Neumärker, A Model for Human Dignity, University of Freiburg, 19 October 2017, Accessed at https://kommunikation.uni-freiburg.de/pm-en/online-magazine/research-and-discover/a-model-for-human-dignity

Corporations today are one of the most powerful actors in the global international order, operating under vastly different economic conditions and capacities than they ever have before. There is no voluntary code on earth that can convincingly compel them to respect human rights at every point of their operations; this, at least, is clear. A binding treaty on business and human rights would be one important step in 'legalising' the UNGPs; as Heidi Hautala, Vice-President of European Parliament, has said: "There is more and more understanding that the smart mix prescribed by the UN Guiding Principles on Business and Human Rights means that there needs to be legislation in order to reach the stated aims"[1881], and building on the recent progress made around 'mandatory due diligence', the "growing worldwide movement to legally require companies to undertake human rights due diligence"[1882], is another key step[1883].

As a final point, it is proposed that individuals can play a greater role in holding corporations to account for the way they treat their workers in their global supply chains. Individuals often fail to realise the power of consciously aligning their purchasing decisions to favour brands that respect human rights and treat their workers with dignity and respect. As consumers, individuals have long held corporations, as custodians of the brands that consumers interact with, to account for their treatment of workers by deliberately choosing not to engage with (boycotting) those brands that fail to practice human rights diligence[1884], whilst rewarding those that do with their custom and loyalty. Boycotting has, after all, long been "an old companion of human rights struggles and [is] today recognized as a

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[1881] Mandatory Due Diligence, Business and Human Rights Resource Centre, 16 April 2022, Accessed at https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/

[1882] *Ibid*

[1883] Mandatory due diligence refers to the role of governments in obliging companies to conduct meaningful due diligence as to the potential human rights impact of their operations, through legislation such as the French Duty of Vigilance Law to the European Commission's announcement in 2021 that it will introduce a new regime for EU mandatory supply chain due diligence, which "draws from and is aligned" with the UNGPs – see OHCHR, EU Mandatory Human Rights Due Diligence Directive: Recommendations to the European Commission, 2 July 2021, Accessed at https://www.ohchr.org/Documents/Issues/Business/ohchr-recommendations-to-ec-on-mhrdd.pdf

[1884] Ethical Consumer defines 'boycott' as an action taken to "exert economic pressure on some of the biggest companies to change their practices" – see Ethical Consumer, Boycotts, Accessed at https://www.ethicalconsumer.org/ethicalcampaigns/boycotts; also see Friedman, who defined a boycott as "an attempt by one or more parties to achieve certain objectives by urging individual consumers to refrain from making selected purchases in the marketplace" (Monroe Friedman, Consumer Boycotts in the United States, 1970–1980: Contemporary Events in Historical Perspective, Journal of Consumer Affairs, Vol 19 No 1, pp 96–117, p 97)

legitimate and powerful form of collective action", according to Le Bastard[1885], whereas consumer choice is a "rationale for capitalism"[1886]. There is a delicious irony in exercising this choice to compel brands to carefully consider the financial and reputational fallout of human rights avoidance, especially in the social media age where corporations have largely lost control of media messaging and consumer activism both online and off is widely recognised as a tool for change[1887] (although in the context of digital advocacy, Earl and Kimport make the important point that it is "people's uses of technology – not technology itself – that can change social process"[1888]). Digital, consumer-led activism has "altered the nature of activism itself", per Albinsson and Perera, in that "every consumer is a potential activist because each individual's consumption behaviours are statements of value"[1889]. The role of the individual in relation to the principles conveyed within the UNGPs is identified as an area for future research, as the pillars are largely state-centric in the duty to protect human rights and provide adequate remedy in the judicial system when they are abused, and corporation-focused with regard to the responsibility to respect human rights. Extending the corporate responsibility to respect doctrine into an individual responsibility to promote, defend and protect human rights at the individual level, and in all the spheres of Roosevelt's 'small places, close to home' are incremental first steps to bringing rights into our personal and professional lives, ensuring their mainstreaming in our places and spheres of work where we spend our lives and where some of our most meaningful interactions with other human beings play out.
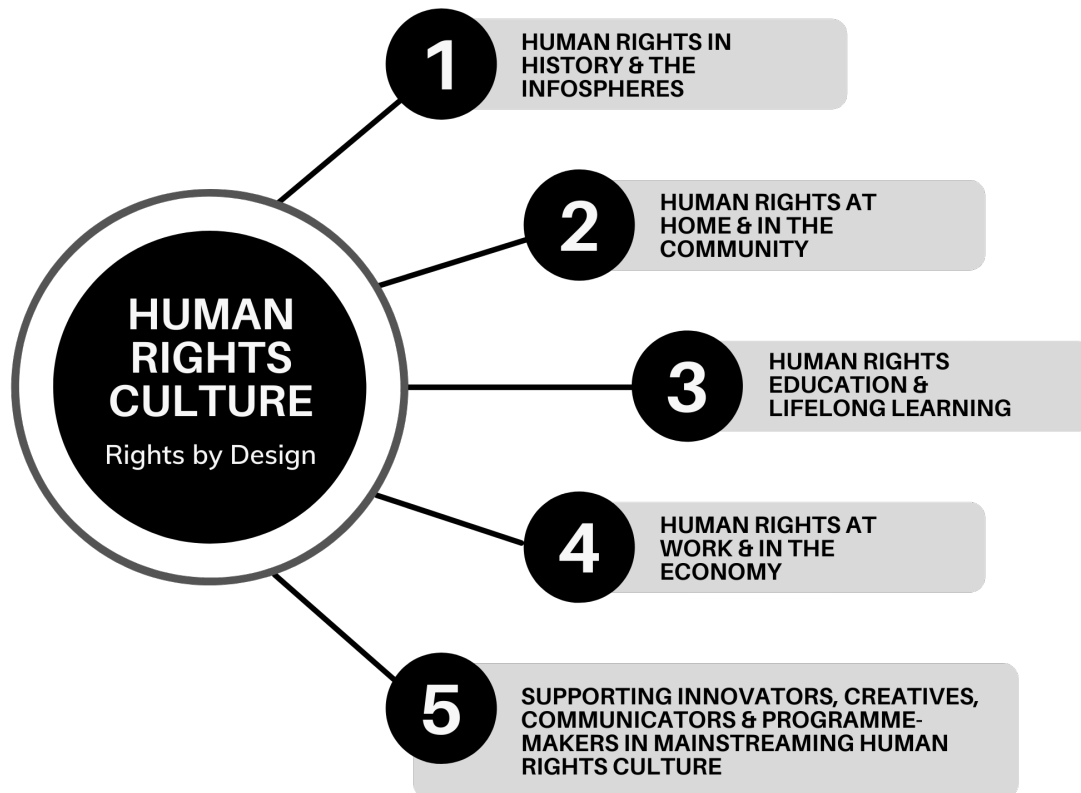

[1885] Alice Le Bastard, Boycotts in the struggle for human rights, Global Campus of Human Rights (EMA, European Master's Programme in Human Rights and Democratisation, Theses 2018/2019, https://doi.org/20.500.11825/1113)

[1886] Jill Gabrielle Klein, N Craig Smith, Andrew John, Why We Boycott: Consumer Motivations for Boycott Participation, Journal of Marketing, Vol 68 Issue 3, pp 92-109, p 92

[1887] Pia A Albinsson and B Yasanthia Perera, Consumer Activism 2.0: Tools for social change, in The Routledge Companion to Digital Consumption, eds Rosa Llamas, Russell Belk, Routledge 2013, p 356

[1888] Jennifer Earl and Katrina Kimport, Digitally Enabled Social Change: Activism in the Internet Age, The MIT Press 2011, p 14; also cited in Pia A Albinsson and B Yasanthia Perera, Consumer Activism 2.0: Tools for social change, in The Routledge Companion to Digital Consumption, eds Rosa Llamas, Russell Belk, Routledge 2013, p 357

