



**David P.
Forsythe**



Human Rights in International Relations

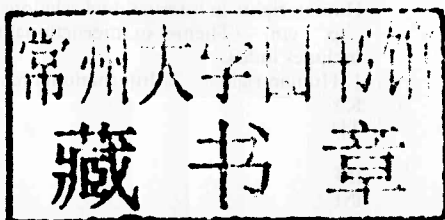


Third Edition

Human Rights in International Relations

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David P. Forsythe



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Human Rights in International Relations

David Forsythe's successful textbook provides an authoritative overview of the place of human rights in international politics. A central paradox summarizes developments: while human rights is more firmly established in international law than ever before, the actual protection of human rights faces increased challenges. The book focuses on four central themes: the resilience of human rights norms, the importance of "soft" law, the key role of non-governmental organizations, and the changing nature of state sovereignty. Human rights standards are examined according to global, regional, and national levels of analysis with a separate chapter dedicated to transnational corporations. This third edition has been updated to reflect recent events, notably the persistence of both militant Islam and tough counterterrorism policies, the growing power of China and other states not entirely sympathetic to many human rights, and various economic difficulties which highlight the costs associated with a serious attention to human rights. Containing chapter-by-chapter guides to further reading and discussion questions, this book will be of interest to undergraduate and graduate students of human rights, and their teachers.

DAVID P. FORSYTHE is Emeritus Professor at the University of Nebraska, Lincoln, where he was Charles J. Mach Distinguished Professor of Political Science. He is the author of numerous International Relations titles, including *The Humanitarians: The International Committee of the Red Cross* (2005). He is the general editor of *Encyclopedia of Human Rights* (2009, five vols.), which won the Dartmouth Medal as the best reference work published in the United States that year.

This new series of textbooks aims to provide students with authoritative surveys of central topics in the study of International Relations. Intended for upper level undergraduates and graduates, the books will be concise, accessible, and comprehensive. Each volume will examine the main theoretical and empirical aspects of the subject concerned, and its relation to wider debates in International Relations, and will also include chapter-by-chapter guides to further reading and discussion questions.

Contents

<i>Preface to the third edition</i>	page vii
<i>Preface to the second edition</i>	ix
<i>Preface to the first edition</i>	xi

Part I The foundations

1 Introduction: human rights in international relations	3
2 Establishing human rights standards	37

Part II Implementing human rights standards

3 Global application of human rights norms	71
4 Transitional justice: criminal courts and alternatives	117
5 Regional application of human rights norms	155
6 Human rights and foreign policy in comparative perspective	197
7 Non-governmental organizations and human rights	240
8 Transnational corporations and human rights	277

Part III Conclusion

9 The politics of liberalism in a realist world	317
<i>Index</i>	346

Preface to the third edition

My preface to the first edition explains the objectives of this book, and they have not changed. My preface to the second edition explains the considerations that guide revisions, and they have not changed either. As before, revisions seek both to clarify the presentation and to incorporate recent developments. In particular I have now added some brief case studies to provide more specificity to certain rights in political context. My overall approach, hence the structure of the book, remains unchanged.

From the origins of this work as a gleam in the author's eye, the tension between personal rights and the workings of the state system of world affairs has been highlighted. If anything, the new edition emphasizes this tension even more. It is now even clearer that when states perceive a serious threat to their interests, above all their physical security, it becomes more difficult to get serious attention to human rights, especially the rights of those perceived as enemies. Moreover, when ruling elites elevate perceived challenges to the level of existential threats, sometimes to the nation but often just to the nature of their rule, serious attention to human rights suffers. Complicating analysis is that fact that some non-state actors see the existing situation as so objectionable that unrestricted violence is justified. This then feeds into a downward spiral of animosity and violence that tends to push human rights to the margins of public policy. Pursuit of victory in total war is not a mind set conducive to human rights.

Still, such is the power of the idea of human rights, defined to include humanitarian law, that states continue to profess their commitment to at least some of those standards, even as their record of compliance is often far short of what it should be. And armed non-state actors who attack civilians and kill prisoners face an uphill journey as they try to explain why they should be considered the new legitimate elite with the right to rule. The Arab Spring of 2011, with its demand for more democracy and other human rights, was a rejection of the militancy of Al Qaeda and other Islamist violent actors. Al Qaeda and its allies were not completely

spent forces, but they were mostly irrelevant to major developments in Tunisia, Egypt, and many other places.

