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# Not Philanthropy But Rights: The Proper Politicisation of Humanitarian Philosophy

HUGO SLIM

This article supports the efforts of humanitarian agencies working in armed conflict to recognise a political and legal philosophy of humanitarian action that is more explicitly built on human rights and international humanitarian law. It regards humanitarian philosophy as a mixture of a simple ethic of charity and a more politically connected theory of rights. It observes the dangers of a strong philanthropy-only tendency that persists in international humanitarianism and argues that basing humanitarian action primarily on the ethic of charity is not sufficient for two reasons. First, because such charity seldom demands political responsibility from others. Second, because the virtue of charity can often be distorted into dysfunctional and patronising relationships between western aid givers and their 'beneficiaries' that can be colonial and even racist at heart. To move beyond a dysfunctional philanthropic mindset, the article sees better understanding of and respect for international humanitarian law (IHL) as of crucial importance. As a practical guide to human rights in war, IHL provides an effective bridge between a potentially utopian theory of human rights and effective humanitarian protection in war. The article also sketches the recent trend of contemporary humanitarian philosophy becoming increasingly rights-based and identifies a number of advantages as well as disadvantages in such an explicit ideological shift.

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For centuries, there has been an ideological tussle between a humanitarianism based on charity and a humanitarianism based on rights. For some people, being humanitarian to strangers who are poorer or more endangered than themselves is something they do because it is morally right and because they regard others as more unfortunate. For other people, being humanitarian is what they do because they regard the suffering of others as morally and politically wrong, because they believe all people have equal rights and because they want to change the world. In short, some have politicised humanitarian action by grounding it in an explicit political philosophy of rights. Others have not.

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## BACKGROUND

In his famous *Essay on Perpetual Peace* in 1795, Immanuel Kant, reflected on why a state should show hospitality to refugees and strangers. In doing so, he seemed to voice a certain impatience with a particular kind of humanitarian thinking:

Our concern is not with philanthropy but right, and in this context the right of an alien not to be treated as an enemy upon arrival in another's country...the right to visit, to associate, belongs to all by virtue of their common ownership of the earth's surface.<sup>1</sup>

Kant's humanitarian philosophy is one of equality, rights and duties. It is grounded in a clear idea of morally responsible politics. The purpose of this article is to take up this idea and affirm it in relation to contemporary humanitarianism and the protection of civilians in war. In war, as in issues of asylum, the notion of philanthropy as a general moral project of individual good deeds is not a sufficient philosophical and ideological basis for humanitarian action. In a world of states, interests, conflicting parties and organised violence, it is essential that humanitarian action is rooted in a considered and explicit political philosophy connected to a wider political framework of rights, duties and law. An ethic of charity is not enough. Nick Leader has rightly noted that 'determining the limits of war is an intensely political process' and that 'attempting to promote respect for principles is a different kind of politics from taking sides in a war, but it is politics none the less'.<sup>2</sup> To be effective, humanitarianism must be a political project in the broadest and best sense of the term. In other words, a project that is actively engaged with challenging those in power to limit violence and protect civilians without being *parti pris*. The International Committee of the Red Cross (ICRC) has always known this to be true and so has long been at the forefront of a project to engage states and non-state actors in the development of law and responsible politics in the face of armed conflict. Many UN agencies and NGOs have also recognised the importance of humanitarianism as an essentially political but impartial project. It is the purpose of this article to make the case for human rights as a vital part of the political philosophy of such a humanitarian approach.

Apart from the fact that an ethic of charity is not sufficient to underwrite humanitarian action in a political world, there is another reason why humanitarian action requires an explicit political and legal philosophy. The charitable or philanthropic ethic is open to political abuse. Mere philanthropy that functions without explicit political vision

and legal requirement may act as a veneer for the preservation of an inhumane political status quo. More than 50 years after Kant in 1848, two young German radicals, Karl Marx and Frederick Engels, recognised this all too clearly. In *The Communist Manifesto*, they made a stinging critique of what they saw as the reactionary, palliative and self-serving nature of a certain type of charitable endeavour:

A part of the bourgeoisie is desirous of redressing social grievances, in order to secure the continued existence of bourgeois society. To this section belongs economists, philanthropists, humanitarians, improvers of the condition of the working class, organisers of charity, members of societies for the prevention of cruelty to animals, temperance fanatics, hole-and-corner reformers of every imaginable kind. This form of Socialism has moreover, been worked out into complete systems.<sup>3</sup>

In the 150 years that followed the publication of *The Communist Manifesto*, just such a 'complete system' of international philanthropy developed across the world through the missions and charities of the colonial period and beyond. After the decades of liberation and independence in the 1960s and 1970s, a similar system has been continued in the post-colonial era by the NGO, Red Cross and UN descendants of these earlier philanthropists. Alex de Waal has coined the term 'the humanitarian international' to describe this system. He criticises what he sees as the overwhelming 'philanthropic humanitarianism' of this system for its essential failure to challenge the politics that permits famine and war. This would be best done by supporting people's efforts to forge 'political contracts' with the powers in their lands that would make hunger and violence unacceptable.<sup>4</sup> Arguing such contracts nationally and internationally in terms of a theory of rights and duties can be an important part of such a process and secure deeper change than an endless supply of food aid and war relief.