[1889] Pia A Albinsson and B Yasanthia Perera, Consumer Activism 2.0: Tools for social change, in The Routledge Companion to Digital Consumption, eds Rosa Llamas, Russell Belk, Routledge 2013, p 357

Chapter 10
Rights by Design: Conclusion, Principles & Projects / Initiatives Emerging from this Research

1 HUMAN RIGHTS IN HISTORY & THE INFOSPHERES

2 HUMAN RIGHTS AT HOME & IN THE COMMUNITY

HUMAN RIGHTS CULTURE

Rights by Design

3 HUMAN RIGHTS EDUCATION & LIFELONG LEARNING

4 HUMAN RIGHTS AT WORK & IN THE ECONOMY

5 SUPPORTING INNOVATORS, CREATIVES, COMMUNICATORS & PROGRAMME-MAKERS IN MAINSTREAMING HUMAN RIGHTS CULTURE

10.1 Summary of Chapters

In the R*b*D vision for mainstreaming human rights culture, information and education, rights consciousness begins in the earliest parts of a person's life, where the intuitive behavioural and emotional learnings gleaned largely from environment and nurture create the external conditions and intrinsic characteristics where rights consciousness can take root. In this phase of a person's life, the creation of human rights homes (rights-friendly holding environments where parents understand the importance of modelling pro-rights behaviours to their children) is integral to raising children who understand and respect key concepts underpinning human rights from the earliest ages and are imbued with the characteristics to defend and protect human rights in their later lives – specifically, empathy, compassion, and confidence.

This sets the child up for their entry into the information environment, where they will inevitably be faced with a choice – to contribute to the disordered information environment through indifference and thoughtlessness *or* to equip themselves with the knowledge, skills and capacity to recognise and challenge misinformation, disinformation and malinformation when it arises in the context of human rights. However, in order to be able to confidently counter disordered human rights information – which is critical to restoring confidence in the international human rights system – rights bearers outside of the legal profession and academia must be able to access, make sense of, apply and even generate human rights knowledge, and to be able to use it freely and openly, without copyright restriction, to consciously create and cascade key human rights messages, and use creativity and innovative thinking to disrupt the traditional model of legal information publishing, which has commoditised and hoarded legal information to the detriment of human rights culture.

This exposure to human rights information prepares the individual for further infusion with HRET as they enter into formal education, where HRET should in my view become a core, mandatory part of teaching in the general curriculum. By integrating HRET into *every* stage of a young learner's education journey using the learning *about*, *through* and *for* framework first advanced by the UN in 2011[1890], we are a step closer to conceptualising how HRET can become an integral part of lifelong learning, embedded into all the stages of formal education through to higher, postgraduate and vocational education and training, where human rights learning has tremendous potential to positively impact the world of work where the majority of graduates, apprentices and school-leavers will eventually arrive.

Across nine substantive chapters, this thesis has articulated this ambitious reimagining of how human rights culture might be embedded in the most formative and fundamental parts of the human experience – in our homes, families and communities; in the information environment where we spend 82 hours of our week, or 69% of our waking hours[1891]; in our education, from early years, primary and

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[1890] UN Declaration on Human Rights Education and Training 2011
[1891] Doug Clinton, Defining the Future of Human Information Consumption, 12 July 2018, Loup, Accessed at https://loupfunds.com/defining-the-future-of-human-information-consumption/

secondary education through to tertiary, vocational, heutagogical, and lifelong learning; and in our worlds of work, the sphere in which we spend much of our adult lives and is as influential to our wellbeing as our lives at home or our lives in love.

In doing so, I have followed the path illuminated in 1958 by Eleanor Roosevelt in her now infamous "*Where do human rights begin? In small places, close to home*" speech delivered on the 10th anniversary of the UDHR in 1958, in which she so beautifully articulated how living human rights values gives human rights meaning in our local communities, our lives in education, and our lives at work – in all the spheres where we are nurtured and where we nurture, where we influence and are influenced, and where we exercise agency whilst respecting the rights of others to do the same. These are our most intimate, most meaningful places where we, as individuals and as rights bearers, have the power and the potential to effect lasting normative and narrative change and correct deep-rooted structural and cultural challenges that inhibit rights realisation and incubate human rights injustices. These are also the places where, through our intimate proximity with others, we build capacity for individual action and develop the confidence to engage in collective, collaborative action, which ultimately fosters the social cohesion which is a prerequisite for consciously building a culture of human rights.

In my view, the top-down, state-centric, and exclusively legalistic approach to human rights realisation has had its day. As I argued in the introductory chapter, ***Why Now is the Time for Rights by Design: From state-centric legalism to a new state of 'glocal' rights consciousness***, state-centric legalism in the context of human rights has failed to empower actors at the local level to engage with the content of human rights, and this has delegitimised human rights values, awareness, and culture at the local level. Drawing from the analysis of An-Na'Im, Fraser and Lafont, the chapter critiqued the hyper-legalistic dominance of the state over human rights narratives and discourse. Rejecting the state-centric legalism that has kept human rights discourse and individual agency in a stranglehold for most of the last century, this part of the thesis imagined a human-centric culture for human rights that places the individual firmly at the heart of human rights.

The criticism in the first chapter towards the state-centricity of human rights is by no means a critique of the drafters or of the UDHR or of the international human rights story as a whole. It must be considered that the UDHR, as our foundational human rights instrument, was drafted and adopted in the immediate aftermath of a global conflict that had left over 60 million dead, a further 6 million European Jews exterminated in the genocide of the Holocaust, millions more displaced, countries in famine, economies wrecked, thousands of babies orphaned, women dehumanised by the war crime of rape, and returning service members stricken by combat-related PTSD[1892]. Although the establishment of the 'welfare state' in 1945 hastened a "relentlessly upbeat" post-war narrative that falsely portrayed "heroes of World War Two … building a prosperous post-war society"[1893], given the emphasis on the "welfarist approach"[1894] of the nation states at the time it is inconceivable that an intergovernmental organisation or any state-led endeavour would have placed much or indeed any of the responsibility for human rights onto the individual given the realities of peoples' lives at the time.

If one also considers the monumental effort expended by the drafters and specifically by the members and chair of the drafting committee (Eleanor Roosevelt) in reaching consensus among the ideologically diverse nation states represented on the committee, it becomes clear that any draft declaration that awarded such radical and extraordinary responsibilities towards human rights (and with them, powers) to citizens would never have been adopted at all. The authors would have been constrained, quite naturally, by the ideas of the time and "the realm of their own circumstances"[1895]; and at any rate, as An-Na'Im points out, it would always have been the case that any instrument drafted in the 1940s in the aftermath of a terrible war would be "unlikely to suit the circumstances of subsequent generations in their own or other societies"[1896]. This view is supported by Moyn, who has written:

[1892] Rosenheck, in a 1986 study of children who had grown up in families where the father returned from war with combat-related PTSD, found that the "continuing legacy of wartime trauma" continued in the adult children of these service members, which illustrates the extent of collective trauma that families and societies collectively would have experienced in this period of time - see Robert Rosenheck, Impact of Posttraumatic Stress Disorder of World War II on the Next Generation, The Journal of Nervous and Mental Disease, June 1986, pp 319-327
[1893] Stephen Mulvey, The long echo of WW2 trauma, BBC News, 8 June 2019, Accessed at https://www.bbc.co.uk/news/stories-48528841
[1894] Kieran McEvoy, Beyond Legalism: Towards a Thicker Understanding of Transitional Justice, Journal of Law and Society, Vol 34, No 4 (Dec 2007), pp 411-440, p 430
[1895] Abdullahi Ahmed An-Na'Im, The Spirit of Laws is Not Universal: Alternatives to the Enforcement Paradigm for Human Rights, Tilburg Law Review 21 (2016), pp 255-274, p 258-259
[1896] *Ibid*

"Human rights are not so much an inheritance to preserve as an invention to remake – or even leave behind – if their program is to be vital and relevant in what is already a very different world than the one into which it came so recently"[1897]. It is time, in my view, for human rights to be remade and reimagined so that human rights legacies can be preserved through the wonderful process of reinvention, and all the exciting disruption, possibility, creativity and innovation that comes with it.

