

Contents

Acknowledgments

page xi

Introduction: Navigating Deep Waters: The Problems of Human Rights and New Perspectives of Inquiry	1
I.1 Critique and Defense	1
I.2 Reason, Conscience and Rights	4
I.3 The Problem of Rights	7
I.4 Human Rights Instruments and Heuristics of Law	11
I.5 The Law: In Splendid Isolation from the Troubles of Theory?	12
I.6 Human Rights and the Emancipation of Human Thought	14
I.7 The Spheres of Rights	19
I.8 The Inquiry into Mind and Rights	22
I.9 Why It Is Worth the Effort	30
I.10 The Line of Argument	33
I.11 Problems of Inquiry	36
I.12 Theory of Human Rights and the Ethics of a Way of Life	38

PART I THE CONCEPT OF HUMAN RIGHTS AND THE GLOBAL HISTORY OF AN IDEA

1 The Concept of Human Rights	43
1.1 Parameters of Analysis	43
1.2 Moral and Legal Rights	44
1.3 The Complex Makeup of Subjective Rights	46
1.4 The Holders and Addressees of Rights	50
1.5 The Basic Content of Human Rights	53
1.6 Co-possibility and Limitations of Rights	54
1.7 Rights and the Nature of Obligations	58

1.8	The Peremptory Nature of Rights	61
1.9	Group Rights	63
1.10	Ethics, Legal Hermeneutics and Justification	64
1.11	What Are We Talking About?	66
2	The Truth of Human Rights: A Mortal Daughter of Time?	68
2.1	Apologizing for Genocide	68
2.2	How to Decipher the History of Human Rights?	75
2.2.1	History and Human Rights Revisionism	75
2.2.2	Concepts and Methods of Inquiry	78
2.2.3	Conceptions of History	85
2.3	Rights on the Barricades	92
2.3.1	Where to Begin?	92
2.3.2	From Politics to Law	93
2.3.3	Civil Rights and Human Rights	95
2.4	The Growth of the Multilayered Protection of Human Rights	98
2.4.1	Contours of the Project	98
2.4.2	Constructing the Postwar World	103
2.4.3	Pushing the Agenda from the Periphery of Power	108
2.4.4	From the <i>Universal Declaration</i> to the Differentiated International Bill of Human Rights	112
2.5	The Parameters of Change	116
2.5.1	Policy and Politics	116
2.5.2	Regime Change and the Creation of New Political Bodies	118
2.5.3	Political Ideologies	119
2.6	The Myth of the Western Origins of International Human Rights	121
2.7	Lessons to Be Drawn	128
2.7.1	A First Lesson: The Rediscovery of the Political Roots of Human Rights	128
2.7.2	A Second Lesson: The Rediscovery of Autonomous Critical Thought	130
2.8	Politics, Ethics and a Preliminary Conclusion	132
3	Down the Deeper Wells of Time	133
3.1	Back to the Roots or Trapped in Anachronism?	134
3.2	A Standard Thesis	134
3.3	Not a Moral Blank Slate: The Perspective of Indigenous People	136
3.4	The Many Forms of Normative Thought in Ancient Times	143
3.4.1	The Imagery of Epics	143
3.4.2	Democracy and Rights	146
3.4.3	Equality	148

3.4.4	Slavery and the Search for Freedom, Equality and Equal Worth	151
3.4.5	Liberty and Tyranny	153
3.4.6	Rape, Injustice and Human Self-Determination	155
3.4.7	Justice and Rights	156
3.4.8	The Worth of Human Beings	159
3.4.9	The Human Polis	160
3.4.10	Actions and Rights in Roman Law	161
3.4.11	Varieties of Rights	163
3.5	Rights since Antiquity	164
3.5.1	Rights at the Dawn of a New (European) Era	164
3.5.2	Natural Rights and Medieval Rebellion	166
3.5.3	Natural Rights and the Conquest of America	168
3.5.4	Natural Rights and the Worldly Law of Reason	173
3.5.5	Transitions of Natural Law	175
3.5.6	Rights in the Best of All Possible Worlds	175
3.5.7	Closing the Circle: The Explicit Doctrine of Human Rights	177
3.6	The Many Roots of Human Rights	180
3.6.1	The Importance of Methods of Inquiry	181
3.6.2	Varieties of Rights and the Significance of Distinctions	181
3.6.3	Rights and Models of History	185
3.6.4	A Key Finding: The Long Way from Moral Intuitions to Explicit Rights	186
3.6.5	How to Miss the Point of Human Rights: Some Lessons from the Past	188
3.6.6	Not from Nowhere	190
3.7	The Charisma of Human Rights: Where from?	192

PART II JUSTIFICATION

4	Far from Obvious: The Quest for the Justification of Human Rights	201
4.1	How to Justify Human Rights	202
4.1.1	An Idle Question?	202
4.1.2	A Critical Theory of Human Goods	204
4.1.3	A Political Theory of Human Rights	206
4.1.4	A Theory of Fundamental Normative Principles	208
4.2	The Functions of Human Rights	211
4.2.1	Human Rights as Tools for Social Integration	211
4.2.2	Engineering Social Efficiency?	214
4.2.3	Human Rights and Maximizing of Happiness	216
4.3	Justification by Agreement	217
4.3.1	Discourse and Consensus	217
4.3.2	Justification by Contract	219