In discussing the political philosophy behind humanitarian action, this article draws on Kant's distinction between philanthropy and right, to illustrate the current shift that is taking place in western humanitarianism's understanding of itself. It explores how an explicit humanitarianism of rights compares with philanthropic humanitarianism. Simple versions of these two types seldom exist in any agency or individual. Most agencies and individuals have a mixed philosophy. Thus, the article argues that humanitarianism – as the perpetual project of restraining and repairing the violence of war<sup>5</sup> – is divided in its understanding of its essential philosophy. A part of every international humanitarian worker understands their calling as a

philosophy of simple and morally absolute charity. But another part is – and must be – concerned with the very political project of shaping laws and implementing programmes that seek to develop a very real political contract between people, state and non-state power about the extent of armed conflict in their politics. To think that humanitarianism is either *all* charity or *all* politics is simplistic. Humanitarianism in war is a strange and compelling mixture of the two pursuits of charity and politics. It is about bringing love and kindness into the midst of war. But it is also about engaging state power and non-state power in a moral, legal and political process that seriously limits war and protects the rights of people when they are threatened by organised violence.

Rooting humanitarian action in political contract involves humanitarian philosophy in an appropriate swing away from its more sentimental, paternalistic and privileged discourse of philanthropy and charity, to a more political, egalitarian and empowering ideology of rights and duties in war. This shift has been a long time in the making as both discourses have tended to exist simultaneously in most humanitarian and development organisations for much of the last century. However, it is fair to say that the shift to rights has recently accelerated as humanitarians have reflected on their role in the wake of the Rwandan Genocide. The dominance of neo-liberalism also makes it easier to speak freely of human rights at present. This makes for a real possibility for a more consistent realignment in favour of rights over philanthropy in humanitarian thinking and practice. While championing this ideological shift and its better balance between charity and politics, the article also seeks to lay bear the risks of a rights-based approach to humanitarianism.

### *Charity and Philanthropy*

Criticising charitable or philanthropic ideology does not undermine the original values inherent in these words. It is not the purpose of this article to denigrate the great Victorian reformers, known as philanthropists, who engaged in very real politics around the rights of slaves and children amongst others. Nor can there be any greater practical moral value than the love or charity of the Christian virtues and its namesakes in other religions. Equally, as a secular version of this form of practical human love, there can be no better thing than philanthropy. People who unequivocally embody and share this form of love have no real personal need of theories of rights, even if their society may still require ideology and law framed in such terms. All of us have moments of such love and charity. But equally, all of us live in (and join in) wider systems that work against the realisation of such love.

The concern of this article – akin to that of Marx and Engels – is what becomes of these virtues and their labels when taken up by rich givers without an explicit philosophical determination to engage just political relationships. In short, it is alarmed at ideologies in which charity and philanthropy are ends in themselves and left to float free of any serious challenge to power. The virtues of charity and philanthropy, which should have equality at the centre of their meaning, have all too frequently become the means to make the opposite principle of inequality and its resulting suffering morally, socially and politically acceptable. A system of ‘good works’ can serve as a smooth gloss over more structural violation and injustice. In this form, while offering help but not redress, de-politicised philanthropic or charitable discourse can in fact throw a veil over the natural rights of particular people – the realisation of whose rights might in fact threaten the status of the charitable. This has been a feature of international humanitarianism on occasion and also of development. Firoze Manji and other ‘post-developmentalists’ have observed how the rise of a form of development driven by charity alone has involved the same process at work.<sup>6</sup> For Manji, the predominance of a charitable and scientific ethic devoid of political vision saw the effective ‘de-politicisation of poverty’ in Africa.

Throughout the second part of the twentieth century, a great part of humanitarian activity and ideology remained firmly in a philanthropic mould. Radical church-based and secular agencies always pursued a serious discourse of rights and from Biafra onwards were clearly aware of ‘the politics of famine’.<sup>7</sup> But in many NGO and UN humanitarian agencies a main melody of rights was also frequently accompanied by a powerful descant of philanthropy which often served to masquerade their political analysis and philosophy of rights. The work of many agencies was often conveyed in the sentimental, de-politicised and frequently paternalistic moral tones of the philanthropist. Wrapped in the apolitical language of compassion and help, the moral case in favour of those suffering war and disaster was made in terms of such people’s extraordinary and immediate ‘needs’, their pitiful state and their inherent and miserable righteousness as ‘victims’. Once established as the objects of such organised humanitarian philanthropy, people soon became known as ‘beneficiaries’. An odious and de-personalising term, the label ‘beneficiary’ undermines the idea that people are the subjects of their own survival and of equal worth to their ‘benefactors’. It also assumes that people are always benefiting from the humanitarian aid on offer. Even with an in-house philosophy of rights, agencies have found it hard to break out of the fairy tale schema of disaster when narrating events through the media to their publics and asking them for money.<sup>8</sup>