As I argued in this chapter, the system that underpins the international multilateral system of governance has been seriously shaken by geopolitical, economic, ideological and other global events in recent years, which has resulted in a further splintering of human rights culture on a global scale and has made human rights "inoperable and even untenable in many localised social and cultural contexts"[1898]. In response, the chapter assessed calls for a more 'human-centred' alternative to state-centric legalism, or what I call a "new state of individual-led, 'glocal' rights consciousness"[1899]. Put simply, if rights cannot be realised "close to home", then there are unrealisable everywhere. Without empowering the individual to promote, protect, respect, and defend human rights, we have little hope of steering global grassroots change or delivering a revived culture of human rights that is fit for the challenges of the post-Covid economic, political and sociocultural continuum.

It is my view that the overly legalistic nature of human rights discourse, development, and implementation since the modern system of international human rights came into place in 1948 has harmed that symbiotic and innate relationship by excluding the individual from the operationalisation of existing human rights and the development of new rights. I strongly believe, and have represented throughout this thesis, that individual advocacy, more than any other factor, is the critical but vastly underexplored and underappreciated link between human beings and human rights (which I see as worldly representations of human dignity).

We have had a tumultuous start to the century for human rights, and we are still in the immediate aftermath of a decade of post-truth populism and a global public

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[1897] Samuel Moyn, The Last Utopia, Harvard University Press 2012, p 9
[1898] See 1.1.2 Towards a new state of individual-led, 'glocal' rights consciousness
[1899] *Ibid*

health emergency which have profoundly stress tested both the spirit and the system of human rights. Whilst it is tempting, in these dark times for human rights, to assume that human rights have had their day, I have argued that we are in the midst of a new beginning for human rights. The current, febrile human rights climate presents us all with an opportunity to clarify the *spirit* of human rights, and to rethink the imperfect but precious *system* of human rights which has been ravaged in recent years by populism, the post-truth phenomenon, terrorism, protectionism, neoliberalism, postmodernism, and most recently, an unprecedented global health pandemic, which may have actually ensured the survival of human rights for now and the foreseeable future by forcing a much-needed reimagining of how we view social and economic rights. In my view, the time is absolutely right to clarify the vital role that individuals should play in the creation and continued realisation of human rights culture in their local contexts and in the social institutions that are, as Giddens put it, the "enduring features of social life"[1900], so that they can be empowered to consciously respect, promote and defend human rights individually and collectively, as members of rights-respecting families, rights-friendly communities and cities, and citizens of rights-championing nations.

The first 'objection' that human rights defenders must often contend with in the local context is the postmodern, cultural relativist argument that human rights are economically or ideologically impossible to mainstream as not all cultures and religions subscribe to the idea of human rights being in any way universal. I tackled this objection early in this thesis, in Chapter 2 ***Human Rights as Representations of Dignity: Why human rights matter to every human being (and how they are woven into human history, culture and civilisation***, which set out why human rights *matter* and why they should be protected for *everyone*. In this chapter, I argued that natural rights and human dignity are present in our civilisation's most sacred religious texts and founding philosophies and are woven intricately into human rights, culture, and civilisation. This is my view counters the dominant cultural relativist argument that human rights are purely a Western construct and a tool of Euro-centric liberal imperialism, a highly cynical and opportunistic argument against

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[1900] Anthony Giddens, The Constitution of Society: Outline of the Theory of Structuration, Polity Press 1984, p 24

the international human rights framework usually advanced by authoritarian regimes keen to exclude their citizens from the human rights paradigm.

In this chapter, I clarified a distinction between the *system* and the *spirit* of human rights which I see as inherent in all human beings and predating the UDHR and the modern international human rights and rules-based system by millennia, as evidenced by the many references in ancient, religious, and philosophical texts to the values that underpin human rights – dignity, justice, and equality being key among them. As representations of human dignity, I have argued, the spirit of human rights is sacrosanct, separate, and protected from political manipulation; it is the system that is periodically threatened by the interference of the pragmatic and the powerful. In uncovering and exploring a rich historiography of human rights, which builds on Gordon's seminal work in this area[1901], I have established my view that human rights are rooted in human dignity and therefore do not existentially depend upon declarations and charters and covenants, on international co-operation, the rules-based order, on geopolitics nor the willingness of governments to protect rights.

What emerges in this early part of the research (and this chapter, specifically) is that 'natural' human rights (as representations of dignity) have been under significant threat many times in history, and each time, have risen from the ashes of human depravity and thoughtlessness as a stronger, more resilient framework which has proven integral to healing, truth, reconciliation, and restoration. As we have seen in every human rights emergency in recent and not so recent times, human rights have survived in what Moyn has called "revolution[s] of moral concern"[1902]. The resilience of human rights through the ages and especially in the latter half of the 20th century, which has been termed the 'Century of Genocide'[1903], is testament to the resilience of the spirit of human rights and to the passion, agency, and self-determination of the human rights defenders who throughout history have protected, respected, and promoted human rights, often at great risk to their safety and often at the cost of their lives. They are 'human rights heroes', nameless and anonymous individuals who have manifested human rights values to exercise personal and collective agency to

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[1901] Paul Gordon Lauren, The Evolution of Human Rights, University of Pennsylvania Press 1998
[1902] Samuel Moyn, The Last Utopia, Harvard University Press 2012
[1903] Eric D Weitz, A Century of Genocide: Utopias of Race and Nation, Princeton University Press 2015

challenge systemic violations of human rights and help victims of human rights abuses in the attainment of justice. Individual agency, when nurtured, empowered, informed, and supported, can act as the bridge between the spirit and the system of human rights, and it underpins the ultimate goal of reinvigorating rights consciousness as I have imagined it in this thesis.

Human rights heroes are not made in the corridors or chambers of the Palais des Nations but at home, in local communities, charities, crisis centres, and campaign hubs. This is strongly argued in the third chapter of this thesis, ***Human Rights at Home and in the Community: Love, Law and Family***, which examines how and why what happens to us at home in the earliest years can impact our capacity for rights consciousness in our later lives. Inspired by my own interactions with my five children, I articulated the view that as parents, by integrating and living human rights values and actions within our families and modelling rights-respecting behaviours in the actions we take and the language we use, we can create a generation of rights-defending individuals with a grounded and well-nurtured appreciation of their precious agency and the power of compassion and creativity in honouring human rights values in their immediate spheres of consciousness.

The chapter, firstly, explored the significance of family in sociology, noting that the role of the family is so central that it is "entrenched in virtually all cultures and traditions, including the modern, universal, legal 'culture' of human rights[1904]; and examined the basis of the family in international law as articulated in the UDHR, the UNCRC and the UN Refugee Convention[1905]. Uniquely for a law thesis, the chapter delves into the musings of Hegel, Bentham, Brake, and others on the significance of family and love to human flourishing, and linked love with respect for human dignity and human rights, finding inspiration of in the words of the indomitable Martha Nussbaum who wrote that "love is what gives respect for humanity its life, making it more than a shell"[1906]. In this part of the research, I discussed the human rights crimes that are endemic around the world which have serious and adverse rights implications for children and families – among them, trafficking, the illegal harvesting

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[1904] Kate Jastram and Kathleen Newland, Family Unity and Refugee Protection, Cambridge University Press 2003, p 557, Available at: https://www.refworld.org/docid/470a33be0.html
[1905] See 3.1 Chapter Introduction: Human Rights at Home and in the Community: Love, Law and Family
[1906] Martha C Nussbaum, Political Emotions: Why Love Matters for Justice, Belknapp Press 2015

of organs, forced labour, forced prostitution, the kidnap of minors for use as child soldiers, forced marriage, and forced separation of migrant families, all experiences which diminish the human spirit and victims' dignity and prompt urgent questions over how human rights tragedies such as these and many others impact children, young people and families will manifest in devastating cycles of injustice, abuse, deprivation, and inequality in the next and future generations.

