

Cuadernos Deusto de Derechos Humanos

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766
DOI (colección): <https://doi.org/10.18543/LFGQ4860>

Núm. 100

ISBN (número): 978-84-1325-270-4
DOI (número): <https://doi.org/10.18543/YJCB6566>

Derechos humanos: Logros y Desafíos

Giza Eskubideak:
Lorpenak eta Erronkak

*Human Rights:
Achievements and Challenges*

Felipe Gómez Isa (Coord.)



Deusto

Instituto de Derechos Humanos
Pedro Arrupe
Giza Eskubideen Institutua

Cuadernos Deusto de Derechos Humanos

DOI (colección): <https://doi.org/10.18543/LFGQ4860>

Cuadernos Deusto de Derechos Humanos

Núm. 100

DOI (número): <https://doi.org/10.18543/YJCB6566>

Derechos humanos: Logros y Desafíos

Giza Eskubideak: Lorpenak eta Erronkak

Human Rights: Achievements and Challenges

Felipe Gómez Isa (Coord.)

Bilbao
Universidad de Deusto
2025

CONSEJO DE REDACCIÓN

Encarnación La Spina, Instituto de Derechos Humanos Pedro Arrupe, Universidad de Deusto.

Cristina de la Cruz, Instituto de Derechos Humanos Pedro Arrupe, Universidad de Deusto.

Trinidad L. Vicente, Instituto de Derechos Humanos Pedro Arrupe, Universidad de Deusto.

Felipe Gómez Isa, Instituto de Derechos Humanos Pedro Arrupe, Universidad de Deusto.

CONSEJO EDITORIAL

Anja Mihr, Investigadora del Human Rights Center de la Universidad de Utrecht, Holanda.

Antoni Blanc Altemir, Catedrático de Derecho Internacional Público de la Universidad de Lleida.

Carlos Villán Durán, Presidente de la Asociación Española para la Promoción del Derecho Internacional de los Derechos Humanos.

Carmen Márquez, Catedrática de Derecho Internacional Público, Universidad de Sevilla.

Cristina Churrua, Instituto de Derechos Humanos Pedro Arrupe, Universidad de Deusto.

Eduardo J. Ruiz Vieytez, Instituto de Derechos Humanos Pedro Arrupe, Universidad de Deusto.

Fernando Fantova, consultor en temas relacionados con los servicios sociales, Bilbao.

Francisco López Bárcenas, Academia Mexicana de Derechos Humanos, México.

Gaby Oré Aguilar, consultora internacional en el campo de los derechos humanos y el género y miembro de Human Rights Ahead, Madrid.

Gloria Ramírez, Catedrática de Ciencia Política de la Universidad Nacional Autónoma de México, UNAM, México.

Gorka Urrutia, Instituto de Derechos Humanos Pedro Arrupe, Universidad de Deusto.

Jaume Saura, Presidente del Institut de Drets Humans de Catalunya, Barcelona.

Joana Abrisketa, Instituto de Derechos Humanos Pedro Arrupe, Universidad de Deusto.

Jordi Bonet, Catedrático de Derecho Internacional Público de la Universidad de Barcelona.

José Aylwin, Director del Observatorio de Derechos Ciudadanos, Temuco, Chile.

José Luis Gómez del Prado, miembro del Grupo de Trabajo de las Naciones Unidas sobre la utilización de Mercenarios, Ginebra, Suiza.

José Manuel Pureza, Centro de Estudios Sociales, Universidad de Coimbra, Portugal.

Judith Salgado, Programa Andino de Derechos Humanos, Universidad Andina Simón Bolívar, Quito, Ecuador.

Koen de Feyter, Catedrático de Derecho Internacional Público de la Universidad de Amberes, Bélgica.

Manuela Mesa, Directora del Centro de Educación e Investigación para la Paz, CEIPAZ, Madrid.

Noé Cornago, Profesor Titular de Relaciones Internacionales de la Universidad del País Vasco/Euskal Herriko Unibertsitatea, Leioa.

Pablo de Greiff, International Center on Transnational Justice, New York.

Víctor Toledo Llancaqueo, Centro de Políticas Públicas, Universidad ARCIS, Santiago, Chile.

Vidal Martín, investigador de la Fundación para las Relaciones Internacionales y el Diálogo Exterior, FRIDE, Madrid.

Cualquier forma de reproducción, distribución, comunicación pública o transformación de esta obra sólo puede ser realizada con la autorización de sus titulares, salvo excepción prevista por la ley. Dirijase a CEDRO (Centro Español de Derechos Reprográficos, www.cedro.org <<http://www.cedro.org>>) si necesita fotocopiar o escanear algún fragmento de esta obra.