*Human Rights*

The notion of human rights emerged in the thinking and writing of political philosophers and jurists during the European Enlightenment but came to the fore in the revolutions in North America and France in the last part of the eighteenth century. It is perhaps in these practical struggles for freedom that the philosophy of human rights is most easily grasped. The best guides to the meaning of these rights are often those who have actively struggled for them. One of the most articulate and impassioned advocates of rights was a former maker of ladies corsets, turned customs officer, turned international revolutionary – Thomas Paine. Born in Norfolk in 1737 and brought up as a Quaker, Paine left school early and was essentially self-educated. Making the acquaintance of Benjamin Franklin in London in 1774, he sailed for America in the same year and became one of the most brilliant political pamphleteers of all time and one of the most significant influences on the American and French revolutions and their various declarations of rights.

While it is possible to make discussion of human rights extremely complicated, rights were always quite simple and ‘natural’ for Paine. In his *Rights of Man* (1791) he argues that ‘only the distinction of sexes’ is evident in humanity and the created order of things and that ‘no other distinction is even implied’. From this he is able to discern ‘the illuminating and divine principle of the equal rights of man [sic]’.<sup>9</sup> This principle of equality is the foundation of the philosophy of human rights. From equality, Paine then identifies two types of rights – natural rights and civil rights. ‘Natural rights are those which appertain to man [sic] in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious of the rights of others.’<sup>10</sup>

However, it is obvious to Paine that an individual acting alone can never realise or enjoy all his natural rights and that any individual is also part of society and so in a position to either realise or violate the rights of others. Thus, one person’s natural rights must be protected by other people in society. That person also has a reciprocal duty to protect the rights of others in society. These rights enjoyed in society, which require an active reciprocity between rights and duties, Paine regards as ‘civil rights’. Every civil right ‘has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent’.<sup>11</sup> In short, we need each other as individuals or as governments or as organisations to protect the rights that we cannot ensure for ourselves – those ‘rights of imperfect power’. These rights we have to ‘exchange’ with others so that they can be secured with others or by others on our behalf. In

order to enjoy our rights we need to relate to each other by respecting our common rights and our common duties.<sup>12</sup> In society this requires a special 'compact' with government. In Paine's view, this compact and its prerequisite of equality was simply not recognised by the governments of his day in Britain and France which drew false distinctions between different classes of people and suppressed the freedom and comfort of many.

Most contemporary advocates of human rights follow in the tradition of 'natural' rights as set forth by Paine and others, although different people find different reasons for what makes certain rights 'natural' and so universal. Some deduce human rights from religious belief and some from political logic. Others, like John Finnis, accept them as 'a valuable addition to the received vocabulary of practical reasonableness' and a useful 'counter in political discourse' which helps to remind us of those self-evident and basic forms of good which enable human flourishing.<sup>13</sup> Since Paine and others began to write down lists of these rights in the American Declaration of Independence, the American Constitution and the French National Assembly's 17-point Declaration of the Rights of Man and of Citizens, people have continued to spell out what human rights might mean in new lists for different generations. The making of rights lists accelerated dramatically after the Universal Declaration of Human Rights in 1948 and is now manifest in the hundreds of covenants, conventions and declarations produced by the United Nations and different regional organisations of states. And, of course, these lists now function not only as assertions of moral rights and political ends but also as law, nationally and internationally.

What perhaps distinguishes the philosophy of human rights from other religious or secular expressions of the equality and sanctity of human life is their implications of specific political contract with government and other organisations of power. This political and legal character puts human rights on a direct continuum with political responsibility and justice. An ideology of charity and philanthropy alone could simply demand pity, compassion and care. But the moment one uses rights-talk, one becomes explicit in a demand for responsible politics, law and justice. Where this demand is rejected in war becomes the point at which the struggle for humanitarian action to protect these rights is begun.

#### *Humanitarian Law and the Specification of Rights in War*

Human rights, and the international legal instruments that express them, have developed largely in the genre of 'manifesto'.<sup>14</sup> They are represented as a series of 'assertions' which Finnis notes as being essentially 'peremptory' and 'conclusory', as per 'everyone has a right to' and 'no one shall be subjected to'. He argues that while human rights as



they stand may usefully sketch 'the outlines of the common good' they require much greater 'specification' and must be translated 'into specific three-term relations' in any given situation. This involves identifying the identity of the duty-bearer, descriptions of the content of the duty, the specific identity of the rights-holder(s), and the conditions under which that rights-holder might lose their claim to a right.<sup>15</sup>