I recognised the importance of parents modelling rights-respecting behaviours in their home and social interactions, through volunteerism, charity work, their participation in peaceful protest or campaign activities, or even in the empathy they convey when talking about the economically disadvantaged, about refugees or about victims of war and human rights atrocities. Of course, I recognise that not all families and all homes present environments to children that are conducive to a rights-friendly upbringing and of course, not all children will be receptive to a rights-friendly upbringing, especially if they are vulnerable to 'inherited' or 'intergenerational trauma' from their parents' experiences as refugees, as survivors of war, conflict, addiction, and abuse[1907]. For these children, the rights-respecting influence and rights-based interventions of teachers, community, charity and social workers, and extended family members becomes vital to their individual flourishing and to the nourishment of human rights values in children who may not otherwise be exposed to them.

Emphasising the courage of human rights heroes in history and in our own family trees is one approach to mainstreaming positive, pro-rights attitudes among the next generation of rightsholders and human rights defenders. Role modelling empathy for those that some in society might 'Other', for example refugees, and demonstrably living human rights values within the family and as members of a local community, committing ourselves to and engaging our children in volunteerism, peaceful protest, and grassroots advocacy on behalf of the homeless, the working poor, and society's most underprivileged and marginalised people, is another. By nurturing empathy within our children, helping our children to recognise bias, and by developing the confidence within them to stand up against injustice when they see it taking place in front of them, we are a step further in driving important change at the local level and

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[1907] Tori DeAngelis, The legacy of trauma, Monitor on Psychology, February 2019, Vol 50, No 2, p 36

empowering individuals and whole communities to enforce rights informally, and subsequently, change social norms for the betterment of society. It is also vital that the children's rights agenda is embedded more effectively and meaningfully into family law, which encompasses both matrimonial and child law, and into the norms, culture and working practices of social care institutions, the professionals and organisations who intervene, assess, support and safeguard children and families in crisis when they are the most acute, critical need of human rights protection.

In Chapter 4, ***Human Rights and the Infosphere I: Information as a Human Right and Human Rights as Information***, I discussed how on one level, the digitisation of legal information (the online publication of international instruments, case law and expert commentary and opinion for ease of access by the general public for the purposes of public legal education and enhanced public awareness of rights and legal processes) has revolutionised access to human rights information, in those places in the world where such information is freely and openly available. Despite digitisation, it must be remembered that not all countries recognise a right to access information produced by public, governmental, or judicial bodies; according to UNESCO, 125 countries worldwide have enacted right to information laws, with nearly a quarter of those enacting such laws since 2013 in line with SDG target 16.10 which calls for "ensuring public access to information and protection of fundamental freedoms, in accordance with national legislation and international agreements"[1908], which could result in more countries enacting progressive access to information laws before the 2030 SDG watershed.

On another level, the dominance of major publishing corporations and their stronghold on legal information has long presented an existential challenge to the open justice principle, and the significance of this in the post-Covid era of misinformation and manipulation – both covert and flagrant – of international human rights norms, rights and conventions cannot be underestimated. As I proposed in this chapter, opening human rights information up to the mainstream public for unrestricted open access, where it can be creatively repurposed and reused in

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[1908] UNESCO, Powering Sustainable Development with Access to Information: Highlights from the 2019 UNESCO Monitoring and Reporting of SDG Indicator 16.10.2, July 2019, p 4, Accessed at https://unesdoc.unesco.org/ark:/48223/pf0000369160

educational as well as disruptive commercial projects, would open up valuable new human rights conversations among key publics who have not traditionally engaged in human rights discourse or have been deliberately excluded from it. By promoting 'open legal information' we support innovative use of that material and have the best possible chance of giving such information new form, meaning, and value in the digital space by enabling its use in the creation of new knowledge products and platforms. Liberating legal information from copyright restrictions in any form would empower entrepreneurs to use this information within tech-based platforms that have the power to reach audiences that have not previously engaged with legal information at all.

Nurturing a culture of 'disruptive' entrepreneurship and innovation around legal information is, this thesis argues, a central strategy to enhancing public awareness of legal rights and the processes by which 'ordinary' citizens can exercise and protect those rights. Ensuring that human rights information and specifically, historic judgments are similarly free from copyright-restriction and available for use and reuse in entrepreneurial ventures is a proactive and empowering strategy that could inspire, inform, and motivate rightsholders to engage in vital human rights conversations and develop valuable knowledge and advocacy skills that will transform awareness into action. In doing so, we can support the creation of a knowledge-based human rights culture which uplifts, and use technology to create a new paradigm of human rights discourse based in hope, not hate, one that makes human rights information a tool for human development and empowerment rather than an elite body of knowledge which is exclusively guarded and greedily suppressed.

Following on from this argument, Chapter 5, ***Human Rights and the Infosphere II: Correcting Misinformation and the 'Monstering' of Human Rights Towards a New Era of Human Rights Thoughtfulness***, examined how information, and especially information technology, has been used to subvert human rights consciousness by disordering information available to 'ordinary' key publics (those outside of the legal profession and legal academia) through misinformation, disinformation and malinformation. It advanced a vision for a human rights culture infused with 'human rights thoughtfulness', which I use to define a new state of

engaging with human rights ideas, conversations, and problems, one that demands an informed view and strengthened awareness among users of social media or consumers of news to address the significant threats that misinformation, disinformation, digital manipulation, data privacy, hate speech, and fake news present to both the spirit and the system of human rights[1909].

The chapter recognised the challenge for individuals to pragmatically navigate anti-rights rhetoric that has become embedded in our media, culture, and political platforms, and within the digitised social world that incubates and amplifies hostility towards human rights. I advanced the view that it is of course correct that human rights should be critiqued in order to ensure a robust, resilient, fit for purpose framework, but that it is not correct that human rights should be monstered, misrepresented and negatively mythologised. I considered the role of postmodernism and populist, anti-rights rhetoric in subverting universality narratives around human rights, which has ultimately excluded whole regions and cultures from any meaningful interaction with human rights and seriously, perhaps even fatally, wounded the credibility and integrity of the whole human rights system. I identified that in the 'Age of Alternative Facts', human rights discourse has become contaminated by fear, distrust, and distortion, and of resentment towards the 'Other'. Both infosphere chapters also discussed the challenges that human rights defenders have had to contend with against rampant anti-rights rhetoric in the 'post-truth' era – among them, state censorship and digital authoritarianism, accusations of virtue signalling, the use of inflammatory and exclusionary language and labelling, false equivalence or pragmatism, a tool which ultimately gives equal weight to the justification of the torturer to torture, for example, and the right of the victim not to be tortured.

Dealing decisively with human rights misinformation becomes absolutely vital at this juncture as we turn the corner towards the Age of the Metaverse[1910] and the significant emerging human rights challenges around digital privacy, hate speech,

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[1909] See 5.1 Chapter Introduction, Human Rights and the Infosphere II: Correcting Misinformation and the 'Monstering' of Human Rights Towards a New Era of Human Rights Thoughtfulness
[1910] Enrique Dans, Has The Pandemic Launched Us Into The Age Of The Metaverse?, Forbes, 27 May 2020, Accessed at https://www.forbes.com/sites/enriquedans/2020/05/27/has-the-pandemic-launched-us-into-the-age-of-the-metaverse/?sh=6283642c4a99

and property rights that we don't yet fully understand and cannot yet fully anticipate nor appreciate. In this chapter, I argued that one key reason that human rights information is so disordered in these times is that the traditional producers of human rights information in nearly all parts of the world now operate under extremely limiting conditions and under the near-constant threat of persecution. In many parts of the world, journalists and editors have no choice but to be part of the system of misinformation, and face serious consequences and even threats to life or security for those who defy state censorship[1911]. To this end, and recognising that the global media freedom crisis has important ramifications for human rights discourse, the chapter discussed the use of sanctions for handling human rights violations perpetrated towards members of the free press, and whether sanctions could feasibly be extended to human rights defenders more broadly, to include members of the judicial and legal professions and all those who are involved in human rights communications, creativity-as-advocacy and in campaign or programme design[1912].

