

## SYMPOSIUM ON THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT SEVENTY

### HUMAN RIGHTS AND THE FUTURE OF BEING HUMAN

*Alexandra Huneus\**

The seventieth anniversary of the Universal Declaration of Human Rights (UDHR) comes at a time of more contestation than usual over the future of human rights. A sense of urgency animates debates over whether the institutions and ideas of human rights can, or should, survive current geopolitical changes. This symposium, by contrast, shifts the lens to a more slow-moving but equally profound challenge to human rights law: how technology and its impacts on our social and physical environments are reshaping the debate on what it means to be human. Can the UDHR be recast for a time in which new technologies are continually altering how humans interact, and the legal status of robots, rivers, and apes alike are at times argued in the language of rights?

Esoteric as this may sound, it is a question provoking real-life legal activity, with implications for international law. In January, the EU Parliament asked the EU Commission to consider “creating a specific legal status for robots ... so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons.”<sup>1</sup> A recent *AJIL Unbound* symposium on global animal law noted a trend towards de-reification of animals, and, in some jurisdictions, the “cautious acknowledgments ... of a ‘nonhuman’ or ‘human-like’ right of several animals” to physical liberty.<sup>2</sup> National courts or constitutions in New Zealand, India, Ecuador, and Colombia have extended the concept of a rights-bearing person to encompass geological features and ecosystems, such as rivers, forests, and mountains, and to nature itself, a trend approvingly noted by the Inter-American Court of Human Rights in a recent judgment.<sup>3</sup> Several legal instruments and judgments speak of duties to future generations, and some cast humans that do not yet exist as rights-bearing persons with claims against humans that do exist.<sup>4</sup>

Individually, these developments do not seek to upend the current human rights regimes so much as to include a broader set of behaviors under their umbrella. Some of this is tactical. Casting a claim in the language of rights allows access to a broad array of established domestic, regional, and international legal institutions, including courts, commissions, councils, committees, rapporteurs and ombudspersons, and a transnational *corpus juris*.

\* *Professor of Law, University of Wisconsin.*

<sup>1</sup> European Parliament Committee on Legal Affairs, [Report with Recommendations to the Commission on Civil Law Rules on Robotics](#), A8-0005/2017 (Jan. 27, 2018).

<sup>2</sup> Anne Peters, [Introduction to Symposium on Global Animal Law \(Part I\): Animals Matter in International Law and International Law Matters for Animals](#), 111 *AJIL UNBOUND* 252, 253 (2017).

<sup>3</sup> [The Environment and Human Rights \(State obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4\(1\) and 5\(1\) of the American Convention on Human Rights\)](#), Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, para. 62 (Nov. 15, 2017).

<sup>4</sup> See, e.g., Corte Constitucional [C.C.] [Constitutional Court], abril 5, 2018, [Sentencia T-622/16](#), Gaceta de la Corte Constitucional [G.C.C.] (Colom.).

Taken together, however, these various strands of legal argument raise the possibility that we are not just strategically tinkering with existing rights regimes, but pushing them towards a new paradigm. It is this possibility that our symposium commemorating the seventieth anniversary of the UDHR explores.

### *The “Human Family” and Beyond*

The UDHR itself does not directly define “human,” nor does it explain why membership in “the human family” grounds the rights and freedoms it announces.<sup>5</sup> Rather, it punts on these questions by relying implicitly on shared intuitions from which we can build a “common understanding.”<sup>6</sup> But of course the UDHR’s contentious history, and the struggles over how to write it into treaty law, makes clear that our intuitions were never shared.<sup>7</sup> Often, the universal and regional human rights systems have but provided a stage for “the exciting drama of man seeking to grasp himself,” as Charles Malik, the Lebanese philosopher, diplomat, and UDHR coauthor, observed.<sup>8</sup>

In these struggles over the meaning of the UDHR, two lines of contestation have been particularly prominent. The first is relativism/universalism, and the question of whether membership in a human family, as opposed to a particular culture or people, can tell us anything about our moral commitments, or, conversely, whether the idea of rights by virtue of our humanity is itself but a Western cultural construct. A second fundamental, and related, cleavage is that of liberty/equality, and whether we are first self-realizing individuals whose natural liberty must be protected, or whether we are, rather, deeply shaped and constrained by duties to each other. Both lines of contestation undergird today’s debates about human rights and nationalism, populism, and rising inequality, just as they animated Cold War era debates about the relative importance of economic and social rights, and post-Cold War debates about cultural rights.