It is in this process of specification that human rights are brought down to earth. And it is also in this process that rights-based humanitarianism is able to draw on its greatest asset – the specific prohibitions and injunctions of international humanitarian law as spelled out in the Geneva Conventions and their Additional Protocols. For, while IHL is all about protecting human rights in war, it is not written in the manifesto form of human rights law but, as the laws of war, is formed much more in the way of Finnis' 'three-term relations'. ICRC's lawyers now increasingly emphasise this important complementarity that exists between Human Rights Law and IHL. The great strength of IHL seems to be its legal and philosophical bi-lingualism that enables it to speak of rights and yet also specify them as rules that directly relate to fighters. As Doswald-Beck and Vite point out, the provisions of IHL cover the greater part of civil, political, economic, social and cultural rights as represented in UN Human Rights law, but they do so in a way which speaks in terms of the specific duties of fighters. This means that IHL 'is not alien to military thinking and has the advantage of being a realistic code for military behaviour as well as protecting human rights to the maximum degree possible in the circumstances'.<sup>16</sup> A similar view has also emerged from a recent consultation on humanitarian and political challenges in Africa convened by the InterAfrica Group and Justice Africa. Recommendations from this meeting urge African governments to put IHL at the centre of war in Africa as the best way to protect people's human rights in war.<sup>17</sup>

For humanitarians to be serious about and committed to a philosophy of rights in armed conflict means committing themselves to a much greater engagement with IHL as the main arbiter for protecting human rights in war. Not only ICRC but also NGOs and UN agencies need to know this law, to share it with those civilians enduring war, with politicians, with business people and with fighters. They need to make real efforts to use it in practice and to build a movement to normalise it as a fundamental way of forging a political contract about the limits of armed conflict in society.

#### THE PERSISTENCE OF PHILANTHROPIC HUMANITARIANISM

With the politics and language of human rights making such headway in the years since the UN Charter (1945) and Universal Declaration (1948),

and with the renewal of the Geneva Conventions in 1949 and 1977, the tenacity of the philanthropic paradigm in mainstream humanitarianism requires some explanation. The staying power of the de-politicised philanthropic descant in humanitarian ideology seems to stem from six main factors.

### *The Question of Money*

Many humanitarian agencies in the second part of the twentieth century were driven by quite radical idealism, some with an increasingly rights-based hue like many church related agencies, Oxfam and Médecins Sans Frontières (MSF). But many were not and were conventionally philanthropic. But, even the more radical agencies, seldom found it in their immediate financial interests to develop a more political rights-based consciousness with their domestic publics when appealing for large funds for those suffering from war and disaster. In such circumstances, it was consistently assumed that the best button to press in potential givers was the generic philanthropic button. An apolitical description of people as needy victims requiring generosity was more likely to generate the giving reflex than an image of people as oppressed rights-bearers demanding a duty from states and peoples across the world.

### *Contested Rights*

The second break on an earlier rights-based humanitarian paradigm was the contested status of human rights within the ideological contest of the Cold War. Human rights were despised by many on the political left and the political right. Considered as too individualistic to be meaningful in the collective societies of the Soviet bloc, they were regarded as subversive of order and property in hierarchical and elitist right wing polities like the Latin American dictatorships. This meant that it was bad tactics to pursue a human rights interpretation of humanitarian action in many of the world's wars and disasters between 1945 and 1989. Using rights-talk would simply place one in even greater confrontation with the national authorities in a given emergency. Political opportunism thus dictated that humanitarian agencies used the moral language of compassion and needs where there was censorship of rights-talk.

### *Racism and the Colonial Gaze*

A third factor concerns the terrible resilience of the colonial gaze. Throughout the last 40 years, large sections of the public in Europe and North America continued to look on Africa and Asia in particular with the eyes of colonialists. Except in rare and extreme moments, it has been hard for a western imagination influenced by its media to recognise that

different coloured people enduring the horrors of war and disaster are fully 'like us'.<sup>18</sup> This racism which still lingers from colonialism was often comforted rather than challenged by humanitarian marketing and reporting which took a patronising philanthropic view. Many personal acts of humanitarian giving were probably tainted by ideas of African and Asian inferiority that served to infantilise these societies and to dehumanise their people to an almost pornographic extent.<sup>19</sup> Indeed, the very act of giving might often have served to confirm such racism. The fact that the gift was necessary seemed to justify the 'fact' that these people were not fully human 'like us'. Although better denied by some than by others, the process of 'seeing' distant suffering and then giving to it, often completed a vicious cycle of fundamental dis-regard for people in Africa and Asia. In some sections of western society, financial generosity could veil a lasting racist gaze. Despite agency attempts to alter the image of African and Asian people enduring war or disaster, such tinkering has not yet altered the dominant gaze. The scales have not fallen from most western eyes to see the equality that exists between peoples.

#### *Humanitarian Ignorance of Rights*

A fourth reason why the philanthropic paradigm proved so resilient was perhaps one of ideological ignorance. Up until the 1990s, most front-line humanitarian personnel simply did not know about human rights or international humanitarian law in any meaningful way.<sup>20</sup> Many still do not. Such ignorance was partly because of the censorship of rights-talk described above which was operating nationally and internationally. But it was also partly because, thanks to the success of Amnesty International and others working primarily on civil and political rights, human rights were caricatured as a limited moral and political agenda around torture and freedom of expression. Most humanitarian agencies, therefore, saw themselves and their mission as having very little to do with human rights. Most humanitarian workers probably thought human rights were a good thing but very few had stopped to think about them seriously and to reflect upon their implications for work in war and disaster.