This chapter also advanced the argument that at community and local levels, reviving human rights discourse remains the best individual-led hope for countering, targeting, and correcting human rights misinformation, at source and as it spreads through our own personal infospheres[1913] – from the personal conversations we have to the social media posts we share and our interactions with others in our worlds of work. In order to make human rights discourse a place of hope not hate, we need to 'glocalise'[1914] human rights conversations by bringing them closer to home where, according to Papisco, "the local dimension becomes important as the very space of life and peace, and thus of the realisation of human rights, especially of social, economic and cultural rights"[1915].

[1911] Amal Clooney, Report on the Use of Targeted Sanctions to Protect Journalists, First Report by the High-Level Panel of Legal Experts on Media Freedom, 13 February 2020

[1912] See 5.4 Reviving and restoring human rights discourse

[1913] Luciano Floridi, The Fourth Revolution: How the Infosphere is Reshaping Human Reality, Oxford University Press 2014, p 41

[1914] 'Glocal' refers to the "seamless integration between the local and global", and "captures the dynamic, contingent, and two-way dialectic between the global and the local" – see Oxford Reference, *Glocal*, Accessed at https://www.oxfordreference.com/view/10.1093/oi/authority.20110810105005976

[1915] Antonio Papisca, 4 - Relevance of human rights in the glocal space of politics: how to enlarge democratic practice beyond state boundaries and build up a peaceful world order, In The Local Relevance of Human Rights, Cambridge University Press 2011, p 91-92

One of the more obvious solutions to the challenge of misinformation on human rights is to ensure that credible, fact-based, objective human rights information is openly and easily accessible to publics seeking out that information in order to participate confidently and credibly in human rights discourse. Another is to liberate the language of human rights from the politico-legal domain to engage social and community agents of change who are the most important stakeholders in "the social life of human rights"[1916], empowering them with opportunities to ask meaningful questions and engage in human rights conversations that can open up avenues for a more human-centred approach to human rights systems, traditions and culture. In closing this chapter, I discussed how it would be helpful for human rights researchers to more succinctly understand how different people engage with and construct human rights dialogues, as those who live and work outside of the professionalised international human rights community or from within conflicted human rights environments, such as a war or reconstruction zone, or within the borders of an authoritarian state, are unlikely to discursively engage in meetings or interventions in institutional or academic human rights conferences or in the design and delivery of educational or training experiences on human rights-related subjects.

With this in mind, I proposed that a series of studies be carried out to better understand human beings' personal relationship with human rights, and to measure human rights attitudes and biases among key publics in the different regions of the world. I believe that a bank of data-driven insights into the impact of human rights information disorders would be an invaluable resource for researchers seeking to understand how state-centric legalism and misinformation may have warped our understanding of the value and relevance of human rights. This type of research would also be helpful in determining just how amenable key publics are to engaging more meaningfully with human rights information and discourses in the future, and would help human rights communicators and programme designers craft strategic messages that will resonate most strongly with different key publics.

From here, synthesising and building on existing research on HRET strategies from 1948 to date, Chapter 6 (***Human Rights Education and Training I: Learning***

[1916] Richard Ashby Wilson, Afterword to 'Anthropology and Human Rights in a New Key': The Social Life of Human Rights, American Anthropologist 2006, Vol 108 Issue 1, pp 77–83

About, Through and For Human Rights - the first of three devoted to HRET in this thesis) imagined a culture of human rights learning that is designed to transcend socioeconomic, generational and digital divides, to challenge traditional teaching approaches and learner attitudes towards HRET, and to create a more engaging, interactive, open pedagogy with technology at the heart of HRET practice. This vision for the future of HRET is one which emphasises dignity, empathy, purpose, meaning, compassion, and conscience at the core of its philosophy in alignment with SDG4 to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all"[1917]. Chapter 6 (and the subsequent two HRET chapters, ***Human Rights Education and Training II: Reimagining Rights Education in Primary, Secondary and Higher Education***, and ***Human Rights Education and Training III: Human rights in Postgraduate, Vocational and Lifelong Learning***) were based on the tripartite 'learning *about*, learning *through* and learning *for*' framework for HRET as articulated in the UN Declaration on Human Rights Education and Training 2011[1918], and explored the framework through a lifelong learning lens, examining each of the three pillars for how they might be implemented in practice within various stages of human rights learning and development, within and beyond formal education.

In my imagining of the framework, the learning *about* human rights is the definitive starting point in the human rights learning journey, and should be framed as an introduction to the content, history, basic processes of implementation, institutions and mechanisms for enforcement at international and domestic levels, and should be integrated into formal education in the early years and in primary school. The learning *about* pillar should prepare learners with the foundational knowledge to engage in the learning *through* pillar, which should be designed to support learner participation and the process of value clarification ("one of the central objectives" of HRET, per Koenig, which enables each person to "draw upon her and his own lights and experience"[1919]), as well as critical self-reflection on their own prejudices which may inhibit their advocacy and the unconscious biases that may hinder their

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[1917] Sustainable Development Goal 4
[1918] Article 2(2), UN Declaration on Human Rights Education and Training 2011
[1919] Shulamith Koenig, Foreword in Human Rights Education for the Twenty-First Century, eds George J Andreopoulos, Richard Pierre Claude, University of Pennsylvania Press 1997, xiv

participatory learning[1920]. With this self-knowledge and the internalisation of human rights knowledge and values that arises from meaningful participation in HRET, the learning *for* pillar complements this learning and the related attitudinal and behavioural change that accompanies it by imbuing learners with the more advanced, advocacy-oriented competencies required to transpose human rights awareness into human rights action. As the advocacy-based pillar of HRET, learning *for* human rights is best modelled on Kolbe's experiential learning cycle, where skills such as strategic leadership, communication, conflict resolution, and critical thinking are learned through experience rather than 'taught'[1921].

As Chapters 6, 7 and 8 (the HRET chapters) have argued, there are significant challenges to realising each of the HRET phases, and although HRET has been prioritised by the UN for many decades, inspiring landmark Declarations, a Decade, and multiple projects, initiatives, and partnerships to realise the goals of the UN in HRET, the UN's mission for HRET has to date met with "limited success"[1922]. On further reflection, a macro challenge to the learning *about* pillar is the persistent global problem of illiteracy, which potentially leaves 773 million people in the world at risk of being excluded from HRET altogether on the basis that they cannot read the foundational human rights texts that are a prerequisite to deeper learning in the later phases[1923]. To a great extent, the UN, non-state and civil society actors have circumvented this challenge by creating HRET materials that rely solely on graphics, pictograms, spoken folklore (storytelling), and song, dance, and music, "with a view to the effective delivery of human rights education to people at all levels of literacy and education and to persons with disabilities"[1924]. As literacy itself is a fundamental human right falling within Article 26 of the UDHR, it makes sense that HRET discourse should itself address the ways in which illiteracy prevents the world's most marginalised and vulnerable people from engaging with human rights education in most forms.

[1920] Sarah E Fiarman and Tracey A Benson, Unconscious Bias in Schools: A Developmental Approach to Exploring Race and Racism, Harvard Education Press 2020
[1921] Council of Europe, Experiential learning – a basis for human rights education, Accessed at https://www.coe.int/en/web/gender-matters/experiential-learning-a-basis-for-human-rights-education
[1922] Mary Robinson, Human Rights Education, A Voice for Human Rights, ed Kevin Boyle, University of Pennsylvania Press 2006, pp 144-152, p 144
[1923] UNESCO Institute for Statistics, Accessed at http://uis.unesco.org/en/topic/literacy
[1924] United Nations, Report of the United Nations High Commissioner for Human Rights on the implementation of the Plan of Action for the United Nations Decade for Human Rights Education, A/51/506/Add 1 (1996), para 22

For human rights educators, this means making HRET more inclusive and sensitive to the human dimensions of the content and context of human rights, and framing their practice through the Freirean critical pedagogical perspective in which HRET becomes a "subject of critical dialogue between subjects who dialogue with one another to 'reflect on their reality as they make and remake it'"[1925]. As I have argued in the HRET chapters, this involves rejecting the 'narrative lecturing' model (which is deeply rooted in the "colonialist and European intellectual tradition"[1926]), embracing blended and digital learning, and prioritising lived experiences of human rights together with dialogic exchange of human rights perspectives over rote learning in a more experiential, experimental, and highly participatory pedagogy for HRET.