After the demise of European communism some thought the world had entered a golden age of human rights. Forces such as militant Islam and the globalized but impersonal for-profit corporation, however, showed that the promised land remained distant. But the story is yet to be concluded, and the competing tensions are yet to be fully resolved. This third edition is an attempt to indicate the contemporary synthesis between clashing trends over human rights.

As the cliché has it, one thing is perfectly clear. Not only in the West but around the world the teaching of human rights in schools and universities has increased. There are now more scholarly journals focused on human rights, and more articles are being published on human rights in disciplines such as political science. Even in places such as China and Iran, human rights is now a subject of lively and officially sanctioned discussion. This gives some reason for long-term optimism. In the meantime, I sadly note the passing of some of those educators who led the way in this domain, such as Louis Henkin and Richard P. Claude in the United States, Kevin Boyle in the United Kingdom, and Peter R. Baehr in the Netherlands. Three of the four were affected by their family origins whether in Belarus, Northern Ireland, or Nazified Berlin. The lives of each of these three demonstrated that repression can produce human rights progress over time through personal commitment. Surely it is now evident that it is precisely human wrongs that lead to the demand for more practice of human rights, and that this dynamic has yet to run its course. (This is a good spot to refer the reader to Richard Pierre Claude, "Right to Education and Human Rights Education," in David P. Forsythe, ed., *Encyclopedia of Human Rights* [New York: Oxford University Press, 2009], vol. II, 97–107.)

As with earlier editions I had the help of many persons who called material to my attention or who were kind enough to read passages for accuracy and clarity: Danny Braaten, Jack Donnelly, Kathleen Fallon, Barb Flanagan, John Gruhl, Jorge Heine, Courtney Hillebrecht, Rhoda Howard-Hassmann, Mark Janis, Alice Kang, Bert Lockwood, Peter Malcontent, Jay Ovsiovitch, Scott Pegg, David Rapkin, David Richards, Bill Schabas, Fusun Turkmen, Andy Wedeman, David Weissbrodt, and Jake Wobig.

As before, the production team at Cambridge University Press was efficient and helpful, especially my editor John Haslam.

DAVID P. FORSYTHE
Summer, 2011

Preface to the second edition

In writing the second edition to this work, I have been initially guided by the old axiom: if it's not broke, don't try to fix it. The response by students and faculty to the first edition has been such, including translation into five foreign languages, that I have left unchanged the basic approach and overall structure of the book. The emphasis remains on the transnational policy making process concerned with internationally recognized human rights. The nine chapters remain the same in subject matter content.

At the same time, the world has not stood still since the first edition was written in the late 1990s. So a number of changes have been made within chapters to account for various developments: the creation of the International Criminal Court, including the selection of its first prosecutor; a renewed debate about international humanitarian law (for human rights in armed conflict) and whether it has become *passé* in an "era of terrorism"; an accelerated debate about "humanitarian intervention" and its possible misuse in places like Iraq; further developments about the mainstreaming of human rights in the United Nations system; an updated evaluation of the multifaceted efforts to link human rights with the behavior of transnational corporations; an ongoing debate about the importance of socioeconomic rights compared to civil-political rights; shifts in US foreign policy since September 11, 2001, which affect many things in international relations, given the great power of that state; and so on.

Sometimes I have restructured chapters rather boldly in the hopes of making analysis more systematic and clear. This is the case particularly in Chapter 4 dealing with international criminal justice and the debate about prosecution of those who have done terrible things, versus other means to the progressive development of a rights-protective society. In the same vein I have added a section to the conclusion to make it more reflective of social science research on human rights.

As was true of the first edition, it is a daunting task to try to provide anything approaching a timely and comprehensive introduction to the subject of internationally recognized human rights. When I was an

undergraduate student, I took no classes in human rights – because there weren't any. Now there are many human rights classes in law, political science, philosophy, sociology, anthropology, etc. These reflect the growing attention to the subject, accompanied by a great variety of intriguing perspectives. The law on human rights is further developed, the court cases more numerous, the impact on diplomacy more thorough, the very notion of human rights more pervasive in society, the debates broader. I suppose one should not complain if a certain ideational or normative progress makes even a summary introduction exceedingly difficult. One can legitimately complain, however, about the remaining gap between human rights standards on the one hand, and on the other the human wrongs that are so clearly manifest.