The essays in this symposium show that these abiding debates are taking on new shapes. The development of technologies that give us ever greater power over the natural and human worlds prods us to reconsider our moral duties to each other. They push us to “grasp” ourselves anew. The essays also suggest, however, that in the early twenty-first century a new line of contestation is becoming prominent. It queries not the relations of those within the UDHR’s human family to each other and to the state, but rather our relations with other entities—natural, man-made, and hybrid. At its most radical, it questions whether the human/non-human boundary still has the meaning with which human rights law has always imbued it.

Each essay in the symposium grapples with whether the UDHR and its progeny of international and regional instruments can guide us through these new challenges. Three of the essays examine how the advent of social media and algorithmic decision-making forces us to reconsider our moral relations to one another. Molly Land of the University of Connecticut Law School argues that online social media platforms magnify the impact of ordinary individuals’ speech, and should cause us to strike a new balance between rights and duties.<sup>9</sup> Although the promise of the Internet was in part to provide access to broader and different sets of communities, it is a lack of sense of community that characterizes online speech, silencing women, marginalized communities, and other bullied speakers. Drawing on the UDHR’s Article 29 and new insights from cognitive psychology, Land shows how states could promote online community structures that foster a sense of responsibility to others.

<sup>5</sup> [Universal Declaration of Human Rights](#) pmb., G.A. Res. 217 (III) A (Dec. 10, 1948).

<sup>6</sup> *Id.*

<sup>7</sup> CHRISTOPHER N.J. ROBERTS, [THE CONTENTIOUS HISTORY OF THE INTERNATIONAL BILL OF HUMAN RIGHTS](#) (2014).

<sup>8</sup> Charles Malik, [Speech on Human Rights](#), delivered to United States Chamber of Commerce in New York (Nov. 4, 1949).

<sup>9</sup> Molly K. Land, [Speech Duties](#), 112 *AJIL UNBOUND* 329 (2018).

Turning to the use of algorithms, the Free University of Berlin's Helmut Aust argues that governance by non-human decision-making disrupts the logic of human rights law, which is grounded on the rights and duties among human beings.<sup>10</sup> What happens, then, if the decision behind an act of governance is made not by a human, and cannot be justified by reasons, but is simply the product of an unfolding algorithm? Not only does this create a rupture in the relation between humans that grounds the UDHR, it also makes it more difficult to fashion a remedy. Aust also examines how these nonhuman decision-makers are undermining public discourse, and therefore democracy, by isolating us in our specially-tailored information bubbles.

While the first two essays focus on how technologies reshape our interactions, Catherine Powell of Fordham Law School points us to the irony that certain aspects of our interactions remain intact: even as our exchanges are increasingly disembodied, they are persistently racialized.<sup>11</sup> Drawing on Osagie Obasogie's study of how race is perceived by the blind, she shows how the use of algorithms reproduces structural differences, including race-based inequality, even absent visual cues. Future posthuman or transhuman societies, it seems, will continue to be racialized, just as human-like robots are raced and gendered.

The three remaining essays query our relationships with others: humans and genetically engineered humans, humans and the planet, and humans and animals. Reflecting on the fast-moving advances in gene-editing technologies, University of Wisconsin bioethicist Alta Charo challenges the existing human rights law approach.<sup>12</sup> The Oviedo Convention on Human Rights and Biomedicine views the human being "both as an individual and as a member of the human species," and seeks to protect the species by banning heritable man-made changes to the genome. But this conception, Charo argues, misunderstands both the mechanisms of genetic mutation and recombination, and the moral basis for human rights. International law should not prescribe a ban on germline editing, but instead should take a more reasoned approach that weighs societal and health benefits against a scientifically sound calculation of the risks. This is a change consonant with the UDHR's right to share in scientific advancement and its benefits, as well as the right in Article 27 to the protection of interests resulting from scientific production.