© Publicaciones de la Universidad de Deusto

Apartado 1 — 48080 Bilbao

e-mail: publicaciones@deusto.es

ISSN (versión impresa): 2603-5766 • ISSN-L (de enlace): 2603-5766

ISBN (número): 978-84-1325-270-4

DOI (colección): <https://doi.org/10.18543/LFGQ4860>

DOI (número): <https://doi.org/10.18543/YJC86566>

Depósito legal: LG BI 00489-2025

Critical Human Rights. Righting Wrongs for a Sentient Era

*Davinia Gómez Sánchez**

«Remember to imagine and craft the worlds you cannot live without, just as you dismantle the ones you cannot live within»

Ruha Benjamin

As a first uncomplicated approach to human rights, they could be defined as rights that we have by the mere fact of existing as human beings. Furthermore, human rights are inalienable (cannot be taken away), indivisible, inherent (regardless of our status), interdependent, interrelated and universal, every human being is born with them. Consequently, certain beings and entities such as particular groups, non-humans, animals, nature, states, corporations, to name a few, are excluded as holders of human rights.

Adding complexity to that initial definition, human rights could be thought of in different ways; as a practical project as well as a theoretical discourse; as a social, political and intellectual movement alongside its theoretical foundations. Also, as a historical phenomenon (with respect to its origin), insofar as it presupposes a type of relations that occur in modern capitalist societies and in relation to the structure that makes them possible, the modern rule of law.

* Lecturer of Philosophy of Law at Deusto Law School and researcher at the Pedro Arrupe Institute of Human Rights.

Notwithstanding the meaning, the human rights enshrined in the international human rights law corpus has become the dominant language for referring and formulating the set of universal common standards every human being should enjoy for attaining a dignified life, necessary to achieve social transformation. It has become a central and widely recognized frame of reference despite it faces several impediments and objections that affect their conceptual validity and practical application. These challenges have to do with their conceptual underpinnings, ideological resistance, shortcomings related to its legal framing, conceptualization and implementation mechanisms, limited political commitment, narrow focus and real effectiveness. On this basis, and despite the predominance of this human rights discourse and legal corpus as a global moral framework and universal ethics, many authors have addressed the topic of human rights from a critical perspective, arguing that these constraints can only be solved by acknowledging the fact that a shared future for all demands inclusive contributions beyond the usual hegemonic sites of action and decision.

Among these critical streams are anticolonial theories that explore the relationship between colonialism, coloniality, knowledge production and power structures. They critic the insularity of historic narratives and the focus on Eurocentric ones in the creation of human rights. Accordingly, they challenge the Western epistemic canon by addressing different aspects that brought about the emergence of international law as well as human rights' constitutive elements. They have argued against human rights' acclaimed universalism and focused on their limitations, highlighting the particular epistemic location of its foundations. Aimed at retrieving alternatives to Western views, the above-mentioned difficulties have been tackled from different angles by Postcolonial scholars, decolonial thinkers and activists, Third World Approaches to International Law (TWAIL) and the Epistemologies of the South. These theories and approaches can assist in transforming the human rights conceptualization and framework by getting rid of the colonial features that continue shaping relations, social imaginaries as well as the international law framework that legitimized the idea of human rights in the legal domain.

The contemporary requirement for a critical approach to human rights is further justified by several factors. Firstly, the global situation of exclusion, inequality and poverty, reveals the divide between theory and practice; between the normative referential discourse (and values) and the effective enjoyment of human rights. This gap is illustrated by the 1.1 billion people living in acute multidimensional poverty (over half

of them children),¹ the (selective) outrage of ongoing hostilities, killings and wars (in Gaza, Myanmar, Sudan, Ukraine and too many others), the devastating effects of the climate crisis, the rooted racial and gender discrimination and based violence, the increasing vulnerability of already vulnerable groups, the widespread escalating intolerance, the inability of the international system to take effective action to halt conflicts and prevent and regulate threats (including the ones posed by new technologies), and so forth.