In any event, the second edition seeks to refine the first, without changing drastically what I try to accomplish. I still try to give the reader a reasonably succinct overview of the extent to which the idea of internationally recognized human rights does or does not affect behavior around the world. The target audience comprises university students and the general public, not advanced law students. In this quest I have been greatly aided by the students and colleagues at various institutions who have told me what worked and what did not in the first edition, what was clear and what was not, what was omitted and should be added. I am particularly grateful to Barb Rieffer, Mutuma Ruteere, Collin Sullivan, Jordan Miliken, Evian Littrell, Carrie Heaton, Eric Heinze, Peter R. Baehr, Eva Brems, Mark Janis, Rhoda Howard-Hassmann, Jack Donnelly, Robert Johansen, Bill Schabas, and James Patrick Flood. Richard Claude gave support to my earliest efforts and pushed me into needed changes. To all of them I am very grateful, as well as to the editors and staff and Cambridge University Press who have expressed confidence not only in this work but also in another book I wrote for them in 2004–2005 on the International Committee of the Red Cross. I am especially appreciative of John Haslam and his guidance and support at CUP.

DAVID P. FORSYTHE

Lincoln, September 2005

Preface to the first edition

This book is intended for students interested in international relations. Rather than do a third edition of an earlier work of similar scope and purpose, I decided to start again from scratch. The changes in international relations have been so momentous, with the end of the Cold War and the collapse of European communism, that mere revisions seemed inadequate.

My emphasis is on political and diplomatic processes. I seek in general to show *how and why* human rights standards come into being, impact the notion of sovereignty, become secondary or tertiary to other values and goals, are manipulated for reasons other than advancing human dignity and social justice, and sometimes change behavior to improve the human condition. I use particular legal cases and material situations mainly to demonstrate the policy making processes associated with international human rights. I conceive of law and legal cases as derivative from politics and diplomacy, mostly. I make little attempt to summarize the substantive decisions of particular human rights agencies and courts, other than to give an indication of their general importance or irrelevance. My central objective remains that of giving the reader an overview of decision making processes pertaining to human rights in the context of international relations. I intend to give readers a framework of process, within which, or from which, they can plug in whatever changing particulars seem important.

I seek to show two important trends:

- (1) the extent of changes in international relations pertaining to human rights over the second half of the twentieth century, and
- (2) how difficult it is to mesh personal human rights, based on the liberal tradition, with the state system dominated as it has been by the realist approach to international relations.

Along the way I repeatedly address the distinction between human rights and humanitarian affairs. Legally and traditionally speaking, human rights pertains to fundamental personal rights in peace, and humanitarian affairs pertains to protecting and assisting victims of war

and other victims in exceptional situations. International human rights law and international humanitarian law are different bodies of law, with different histories, and supposedly pertaining to different situations. But in the scrum of international relations, legal categories get blurred. Legal categories sometimes entail distinctions without a difference. Was the situation in Bosnia 1992–1995 an international war, an internal war, both, or neither? Did it matter for practical action on the ground? And Somalia 1992–1995? And Kosovo in 1998–1999? What does the United Nations mean by “complex emergency”? The point I stress is the following: the international community, represented by different actors, is taking an increasing interest in persons in dire straits, whether in peace or war or some mixture of the two. If states cannot maintain a humane order, the international community may take a variety of steps, sometimes referring to human rights, and sometimes to humanitarian law and diplomacy. It is thus important not only to understand the law and diplomacy of human rights, but also – to give a few concrete examples – the Geneva Conventions and Protocols for victims of war, and the International Committee of the Red Cross which is the theoretical and practical guardian of that humanitarian tradition. In other words, I take a broad, practical definition of human rights – including human rights in war and political unrest.

The book is organized according to two concepts that are both useful and imperfect: the idea of levels of analysis; and the idea of organizations that act, or may act, for human rights. As for the first, after an introduction I proceed from the global level (the United Nations), through the regional (in Europe and the Western Hemisphere and Africa), through the national (state foreign policy), to the sub-national (private human rights groups and transnational corporations). This means that I take up global actors like the United Nations and associated international criminal courts; regional organizations such as the Council of Europe, European Union, Organization for Security and Co-operation in Europe, Organization of American States, and Organization of African Unity; state foreign policy in comparative perspective (especially that of the United States); private groups active on human rights (e.g., Amnesty International), relief (e.g., the International Committee of the Red Cross), and development (e.g., Oxfam); and transnational corporations like Nike and Royal Dutch Shell. This structure is useful for organizing an ever-growing body of information into an introductory overview.