Within formal education HRET has, for the most part, been limited to the law school and traditionally offered only to lawyers in training as an undersubscribed and typically optional module on law undergraduate courses (often neatly compartmentalised within sustainability or legal ethics courses), and rarely outside of the law school. Curiously, human rights as a compulsory module is not available on the QLD of England and Wales nor in any other jurisdiction that I could uncover in this research other than India[1927]. So, if even prospective lawyers are not required to engage with HRET as part of their legal training, this prompts important questions about human rights preparedness in current and future generations of law graduates. I have proposed that human rights should become a compulsory module on the QLD, SQE and international equivalents, and have taken this further by also advancing the view that human rights should be a compulsory module on every discipline (most STEAM subjects, in essence, as well as business schools and vocational training curricula) where there is potential for adverse human rights impact in the sectors involved. In doing so, we eliminate the entrenched view that HRET is exclusively for lawyers, and we mitigate future business and human rights

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[1925] Yirga Gelaw Woldeyes and Baden Offord, Decolonizing Human Rights Education: Critical Pedagogy Praxis in Higher Education, International Education Journal: Comparative Perspectives, Vol 17 Number 1 2018, pp 24-36, p 28-29, citing Ira Shor and Paulo Freire, What is the "Dialogical Method" of Teaching?, Journal of Education 1987, Vol 169, Issue 3, pp 11-31, p 13 (Excerpt from Ira Shor and Paulo Freire, A Pedagogy for Liberation: Dialogues on Transforming Education, Bergin & Garvey 1987)
[1926] Ibid, p 25
[1927] Solicitors Regulation Authority (SRA), the Bar Standards Board (BSB) and ILEX Professional Standards (IPS), Legal Education and Training Review 2013, p 142, Accessed at https://letr.org.uk/wp-content/uploads/LETR-Report.pdf

challenges by graduating students in every discipline who are knowledgeable, skilled, and confident human rights defenders from the outset of their careers and their professional development and leadership journeys.

The HRET chapters sought to identify innovative ideas and out-of-the box approaches to human rights education, exploring the theoretical underpinnings of human rights education and contextualising these findings against research in the areas of child psychology and development, traditional educational theories, and contemporary research that is shaping the emerging digital education space. Here, I have argued that the education technology revolution has opened up unprecedented opportunities for human rights educators and students, wherever they are in their learning journey, cutting across all sectors and spheres and empowering digital natives and non-natives alike with access to either blended or heutagogical (self-directed) human rights learning. With educators and entrepreneurs yet to fully tap into the immense power and potential of immersive education technology for human rights culture, including 'serious' gaming, AI / virtual reality, and MOOCs, I also argued that emerging edtech models could well democratise and mainstream human rights education opportunities that have been largely unavailable to individuals outside of the legal profession until now, which opens up exciting pathways for the R*b*D framework as well as new avenues for future research and digital education projects.

The discussion in the HRET chapters led organically to the penultimate chapter of this thesis (9), ***Human Rights at Work: Why Dignity in Labour Matters***, which explored our daily interactions with human rights *after* we progress past formal education and into our worlds of work where our status, circumstances and opportunities in life are largely defined and where most of us can meaningfully exercise our creativity, autonomy and agency in our economic lives and in society. Uniquely in the field of BHR scholarship, this chapter explored how human rights, and specifically labour rights, intersect with human dignity in the world of work, as well as how human rights at work are linked with the realisation of other rights. After some discussion on the history of labour rights and their convergence with international human rights after the inclusion of Article 23 in the UDHR in 1948, the chapter briefly examined voluntary 'CSR' codes which have been decidedly

ineffective in mandating corporations to do the right thing by people or by the planet. I discussed how the UN Guiding Principles on Business and Human Rights 2011, as a non-binding framework, cannot force corporations to comply with international human rights law, although it is generally accepted by transnational corporations that the risks of avoiding or ignoring human rights altogether carries tremendous financial, reputational and existential risk for any business – especially in the social media age. In addition, I took forward a keen observation of Baumann-Pauly and Posner that the academic debate around business and human rights after the adoption of the UNGPs in 2011 has largely centred on the 'business case', or "measuring the link between a company's broad commitment to corporate responsibility … and financial performance (at least for Western companies)"[1928]. Recognising that this is indeed the "wrong starting point to motivate and justify the engagement of corporations in human rights"[1929] (because of its emphasis on the economic benefits of respecting human rights rather than the need to nurture what Quintelier called "a moral community of stakeholders"[1930]), I then argued in this chapter that there is a direct correlation between respect for labour rights and respect for human rights more generally, and that for as long as there has been work, there has been exploitation – so what we need is a new, innovative approach to an age-old problem that has been greatly aggravated by neoliberalism and 'too big to fail' free market ideology. As dignity is connected with human feelings of belonging, satisfaction, agency, aspiration and self-respect, I believe strongly that what happens to us in the world of work can have a profound impact on our wellbeing when those worlds become troubled or traumatic, with potentially serious implications for the realisation of human rights culture in extreme cases, especially with respect to social and economic rights which are still unrecognised in many parts of both the developed and developing world.

Further, I argued that as governments scramble to recover pandemic relief spending, there is a real risk that a severe financial downturn amid a new 'Age of Austerity' could see further diminishments in the protection for social and economic rights

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[1928] Dorothee Baumann-Pauly and Michael Posner, Doing business in the 21st century: the relevance of human rights for companies, In Business and Human Rights: From Principles to Practice, eds Dorothee Baumann-Pauly and Justine Nolan, Routledge 2016, p 13
[1929] *Ibid*, p 14
[1930] Katinka JP Quintelier, Joeri van Hugten, Bidhan L Parmar, and Inge M Brokerhof, Humanizing Stakeholders by Rethinking Business, Frontiers in Psychology 2021, doi: 10.3389/fpsyg.2021.687067

granted by the ICESCR, including as Babic identifies, the rights to work, the right to food, housing, welfare, and healthcare[1931]. If ever there were an optimum time to advance the argument that social, economic, and cultural rights are critical to the legitimacy of efforts to reconstruct the global economy, this is it. After the pandemic, there is a strong sense of wanting to 'remake' or 'rethink' how we view and interact with the world of work, which has for too disproportionately benefited wealthy corporations. Although huge advancements have been made in entrenching 'planet over profit' values into the corporate ethos, largely thanks to the UN Global Compact and the SDGs, this chapter – the 'final' link in the R*b*D vision for human rights culture (via human rights mainstreaming at home, in the infosphere, in education and at work) – calls for a new emphasis of 'people over profit' and calls for urgent recognition that social, economic and cultural rights are key to achieving a future human rights culture that safeguards human dignity in all our spheres, including and especially in the future world of work where there is still so much uncertainty, exploitation and degradation in nearly every region of the world.

10.2 The R*b*D Principles

This section will elaborate on the proposed reforms and recommendations that constitute the R*b*D Framework of Principles and which have emerged from the chapters as summarised above, with suggestions for how these recommendations might be implemented in practice and how anticipated challenges might be circumvented. These recommendations are organised into the following five principles:

Principle 1: Individuals should be empowered with knowledge of human rights history and access to human rights information

We should challenge state-centric legalistic approaches to human rights wherever possible and reclaim human rights culture, information, education, and discourse for rights bearers. Doing this entails laying claim to human rights history and narratives,

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[1931] Ana Babic, COVID-19 And Inequality: The Human Rights Impact Of Economic Austerity Measures In The UK, Human Rights Pulse, 5 August 2020, Accessed at
https://www.humanrightspulse.com/mastercontentblog/covid-19-and-inequality-the-human-rights-impact-of-economic-austerity-measures-in-the-uk

and making a personal commitment at individual level to seek out knowledge and an appreciation for human rights stories, to develop an understanding of how human rights events throughout history have influenced the evolution of civilisation and all our social and cultural institutions. In doing so, we can collectively protect human rights history and discourse from obscurity, from insidious information disorders and worse, from indifference. Understanding the conditions under which human rights violations have been allowed to incubate in the past is a clear strategy to preventing them from recurring in the future, and so the empowerment of the individual with knowledge of human rights history is a core principle of the R*b*D vision.