#### *Parallel Laws and ICRC Caution*

Another important reason why explicit rights-talk took time to arrive in mainstream humanitarianism – so allowing philanthropy to prevail – concerns the slowly unfolding relationship between human rights law and IHL. In the late 1940s it was agreed to keep the development of human rights law apart from the further development of the laws of war. Configuring itself as the international institution of peace *par excellence*,

the United Nations did not want to involve itself in the laws of war in a way which might imply that war was acceptable. As such the UN was happy to work on human rights while the ICRC continued to lead on IHL. Equally, during this time, the ICRC was glad not to be entangled in such an overtly contested political institution as the Cold War United Nations.<sup>21</sup>

But despite these institutional differences, the philosophical continuity between human rights and humanitarianism was always clear from the start. In 1949 and again in 1977, as IHL made major developments, the parallels with human rights were explicit. In his final speech during the signing ceremony of the diplomatic conference that drew up the 1949 Geneva Conventions, the President of the Conference, Max Petitpierre, compared these conventions with the Universal Declaration of Human Rights:

Our texts [the Geneva Conventions] are based on certain fundamental rights proclaimed in it [the Universal Declaration] – respect for the human person, protection against torture and against cruel, inhuman or degrading punishments or treatment. Those rights find their legal expression in the contractual agreements which your Governments have today agreed to undertake. The Universal Declaration and the Geneva Conventions are both derived from one and the same ideal.<sup>22</sup>

The same recognition of the overlap between human rights law and IHL was obvious again in 1977 at the drafting of the Additional Protocols where, as Schindler noted, ‘several of whose provisions, for example Article 75 of API (fundamental guarantees) and article 6 of APII (Penal Prosecutions) are directly derived from the United Nations Covenant on Civil and Political Rights’.<sup>23</sup>

So if the philosophical overlap between rights and humanitarianism was clear and acknowledged, why did the philanthropic rather than rights model remain predominant? The answer lies to some degree with ICRC policy. As the doyen of humanitarian agencies, from the 1950s onwards, ICRC pursued two policies which effectively slowed the notion of rights percolating throughout the wider humanitarian community. First, ICRC judged it necessary to disassociate international humanitarian law (IHL) from human rights as a pre-requisite of its Cold War survival. ICRC has always recognised the parallels between the laws of war and human rights but has, until the 1990s, felt it to be bad tactics to emphasise them. A second ICRC attitude also prevailed. ICRC seemed determined to keep IHL firmly to itself as a matter between it and states. Until the 1990s, ICRC ensured that a distinctive aura of mystique

surrounded IHL which made it near untouchable to other humanitarian agencies. To some degree, it gave off the impression that IHL was 'ICRC law' and only they could really understand it and argue for it. In this way, the so-called 'dissemination' of IHL was largely restricted to states, their military forces, certain academics and rebel groups. Until recently, dissemination priorities did not focus significantly on NGOs and other humanitarian actors, let alone civilians and community-based organisations. Throughout this period, few NGOs felt entitled or encouraged to pick up and read copies of the Geneva Conventions and their Additional Protocols. This meant that hardly any active humanitarians outside the Red Cross movement had any idea of what IHL was about.

The institutional (but not philosophical) disassociation between IHL and Human Rights Law (HRL), and an element of ICRC protectionism of IHL, contributed to widespread ignorance of both amongst many humanitarian agencies. It led to a general perception that IHL and human rights were fundamentally different. More than that, the impression was created that IHL was the sole preserve of the ICRC – Swiss legal turf marked with an implicit sign reading 'Keep off the Grass'. This lack of access to the philosophical, political and legal principles underpinning people's protection in war meant that, instead of becoming more politically sophisticated, NGO and UN humanitarian philosophy fell back on the paternalistic ideology of philanthropy with its ideas of need, compassion and help. Such moral generalities were then complemented with crumbs from under the Red Cross table: scraps of ideas about impartiality and neutrality. During the Cold War, ICRC never really educated its NGO humanitarian offspring – possibly because it regarded them as illegitimate and something of a liability.

### *An Ethic beyond Rights*

Finally, another reason why a philanthropic model of humanitarianism has remained resilient and dominant over the rights model is because it is not all bad! There is great truth in a humanitarian ethic that transcends a rights-based formulation of protection in war. Many humanitarians are perhaps rightly afraid of their ethic becoming boxed into a particular philosophical and political formula of rights. People respond to the suffering of war by moral instinct – by identification and compassion. This is the stuff of spirit and emotion which presses upon us as charity or her more broken relation, philanthropy. To bind this urge in a transient political discourse is potentially to sacrifice it to a philosophical fashion. Such a risk is too great for many humanitarians who want to be allowed to use raw moral talk to vent their concerns above the sterility of elite political debate. *In extremis*,

humanitarians want a moral model for their cause that does not complicate it with rights but states simply that it *is* right.