4.4	Human Rights and Human Existence	221
4.4.1	The Rights of Autonomous Agents	221
4.4.2	Needs and Interests as the Engine of Rights	237
4.4.3	The Capability Approach	244
4.5	Political Conception	252
4.5.1	Human Rights and the Veil of Ignorance in the International Sphere	252
4.5.2	The Political Conception Reframed	253
4.5.3	A Fresh Start?	256
4.6	Human Rights and the Art of Living Well	260
4.7	Summary: Affirmative Theories of Human Rights	262
5	A Castle of Sand?	264
5.1	The Sources of Human Goods	265
5.1.1	No Foothold for Rights?	265
5.1.2	The Anthropology of Human Rights and the Thresholds of Inclusion	275
5.1.3	Needs, Interests and Capabilities	278
5.1.4	Contours of a Form of Life	279
5.2	Better Off without Rights?	280
5.2.1	The Limited Reach of Rights	280
5.2.2	Politics beyond Normativity?	282
5.3	The Critique of Rights	283
5.3.1	The Benefits of Authoritarianism	283
5.3.2	Human Rights: Ineffective Ethical and Legal Balderdash?	284
5.3.3	Human Rights as Means of Economic Disempowerment	286
5.3.4	Human Rights as the Handmaidens of Power and the Prospects of Postcolonial Worldmaking	288
5.3.5	Feminist Critiques and Restatements of Human Rights	292
5.3.6	Human Rights Curtailing Democracy and Sovereignty	294
5.3.7	The Wrong Politics of Human Rights	296
5.3.8	The <i>Aporia</i> of Human Rights	296
5.4	The Political Case for Human Rights	299
5.4.1	The Political Theory of Entrenchment	299
5.4.2	Scope to Act and the Political Subjects of History	302
5.4.3	Human Rights as a Condition of Community	303
5.4.4	Human Rights as Legal Rights	304
5.5	Rights after Auschwitz	305
5.6	Normative Principles	310
5.6.1	Justice and Solidarity as the Wellsprings of Rights	310
5.6.2	Dignity and Rights	315

5.7	Making Human Rights Concrete	323
5.8	Some More Results	324
PART III RIGHTS AND MORAL COGNITION		
6	Which Kind of Mind, Which Kind of Morals, Which Kind of Rights?	329
6.1	Ethics and the Theory of the Human Mind	329
6.2	The Epistemology of Moral Cognition	333
6.3	The Neuroscientific Attack on Human Rights: Human Rights and the Mental Gizmo Thesis	336
6.4	The Mental Gizmo Thesis Reconsidered	339
6.5	Rights and Behavioral Science	347
6.6	Justice and Benevolence	351
7	Where Did It All Come From? Morality and the Evolution of the Mind	356
7.1	Morality and Evolution	356
7.2	Puzzling Altruism	358
7.3	Various Forms of Cooperation and the Problem of What Morality Is	358
7.4	Animal Morality?	361
7.5	Evolutionary Psychology	363
7.5.1	The Morality of Selfish Genes	363
7.5.2	Reciprocal Altruism	364
7.5.3	The Morality of Tribes	365
7.5.4	Explanatory Problems	366
7.6	The Power of Joint Intentionality: Interdependence and Cooperation	369
7.6.1	Some Specifics of Human Cooperation	369
7.6.2	Sympathy and Fairness Develop in Small Steps	371
7.6.3	The Path to Objective Group Morality	373
7.6.4	Self–Other Equivalence as a Spandrel	377
7.6.5	Paradigmatic Incrementalism	377
7.6.6	The Analysis of Morality and the Evidence for Evolutionary Incrementalism	378
7.6.7	Stumbling Blocks on the Way to Second-Personal Morality	379
7.6.8	The Objective Morality of Cogs in the Machine	382
7.6.9	Is There an Alternative to Incrementalism?	384
7.7	Evolutionary Pluralism	387
7.7.1	The Contested Scope of Evolutionary Theory	387
7.7.2	Nature Does Not Make Leaps, Does It?	392
7.8	The Evolutionary Possibility of Human Goodness	400

8	The Mentalist Theory of Ethics and Law	402
8.1	A Fresh Look at Frameworks of Morality	402
8.2	Some Properties of Moral Cognition	405
8.2.1	The Cognitive Space of Morality	405
8.2.2	Principles of Morality	406
8.2.3	Basic Harms, Human Rights and the “Seeds of a Collective Conscience”	412
8.2.4	Volitional Consequences of Moral Judgment	413
8.2.5	Questions of Metaethics and the World of Moral Emotions	415
8.3	Explanatory Limits of Emotivism	418
8.3.1	Ruled by Moral Taste Buds?	418
8.3.2	A Testing Case: Corporal Punishment – A Question of Taste?	421
8.3.3	Sentimental Rules	425
8.4	Explaining Moral Disagreement	426
8.5	The Development of Moral Cognition	430
8.5.1	How Do We Learn to Be Moral?	430
8.5.2	The Moral World of Infants and Toddlers	431
8.6	Poverty of Stimulus and the Development of a Moral Point of View	433
8.7	Sentimental Rules, Rational Rules?	437
8.7.1	The Power of Statistical Learning	437
8.7.2	The Limits of Statistical Learning	439
8.8	Theories of Mind and Human Moral Progress	443
8.9	Critique and Construction: Explanatory Theory and Normative Arguments	444
8.10	The Epistemology of Human Rights Universalism	446
8.11	The Epistemology and Ontology of Morals	449
8.12	Epistemological Resilience	452
8.13	Universalism without Dogmatism and Human Rights Pluralism	453
8.14	A New Case for Universalism?	457
	Epilogue: The Tilted Scales of Justice	462
	<i>Bibliography</i>	469
	<i>Index</i>	495