The structure is also imperfect. There is nothing magical about four levels of analysis. Other authors have used both more and fewer. Also, one level can intrude into others. The United Nations is made up of state representatives as well as personnel not instructed by states. So in

discussing UN action for human rights, one has to deal with state foreign policy. Likewise in analyzing the impact of transnational corporations on human rights, especially on labor rights, one has to talk about both states and traditional human rights advocacy groups like the Lawyers Committee for Human Rights.

There are other actors for human rights besides the ones emphasized in this work. One could just as well have a separate chapter on religious organizations, rather than dealing with them briefly as part of human rights movements entailing traditional advocacy groups like Human Rights Watch. One could well envisage a separate chapter on the communications media and human rights.

Yet given the purpose of this book, viz., to provide an overview of the status of human rights in contemporary international relations, and the limitation on length imposed by the publisher, the combination of levels of analysis and actors allows a reasonably accurate survey. This is, after all, an introductory overview. It does not pretend to be the definitive word on international human rights.

I have also tried to pull together in this work much of my thinking on international human rights from the past thirty years. If the reader finds that I cite my own previous publications, it is not because I am thrilled to see my name in the reference notes. Like some other authors who have worked in a field for some time, I have tried to put in one publication, in an integrated way, my cumulative – and sometimes revised – thoughts on the subject.

A number of persons have helped me refine my thinking along the long, unusually tortuous path to publication of this book. None has been more helpful than Jack Donnelly, although some might think he and I have been competitors in writing for university students of human rights. I published the first classroom book on the subject for political science students, he then came out with a similar book that pretty much preempted my second edition, and now I presume this book will at least compete with his recent edition. But he assigned my first work to his students, I praised and assigned his parallel publication to my students, and I am pleased to acknowledge his helpful role in this work. I am glad to say I think of Jack more as a colleague with shared interests than a competitor.

Special thanks should also go to Peter Baehr who invited me to be a Visiting Fellow at the Research School for the Study of Human Rights based at the University of Utrecht in the Netherlands, which allowed me an excellent opportunity to work on this project. Peter also gave me insightful comments on parts of the book. The University of Nebraska–Lincoln, especially my Dean, Brian Foster, was flexible in

accommodating my stay in Utrecht. I should also like to thank the Graduate Institute of International Studies of the University of Geneva for inviting me to be a Visiting Professor there, where the final revisions were made. Danny Warner was most helpful in arranging my renewed contacts in a city closely associated with international human rights.

I would like to acknowledge those, in addition to Professors Donnelly and Baehr, who read all or parts of this work in manuscript form and whose comments led to helpful revisions: William P. Avery, David R. Rapkin, Jeffery Spinner-Halev, and Claude Welch.

A special word of thanks goes to Ms. Barbara Ann J. Rieffer, who was my graduate assistant for part of the time this work was in preparation. She helped enormously not only with technical matters but in commenting on substance and thereby helping with the task of revisions.

Ms. Monica Mason was of great assistance in the preparation of final copy.

Mr. John Haslam was a most understanding editor at Cambridge University Press, despite the fact that events beyond my control delayed the publication of the manuscript more than is my custom.

Part I

The foundations

1 Introduction: human rights in international relations

Human rights are widely considered to be those fundamental moral rights of the person that are necessary for a life with human dignity. Human rights are thus means to a greater social end, and it is the legal system that tells us at any given point in time which rights are considered most fundamental in society. Even if human rights are thought to be inalienable, a moral attribute of persons that public authorities should not contravene, rights still have to be identified – that is, constructed – by human beings and codified in the legal system.¹ While human rights have a long history in theory and even in spasmodic practice, it was the American and French revolutions of the eighteenth century that sought to create national polities based on broadly shared human rights. Despite the rhetoric of universality, however, human rights remained essentially a national matter, to be accepted or not, until 1945 when they were recognized in global international law.

This book is about the evolution and status of human rights in international relations at the start of the twenty-first century. Thus this extended essay is about the effort to liberalize international relations – to make international relations conform to the liberal prescription for the good society. In the classical liberal view, the good society is based on respect for the equality and autonomy of individuals, which is assured through the recognition and application of the fundamental legal rights of the person. In this book liberalism is a synonym for attention to personal rights. But in international relations it has been widely believed that the state, not the individual, is the basic unit. And the core principle has been said to be state sovereignty and non-interference in the domestic affairs of states. In this book realism is a synonym for attention to state interests – foremost among which is security – and state power. The subject of international human rights thus projects liberalism into a realist

¹ Jack Donnelly, “The Social Construction of International Human Rights,” in Tim Dunne and Nicholas J. Wheeler, eds., *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), 71–102.