#### THE SHIFT TOWARDS RIGHTS

On paper at least, in both humanitarian and development ideology, rights are finally gaining the ascendancy over philanthropy. There are perhaps four significant areas that reveal this trend and provide the context to suggest that humanitarianism is becoming increasingly rights-based.

##### *The United Nations and Rights*

The first driver to be actively shaping a form of rights-based humanitarianism is the United Nations. The development of humanitarian policy by a United Nations Security Council (UNSC) which now more frequently agrees than disagrees has involved a serious equalising tendency in the old tension between state sovereignty and individual rights. At one reading, the whole of the recent history of humanitarian intervention in the 1990s has been about the storming, forming and norming of a new international relationship between the sovereignty of the state and the rights of the human person. Boutros Boutros Ghali's now famous observation in 1992 that 'the time of absolute and exclusive sovereignty has passed' heralded a new era in the relationship between the individual and the state – first on paper and then in militarised interventions on the ground.<sup>24</sup> This theme was continued by Kofi Annan who hailed the idea of 'individual sovereignty' as a countervailing force to state sovereignty<sup>25</sup> and observed that the Security Council now recognised that 'massive and systematic breaches of human rights law and international humanitarian law constitute threats to international peace and security'<sup>26</sup> (UN Secretary General, 1999, para 30). In its resolutions and reports, and in the practice of its new tribunals and courts, the discourse of the UN has clearly moved from a philanthropic morality of 'needs must' to a political principle of 'rights demand'.

##### *ICRC and Avenir*

ICRC's 'Avenir' process of increased open-ness has witnessed a real commitment by ICRC to work more closely with NGOs and human rights agencies on developing a complementary rights-based framework for humanitarianism. ICRC is now much more content to make explicit links between HRL and IHL, both in legal terms and in the building of new relationships with other humanitarian and human rights agencies

that focus on 'complementarity'.<sup>27</sup> Since 1996, ICRC has convened an annual inter-agency workshop on humanitarian protection in Geneva to develop practical combined HR and IHL strategies for the protection of civilians in war. In its official statements and the writing of its members and staff, it has also been careful to recognise the importance of integrating human rights with international humanitarian law in policy, practice and law enforcement.<sup>28</sup> ICRC has also determined on a wider remit for the dissemination of IHL to include civil society, young people and NGOs.<sup>29</sup> This looks set to build more of a popular humanitarian movement with the rights protected in IHL at its core.

#### *NGOs, The Humanitarian Charter and Humanitarian Protection*

Another area showing evidence of tectonic shifts towards a rights-based humanitarian paradigm is to be found in the international NGO community in a small but revealing document attached to the SPHERE series of minimum technical standards for disaster relief.<sup>30</sup> This small document, entitled *The Humanitarian Charter*, is an explicit call to a rights-based humanitarianism that roots the signatory agencies' understanding of their humanitarian work in terms of human rights law, refugee law and humanitarian law. The Humanitarian Charter marks the passing of key sections of the international NGO community – on paper at least – from philanthropy to rights. SPHERE's specific standards in the provision of health care, water and sanitation, shelter, food security and nutrition then translate people's rights into specific agency and government duties.

A language change in the NGO community is also revealing. The term humanitarian 'protection' has emerged in NGO consciousness. What was 'relief' (the great philanthropic term of the Victorian Poor Laws and the defining term of Britain's ancient charity laws) became 'assistance' in the 1990s and is now merging with practical legal notions of rights in war and asylum to shape a new over-arching term 'humanitarian protection' that seems set to become the NGO term of choice to cover all humanitarian work. Protective humanitarian practice now sees NGOs wanting to work for the protection and realisation of the full range of people's rights in war. NGO humanitarian work looks increasingly set to overlap with traditional human rights techniques of accompaniment, monitoring and reporting of violations.<sup>31</sup>

#### *Rights-Based Development*

Alongside the shift of the United Nations, the Red Cross and NGOs towards rights-based humanitarianism, lies a parallel process in the re-definition of poverty and development by the UN, western governments

and NGOs alike. UNDP went explicitly rights-based in 2000 and used Amartya Sen's over-arching concept of human freedom<sup>32</sup> to draw the rather tired project of development into the firm philosophical, political and legal embrace of human rights.<sup>33</sup> In Britain, a theory of rights has been informing NGO development philosophy since the early 1990s when Oxfam began to re-conceptualise its work in terms of human rights<sup>34</sup> to be followed in earnest by Save the Children UK and ActionAid.<sup>35</sup> In 1998, Julia Hausermann – a long time champion of rights-based development – led the British government's Department for International Development (DFID) into a rights-based theory of development<sup>36</sup> that means DFID now explicitly understands progress towards international development targets as dependent on the realisation of the human rights of poor people.<sup>37</sup>

#### *Advantages of a Humanitarian Philosophy of Rights*

But what are the pros and cons of a rights-based humanitarian philosophy in practice? Here are what might constitute a few of the basic advantages of a humanitarian philosophy of rights in action.