Human rights knowledge can effectively correct misunderstandings and myths about the origins of human rights and the value, relevance, and urgency for a universal culture of human rights rooted in human dignity. However, the attainment of knowledge, understanding and wisdom depends greatly upon the availability, accessibility, and legibility of human rights information. To this end, it is vital that human rights information in particular and legal information more broadly be liberated from the constraints of copyright, through legislation if necessary, to clarify the primacy of the open law principle over any copyright claimed by commercial publishers in legal information (to include legislation and judgments of the courts), and to ensure that educators, communicators, entrepreneurs and any other users of information are able to fully, freely and openly deal with such legal information for the purpose of creating new works that will help to realise the RbD vision of mainstreaming human rights knowledge, understanding and wisdom.

Principle 2: Individuals should be supported in their creation of rights-respecting homes and their contributions to rights-championing communities

The R*b*D vision recognises that the family, as the most important social institution that both impacts and is significantly impacted by the human rights environment in which it is based, plays a vital role in mainstreaming human rights culture in the local and community context. The parent or parents, in their responsibility for the children they raise and the living environment they create, are key to raising children and maintaining families who are rights-respecting and intuitively committed to challenging human rights injustices when they occur in their immediate spheres of consciousness - at home, in the community, at school and with their peer groups in

their social lives. Parents who model positive direct action and empathic, rights-respecting behaviours to their children in the way they conduct themselves in their everyday lives, through volunteerism, participation in protest or collective action, or in the language they use and the compassion they convey, have the best chance of empowering their children with the inherited activism, confidence and compassion they will need to live a rights-respecting life and to promote, respect and defend human rights when situations arise.

Habitualising human rights means talking to children about human rights problems and taking direct action when it is possible and safe to do so in order to defend one's own rights or the rights of others. Habitualising human rights within the family means dealing sensitively with the family's own history, and addressing intergenerational traumas of past generations to bring healing, rehabilitation and hope to family members of this and previous generations who have witnessed or been the victim of human rights injustices. Habitualising human rights at home and in the community means proactively seeking out opportunities to engage in intergenerational activism; it means speaking up for children and victims both male and female of domestic abuse; and participating in grassroots community outreach and advocacy to support society's most marginalised and vulnerable families, role modelling rights-respecting behaviour and values for those children who do not grow up in rights-respecting homes or whose families are in crisis. And it means more deeply embedding the children's rights agenda into family law, and into social care institutions and practice.

Principle 3: Individuals should be empowered with human rights education in formal and informal education as part of lifelong 'learning about, through and for' human rights learning

Education, both formal and informal, is the cornerstone of the R*b*D vision, a political and pedagogical pathway to emancipation for the oppressed and empowerment for the outraged. In the R*b*D vision, human rights education is part of lifelong learning and can be developed with reference to the UN's 'learning about, through and for' tripartite framework. Human rights education must be carried forward into the secondary school years, where its content already blends well with existing curricula (for example, in English, History, Geography, and STEM) and learners can consider more advanced human rights education and engage in participatory, active learning

around human rights. Human rights education in higher education is pivotal because it is around this age that young adults undergo a process of values clarification, and the enhanced personal responsibility of learners of this age means that there is more scope for peer-led, co-creation and experiential learning. Within this principle, it is recommended that human rights education be integrated into the law school curricula as a mandatory course, as well as within the business school given the adverse impact that businesses can have on the realisation of human rights.

In fact, it is a recommendation of the R*b*D vision that human rights education be integrated as a mandatory module within every discipline in higher education, and not just in the law or business schools, simply because there is no sector in the world economy today that does not in some way touch upon human rights and so it is entirely appropriate to ensure that all graduates leave higher education with an intermediary to advanced level of human rights knowledge. It is also the recommendation of this work that law graduates be required to take an oath as new lawyers, pledging to uphold the rule of law, human rights and human dignity in their practice, research, advocacy, and personal conduct, and before they undergo vocational training so there is no distinction between 'practicing' and 'non-practicing' lawyers (in appreciation of the fact that many law graduates do not necessarily go on to practice law). Human rights education should also be integrated as a mandatory module in vocational (legal practice / Bar practice) courses, as well as vocational training courses for professionals whose work requires them to engage most closely with human rights (the military, the police, parliamentarians, and the medical and social care professions, among others).

To achieve the R*b*D vision for education as emancipation and empowerment within a new culture of human rights, an internationally-focused model curricula should be designed to draw together the findings of this research, to more deeply analyse the good practices discussed, and to explore in more detail emerging ideas for experiential, participatory and co-creative learning across all three pillars of the UN's tripartite 'about, through and for' human rights learning framework. This model curricula should accompany a comprehensive handbook and toolkit that offers educators and communicators a valuable resource for integrating human rights education in their teaching, training, communications, and programme design. In

addition, it is proposed that a global human rights teacher prize be established to recognise educators who are breaking new ground in their participatory and pedagogical approaches to enriching their teaching with human rights education. I also propose that a separate prize be established to reward and recognise entrepreneurs whose start-ups are focused on disrupting and innovating human rights education in the digital space.

Principle 4: Individuals should be empowered to promote and defend human rights in the world of work and the economy

Human rights, as representations of human dignity, commonly come into play in the economic sphere through the world of work, where labour rights and international human rights converge to regulate, to some extent, the treatment of employers towards their employees and to ensure that workers' rights, as enshrined in Article 23 of the UDHR and in the ILO instruments, are protected and respected. What happens to us in the world of work has profound implications for other parts of our lives and a significant impact on human flourishing. Therefore, it is vital that businesses start to prioritise people over profit, that an international right to reskill is recognised, and that social protection measures are strengthened as a core measurement of the fulfilment of social and economic rights.

To this end, individual action is vital. We are all workers, we are all consumers. We all hold a great amount of unrecognised and unappreciated power to ensure that both states and non-state actors (corporations) are held to account for human rights failures. Climate change activists have done a stellar job in recent decades, and especially the last, to bring climate action to the forefront of mainstream consciousness and to hold states and businesses to account for their climate failures through the well-established mechanisms of discourse - protest, international conferences, creative advocacy, and grassroots NGO-led lobbying at the highest levels of the UN to localised initiatives to drive behavioural change among individuals.

To achieve Principle 4, there must be greater institutional support for initiatives that protect people in the world of work, and in this there is much that can be learnt from the climate change movement which has successfully transformed narratives and

mindsets around the need to prioritise the protection of the planet. If we can passionately lobby for a right to nature and against greenhouse emissions and a fossil fuel-driven world economy, we can use those same proven techniques to lobby just as passionately for basic protections of dignity at work, for education systems that will give young people the best possible chances once they enter the world of work, for an end to exploitative, discriminatory labour and related relativist excuses that have allowed such exploitation to become entrenched in many parts of the world. And we can work collectively and in coalition to ensure that new models for dignity, such as the right to a universal basic income or the right to reskill, are factored into international human rights discourse at every level, whilst holding rights-violating corporations to account through boycotts and the strategic use of 'cancel culture' to hit those corporations where it hurts the most - the bottom line.

Principle 5: Individuals should be supported as innovators, creatives, communicators and programme-makers in advancing and mainstreaming human rights culture

All of the principles of the R*b*D vision rely to a great extent on two things: individual action and human rights information. They require individuals to make use of human rights information, and to be able to do so without limitations of copyright, the constraints of censorship and self-censorship, and without interference from the state nor from commercial publishers worried for their competitive advantage after a century of unchallenged monopoly over what is, per the open justice principle, information and knowledge that should rightfully be placed in the public domain, free for use and reuse by innovators, creatives, communicators and programme-makers (those who design human rights conferences, develop advocacy initiatives, and investigate human rights failures of state and non-state actors through traditional or independent media channels - and in so doing, contribute profoundly to the evolution of human rights discourse).