Secondly, the human rights framework and discourse is often subject to strategic and political instrumentalizations, at times it is also the object of a banal abuse and colloquial misuse, resulting in the multiplication and inflation of the discourse/s, as well as prompting a proliferation of rights, which sometimes leads to the distortion of their value and meaning and to the misappropriation of human rights as a tool of emancipation. This aspect is connected to the question of human rights as a language of legality, a supposedly neutral, non-ideological, and apolitical frame. The general and abstract character of human rights makes them less comprehensible and is linked to the frailty of their philosophical foundations. On the one hand, the subject of human rights is an abstract individual one, emptied of its concrete identity, particular contextual and historical conditionings. Its determining factors, namely gender, ethnic characteristics, class, origin, as well as its collective dimension and structural conditionings are omitted. In addition, this abstraction becomes further evident in light of the dichotomy between cultural diversity and the proclaimed universality. Such universality arises from certain ethnocentric premises that uphold it by ignoring the locus of the enunciation. This means that the geopolitical and bodily location of the subject who speaks and defines human rights is erased, privileging what decolonial theories refer to as the non-situated, disconnected ego, which produces an appearance of neutrality, objectivity and universal validity with regard to the knowledge produced. It further results in a radical division and hierarchization of reality, a dualism within knowledge that separates between true knowledge (science) and irrational invalid ones. When it comes to law, the distinction translates into the duality legal and illegal (legal monism and pluralism), further reaching other dimensions: cultural (with classifications such as civilized and barbarian), economic (developed, non-de-

¹ According to the 2024 Global Multidimensional Poverty Index MPI. MPI is a measurement that reflects overlapping deprivation in basic needs and which differs from the «extreme» poverty indicator (income poverty) that accounts for those living on less than \$2.15 a day, almost 700 million people in 2024 according to the World Bank.

veloped or underdeveloped), and ontological (being and non-being; the other). These ramifications compel us to question the imaginary that gave rise to this dominant understanding of human rights that privileges certain interests, principles, values and priorities, in the name of an ideal universality.

Continuing with this critical examination of human rights, under international human rights law states bear the responsibility for their violations, having the obligation to respect, protect and fulfill human rights by creating the conditions required to ensure them. However, this traditional understanding of responsibility for upholding human rights that encompasses responsibility, answerability, and enforceability has been extended to individuals, groups, institutions and non-governmental organizations in the promotion and protection of universally recognized human rights and freedoms.² Besides this primary onus vested on states, the protection system also prioritizes judicialization, without giving sufficient consideration to the asymmetries that sustain both the human rights narratives, institutions and system. Thereby neglecting the root causes of structural violence and structures of domination such as growth and development paradigms, geopolitical environment, economic production schemes, prevailing models of land ownership and property, different considerations on what a good life is, of well-being and so forth.

These shortcomings justify the urgency for a re-legitimation argument aimed at reinforcing human rights' credibility in the specific context of today. A context that is characterized by the paradox of globalization, a process that brings together a growing homogenization while strengthening cultural heterogeneity, a diversity that stems from assertions of ethnic identities, religious and cultural differences and plural ways of life and values. This realization demands a multicultural imperative, based on pluralism in opposition to homogeneity.

Against that background, a global normative agreement is required for human rights to regain legitimacy on the basis of cognitive justice, acknowledging epistemic plurality and the understanding that there is no single way of producing knowledge, recognizing that despite the law aspires to be one, the world is not. This endeavor entails claiming alterity to achieve emancipation and the advancement of struggles for freedom and dignity. Therefore, the above-mentioned critiques demand transformations that include embracing different imaginaries and

² General Assembly resolution 53/144. Declaration on the Right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms, adopted in December 1998.

worldviews, to take into account elements from alternative worldviews as well as non-dominant voices. They call for shifting the focus from the individual person to the community (and people/s), to highlight duties and commitment together with rights, to put the emphasis on the idea of membership (of the human family) in unity with nature and its natural boundaries (our only ecosystem for survival) against citizenship as an exclusionary category and nature as an exploitable resource. They further underline the need for a non-state centric logic that goes beyond legalism, juridification, formalism, institutionalization and a post-violation approach, as well as a more encompassing concept of justice.³

This shift further demands multidisciplinary to undertake the analysis, the re-conceptualization and framing of human rights, a more intense interrelation and dialogue between different disciplines; an intensified role of social sciences and philosophy to address conceptual problems and methodological challenges in relation to human rights besides legality and law as the dominant science in the field. It is also crucial to find meaning to the human suffering which is socially generated, to deconstruct the notion of human dignity, a value that is discernible specially through negative means; through its denial and absence. Finally, it is important to consider power, the abuse of power as well as the resistance to it, to vindicate its recognition in order not to hide injustice and domination.

The challenges human rights face demand transforming their conceptualization as well as, by extension, expanding their praxis and incorporating counterhegemonic elements informed by peripheral knowledge(s), subaltern legalities, alternative narratives and marginalized epistemologies. An unfinished task that reminds us of the following Ewe proverb: «wisdom is like a baobab tree, no one individual can embrace it alone.»

³ A broader accountability that includes legal as well as non-judicial processes, with consequences also for non-state actors.