First, the emphasis on rights as they are set out in human rights law and specified in international humanitarian law and refugee law gives humanitarianism an integrated moral, political and legal framework for affirming universal human values. Grounding humanitarian action in rights, duties and laws makes the values of humanitarian work explicit to all and it links humanitarian values directly to justice. This means that humanitarianism is not left free-floating as some generic act of kindness but is rooted in explicit values, precise political contracts, exact military duties, particular types of assistance, functioning courts, tribunals and truth commissions. Such political and legal *connectedness* makes humanitarian action less vulnerable to being shrouded in moral generalisations and driven by mixed motives.

Second, at a personal level, rights dignify rather than victimise or patronise people. They make people more powerful as rightful claimants rather than unfortunate beggars. Rights reveal all people as moral, political and legal equals. Using rights-talk together with, and on behalf of, those civilians who endure the suffering, atrocity and impoverishment of war puts them centre stage in the prosecution of the war and international response to it. In line with the African proverb (that when two elephants fight, it is the grass around them that suffers), they become another elephant and not just grass.

Third, as Finnis has pointed out, alongside the recognition of equality and dignity, human rights make other important contributions to any political encounter.<sup>38</sup> These are as relevant to armed conflict and



humanitarian action as to any other situation. By affirming universal rights and duties, human rights 'tend to undercut the attractions of the "calculations" of the consequentialists'. Explicitly recognising people's rights in war makes it more difficult to marginalise their violation as a somehow collateral, accidental or unfortunate outcome of the otherwise moral violence and politics of the conflict. When rights are clear, moral arguments and political or military strategies which tend to see people as means rather than ends in the light of some greater good are more quickly challenged.

Fourth, Finnis also points out that rights lists give clear details of the various things that make for a good life. Keeping these lists alive in war thus becomes very important. It means that they constantly challenge those with a duty to contribute to their realisation, either by humanitarian protection or peace.

Finally, rights can also act as standards. As they are listed in human rights law and specified much further in IHL, refugee law and specific humanitarian technical standards, human rights and their related duties provide objective criteria against which to judge human behaviour in the heat of passion and prejudice or in the coldness of neglect so common in war. The lists and laws of human rights can act as a restraint to the violent and a spur to the negligent. People, politicians, fighters and humanitarians can check the rightness of their actions against the rights and rules of international law. Rights and laws that flow from them can operate as standards of practice against which all involved can be called to account now and retrospectively.

#### *Disadvantages of a Philosophy of Rights*

There are perhaps six main risks in using a rights-based approach to people's protection in war. While these risks are serious in practice, there may also be ways to mitigate or even overcome them.

First, by explicitly aligning humanitarianism in war with a philosophy of rights, there is a real risk of imbuing it with an unhelpful utopianism. Norman Geras has observed how easy it is for theorists to espouse new political theories which may have no practical effect on the ground whatsoever:

Theories of rights and justice which do not seriously measure themselves against the realities of violation – violation of the norms about which they theorise, violation of the lives of human beings – and do not seriously measure themselves against the factors conducive to such violation, might be reckoned by this failure to be lacking in an important way.<sup>39</sup>

For an explicit philosophy of rights to be a real improvement in practice on humanitarian philanthropy, it must be able to leave the paper on which it is written and show itself to work on the ground by protecting people better. It must be possible to prove that it is an approach which positively re-politicises a contract around humanitarian duties in armed conflict and has a good effect in the face of extreme violations. In short, rights-talk is not enough. It is easy to write political philosophy for a place that does not exist (utopia) rather than for one that does, like eastern Democratic Republic of Congo. So what can be done to curb the utopian tendency of rights? The answer must lie with the greater use of IHL – the laws of war in which rights lists are transformed into specific political, military and humanitarian duties. The duties set out in IHL must be widely known and widely argued for in the political space in and around every armed conflict.

Second, human rights as currently formulated are highly contested between different cultures and their polities – both theoretically in their very idea and also in the cultural detail of their specific articles.<sup>40</sup> Human rights are viewed as moral, political and cultural imperialism by some and as subversive by others. This tension is bound to continue. The particular expression of a human right will always be historically contingent and disputed. By adopting an explicit philosophy of human rights, humanitarianism will enter the arena of this contest. For a profession so currently dependent on physical access and cooperation with so many diverse regimes, this will be very problematic on occasions. But to pretend that access is not already problematic for humanitarianism without rights-talk would be disingenuous. Once again, the best means of maintaining a humanitarianism of rights when those rights are contested is by emphasising the duties of IHL over human rights law in armed conflict.

Third, as Jeremy Swift has pointed out, the proliferation and subsequent devaluation of human rights may also be a problem for rights-based humanitarianism and development.<sup>41</sup> A sort of Parkinson's Law tends to function around rights which means that rights lists multiply apparently *ad infinitum* and *ad absurdum* in the view of many of their critics. The fact that the general proliferation of rights may affect the value and currency of particular rights is a real problem for aligning the protection of civilians in war with human rights discourse. But again, IHL comes to the rescue by ensuring that rights in war and genocide remain universally acknowledged and specific in their attribution of duty and redress.