This principle calls for greater institutional support for creative individuals who are driving human rights discourse in new, innovative, digital, and disruptive ways. Again, such support starts within the education system, where university entrepreneurship incubator programmes have a significant role to play in developing student entrepreneurial talent to develop exciting new projects in this space, with

funding and mentorship support provided by institutional and private sector partners (although it is acknowledged that such programmes may need to reframe their approaches as being more sustainability-focused than human rights-focused to win vital funding). NGOs are packed with talented, highly educated advocates whose ideas should be better showcased and seriously considered for implementation. Celebrities and other public figures are a tremendous resource for publicity and awareness, with a key role to play in mainstreaming human rights awareness through the creative industries, and so should be better utilised for more meaningful advocacy that goes beyond war zone, 'white saviour' photo opps. Journalists should be protected in international law to a greater extent than they currently are, with heavy sanctions levied against states and non-state actors that interfere with media freedom. Journalists should be supported in their vital work to hold human rights violating state and non-state actors to account, with enhanced recognition and promotion of the role they play in developing rights discourse and preserving the sanctity of truth, democracy and freedom.

10.3 Strategic projects and initiatives emerging from this thesis

It has always been my intention that the knowledge created by this research should be used to guide reform of policy, professional and pedagogical practice. In preparation for the project work that I anticipate launching immediately after the thesis submission, I recently completed the University of Oxford's Leading Strategic Projects Programme delivered by the Said Business School, to update my project leadership skills and clarify my thinking around the design and delivery (as well as monitoring and evaluation) of a strategic human rights communication, education or cultural project[1932]. Professionally, I have over a decade and a half of experience to put to good use on these projects, having worked as a senior consultant in corporate and NGO communications, operations and human rights project advocacy. I have

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[1932] I achieved an overall mark of 91% for this eight-week course on Leading Strategic Projects with Said Business School, which complemented other training courses I have proactively attended throughout my time at law school (from QLD to LLM to PhD), on Education Technology (MITx), Law and Logic (Harvard Law School / European University Institute), Business & Human Rights (London School of Economics), and Information Design (University of Bath), among others. As a Lecturer in Law at the University of Exeter, I am also enrolled in the Academic Professional Programme (which is aligned with Fellowship of the Higher Education Academy) to develop my teaching practice, which has given me the opportunity to reflect on how some of the findings of my PhD research might transfer into further research papers, digital learning projects and pedagogical practice (see https://www.exeter.ac.uk/staff/exeteracademic/probationpromotionprogression/academicprofessional/) and here for my professional profile: www.linkedin.com/in/louise-loder

advanced experience in programme design, conference / seminar / event management, and the research, planning, implementation, monitoring and reporting of training programmes and consensus-building, cross-disciplinary initiatives spanning human rights problems and sustainability challenges, including gender, climate action, refugee inclusion and youth empowerment, food security and water scarcity, the future of work, entrepreneurship, and importantly, education. I am a Lecturer in Law at the University of Exeter teaching Business and Human Rights and Intellectual Property Law and undertaking Exeter's Academic Professional Programme as a key part of my continued professional development, so I am in the best possible place to continue developing the R*b*D vision even after the submission of this thesis in May 2022 with a view to leveraging all possible research resources and knowledge-building opportunities as well as building valuable new coalitions and partnerships to realise the principles and recommendations that have emerged from this thesis.

The findings of this work have generated a number of highly topical research questions that will inform further work with a view to producing a series of articles for journal publication, as well as clear and viable ideas for tangible, digital and scalable projects that speak to the overarching goal of mainstreaming rights information, communication, and education towards the creation and revival of human rights culture and a new 'golden age' for rights consciousness. After the thesis is successfully defended in the summer of 2022, work on the following two projects will be scaled up with a view to launching them in early 2023.

10.3.1 Handbook & Model Curricula for Human Rights Education and Training

A key strategic project to emerge from this thesis is the research, creation, and publication of a Handbook & Model Curriculum for educators both within and beyond the law school, and within and beyond formal education, to integrate human rights education into their teaching and training courses, incorporating theoretical guidance and practical steps to planning, implementing, and measuring formal (school-based) and non-formal (out of school) HRET. Although there are several excellent handbooks and monographs available on this topic, many of them are out of date – some by two or more decades – and so they do not account fully for digital

pedagogies or the technologies now available that would have been unimaginable in the 1990s / 2000s.

Existing handbooks that will be critically considered for good practice in the planning of this work will include Nancy Flowers' *Human Rights Education Handbook: Effective Practices for Learning, Action, and Change*[1933], originally published in 2000 and which was hugely inspirational in the research of the HRET chapters within this thesis; and the Council of Europe's *Compass Manual for Human Rights Education with Young People*, originally published in 2002[1934]. The handbook will also draw inspiration from UNESCO's excellent *Journalism, Fake News and Disinformation: Handbook for Journalism Education and Training*, "an internationally-relevant model curriculum, open to adoption or adaptation, which responds to the emerging global problem of disinformation that confronts societies in general, and journalism in particular"[1935]; and the UNDP's recent *Reporting Business and Human Rights: A Handbook for Journalists, Communicators and Campaigners*, which recognises that "[w]hat we choose to communicate, report on, or make programmes about, can have a real influence on the lives of people: on the factory floor, in the office, and in ships, shops, mines and plantations"[1936].

The Handbook & Model Curriculum for Human Rights Education and Training will be made available for open access and reuse, and will be hosted on a digital portal where educators and learners can utilise a comprehensive catalogue of microlearning experiences, bite-sized stackable interdisciplinary (law *and* X) modules complementary to the Handbook and which will cater for a range of specialisms, ie human rights reporting for the media; human rights in STEM; human rights for children; and human rights for business schools (among others). This project is currently at literature review stage.

[1933] Nancy Flowers, Marcia Bernbaum, Kristi Rudelium-Palmer, and Joel Tolman, Human Rights Education Handbook: Effective Practices for Learning, Action, and Change, Human Rights USA Resource Center 2000
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10.3.2 Rights Reimagined

Rights Reimagined is a Springwise-style inspiration and collaboration platform for human rights defenders (practitioners, educators, communicators, creatives, and programme-makers) to discover, benchmark and showcase unique, disruptive, and innovative approaches from every country in the world to mainstreaming human rights culture through education, information, communication, popular culture, digital technology or interdisciplinary / cross-cultural partnership. Projects, initiatives and innovations from around the world that seek to mainstream, disrupt and rethink human rights education, communication and culture will be curated, case studied and showcased on the digital knowledge hub, which will be openly available at rightsreimagined.com, and which it is hoped will provide a valuable repository of research for NGOs, journalists, teachers, educators and learners, civil society organisations, human rights defenders, lawyers, researchers, or the merely curious. Rights Reimagined will celebrate 'disruptors' using digital technologies and creative, out of the box thinking to bring human rights to life for key publics without a professional interest in human rights, and will seek to work in partnership with international organisations, institutes, universities and creatives in order to identify good practices and projects that should be benchmarked. This project could generate significant institutional support for tech-based innovation in human rights education which in itself could prove transformative for mainstreaming human rights culture in the digital world and in practice.

Over the last year, in tandem with the writing up of this thesis, I have been compiling a database of innovations for potential case study on the Rights Reimagined platform. These innovations have been selected for their potential to disrupt, their use of technology, and their demonstration of collaboration across countries or sectors (ie partnerships between universities and NGOs, for example, or tech labs with human rights defenders), and their cross-/interdisciplinary nature (whether the project or platform is related to human rights and business, or human rights and education / training, human rights and communication, human rights and the creative industries / popular culture, or human rights and to give just a few examples). New listings are being added to the knowledge hub on a near daily basis, with valuable relationships being contemporaneously established with academics, creatives,

entrepreneurs, innovators and representatives of international institutions who are, with every new project, platform, toolkit, website, publication, and index, changing the face of human rights education, information, advocacy, and communication, towards the creation of a culture of human rights that is fit for the digital age and able to rise to the challenge of our post-Covid future.

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