Fourth, another risk involved in developing a rights-based approach to humanitarian protection is the legalism associated with human rights

and IHL. Although expressions of moral and political value, human rights are expressed as law and so written in legal jargon. This has two main problems: deterrent and scepticism. Like all professions, the legal profession across all cultures has invested a great deal in maintaining a significant element of mystique and unintelligibility around the law. This means that people are usually put off from practising it themselves and decide either to do nothing about their predicament or resort to paying a lawyer. The mystique and complexity of the law gives rise in many cultures to what might be called 'jurisphobia'. People are afraid of the law and think it too complicated or expensive to pursue. And they are often right. Equally, a widespread scepticism about the power and efficacy of laws (especially international laws) affects many societies, especially those most in need of protection from those laws. In many societies enduring violent conflict and poverty, the law has a reputation for looking good on paper but not in practice. This innate scepticism also prevents people from viewing rights and their legal expression as a source of hope.

If rights-based humanitarianism is going to take root beyond humanitarian agencies and form a wider people's movement for rights in war, then the dry and complex laws which currently enfold these rights must be brought down from the mountain and given to people to make sense of for themselves. The human rights lawyer, Helena Kennedy, has described human rights as the 'ground where we can bring the law back to the common conversation of humankind'.<sup>42</sup> In many places where war and rights are the burning issue, this hope is still very far from the truth. Although ICRC's important global survey<sup>43</sup> showed that the great majority of people cherished the basic values of restraint in war enshrined in IHL, not many villages threatened by war around the world are humming with a conversation about the laws that seek to protect their rights. This common conversation must be had and humanitarians must help to enable it. Chidi Odinkalu has criticised the human rights movement for failing to share a common conversation around human rights in Africa, becoming instead an elite and 'select professional cadre' with its own specialised language and certificates.<sup>44</sup> Humanitarianism's adoption of rights-talk and IHL must avoid this pitfall by taking the Geneva Conventions to the people that need them most.

Fifth, the legal texts in which human rights are presented do not easily catch the moral imagination. The philosophy of human rights is possibly one of the first of the great human ideologies which has no great narrative running through its holy texts. It has no over-arching story that means it can be told to every child sitting on the knee of a parent or grandparent. How does one begin to talk of human rights and their

protection in war without a narrative comparable to the Exodus, the life of the Prophet Mohammed or Marx's great narrative of history? This too is a problem in the communication of a philosophy of rights. The text of human rights seldom grips the heart or quickens the mind. But even though there is no great single narrative, there are lots of smaller stories of people who have stood up for their rights and the rights of others. More of these stories are being lived and told every day locally, nationally and internationally. Humanitarians need to know these stories so that they can tell them. But they also need to be a part of the making of such stories.

Finally, the wise caution of liberal philosophy should make humanitarians wary of advocating that there is only one way in which to talk about goodness in war. European history in the last century shows all too clearly that ideological monism can too easily tend to exclusion and extremism. Like everything that is taken up into the hearts and minds of human beings, an ideology of rights could become a blessing or a curse. It depends on who is controlling it and to what ends. In proposing a move to more explicit rights-talk, this article would never want to preclude other simpler moral talk of love, solidarity and compassion from humanitarian philosophy.

## CONCLUSION

The Anglican cleric, Dean Inge, once said that 'the man who marries the spirit of the age will soon find himself a widower'.<sup>45</sup> Human rights is undoubtedly one of the moving spirits of our age and so it may well be profoundly unwise to join it to so important a matter as the protection of civilians in war. This article has sought to argue that the risk is worth taking. This is because a rights philosophy connects the humanitarian ethic with a properly political framework of rights, duties and laws. In doing so, it encourages the development of humane and just political contract between people and power about the legitimate role and nature of organised violence. The article has sought to show how a theory of rights can free humanitarianism from a potentially colonial philanthropic mindset. Above all, it has recognised rights as already integral to humanitarianism's greatest political asset – international humanitarian law. This body of law is not just rights-based but goes further and works out what those rights look like in war by identifying specific duties too. This allows humanitarian philosophy to move beyond a 'manifesto' approach to rights and to engage individuals, states and non-state actors on particular questions of their duties in war.

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## NOTES

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3. K. Marx and F. Engels (1848), *The Communist Manifesto*, McLellan (ed.), (Oxford: Oxford University Press, 1998), p.33.
4. Alex de Waal, *Famine Crimes: Politics and the Disaster Relief Industry in Africa* (Oxford: James Curry, 1997).
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  26. UN Secretary General's Report to the Security Council on the Protection of Civilians in War (New York: United Nations, 1999), para. 30.
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45. I am grateful to David Turton for providing me with this quotation and in so doing serving me with an important warning that I probably should have heeded.