It is not only new technology that is reshaping our moral relations; it is also a growing understanding of technology's long-term impact. The concept of the Anthropocene conveys the idea that human activities are perturbing the planet's main systems, such as climate and geology. Ellen Hey of Erasmus University Rotterdam argues that this new knowledge demands that we rethink our duties to each other and to the natural world.<sup>13</sup> The UDHR, perhaps more so than its treaty progeny, is capacious enough to encompass such Anthropocene thinking if reconstrued to emphasize community (Article 29), economic and social rights (Articles 22–26), a right to an international order (Article 28), the duties of actors other than states (preamble), and the duty of states to uphold a context in which human rights can be fulfilled (Article 30). It is not enough, however, to stay within the UDHR: human rights law must be understood to interact with other treaty regimes, and in particular that of international economic law (trade, investment, and finance).

Anne Peters, the Director at the Max Planck Institute for Comparative Public Law and International Law Heidelberg, turns our focus to those outside the human family with whom we have the closest relation.<sup>14</sup> We have always viewed animals as more like us than any other creature; we have always believed we have duties toward

<sup>10</sup> Helmut Philipp Aust, *Undermining Human Agency and Democratic Infrastructures? The Algorithmic Challenge to the Universal Declaration of Human Rights*, 112 AJIL UNBOUND 334 (2018).

<sup>11</sup> Catherine Powell, *Race and Rights in the Digital Age*, 112 AJIL UNBOUND 339 (2018).

<sup>12</sup> R. Alta Charo, *Germline Engineering and Human Rights*, 112 AJIL UNBOUND 344 (2018).

<sup>13</sup> Ellen Hey, *The Universal Declaration of Human Rights in "The Anthropocene"*, 112 AJIL UNBOUND 350 (2018).

<sup>14</sup> Anne Peters, *Rights of Human and Nonhuman Animals: Complementing the Universal Declaration of Human Rights*, 112 AJIL UNBOUND 355 (2018).

them; and they have always been a foil against which we understand ourselves. The precise question of their legal status, however, has varied by place and time. To mark the seventieth anniversary of the UDHR, Anne Peters rereads human rights law to argue that a next step in its evolution should be the creation of a legal instrument for the protection of animals that sits at the international rather than the national level, that is created by states as a formal treaty, and, most radically, that is articulated in the language of rights rather than welfare—thus granting animals a legal personhood akin to ours.

Does the UDHR, then, still matter, or do human rights law and institutions hamper our ability to respond to the changes wrought by new technologies? Will these advances introduce debates that sustain creative work in human rights, or will they rip open the rights conceit? Taken together, the essays suggest that the UDHR is capacious enough to provide moral guidance in our times, but only if reread with greater emphasis on its later and relatively less developed articles. These are the articles that emphasize innovation and right to science and culture (Article 27), participation and community (Article 28), and individual duties (Article 29). Interestingly, the essays lay special emphasis on the final articles of the UDHR, which speak to community, duties, and limitation. The final provisions (Articles 28–30) belong to what René Cassin called the “pediment” in his visualization of the UDHR as the façade of a temple leading to a better world. For him, the last three articles thus sit atop the others, binding together the rights below.<sup>15</sup> Perhaps the future of human rights law lies in developing the less explored pediment, and the way in which it infuses the articles that precede it.

### *Law and the Long Now*

When the EU Parliament recommended that robots be granted legal personhood, a group of scientists, ethicists, and business leaders countered that to do so was itself an affront to human rights. They also suggested the parliamentarians’ thinking had been “distorted by Science-Fiction.”<sup>16</sup> The same critique might be made of this symposium. By chiming in about the long-term future of being human, one might argue, it sidelines the urgent and fast-moving issues of inequality, populism, nationalism, and migration that are facing the human rights movement and challenging its institutions. Perhaps it is a luxury, or a type of escapism from our pressing sense of crisis.

But there are reasons why these questions also matter here and now. First, as noted above, lawyers are raising these arguments in courts and other legal venues, with implications for human rights law. Further, there is a blossoming field of posthumanism in the humanities in dialogue with the social sciences and even natural sciences, and an important national security law debate on autonomous weapons (or killer robots) and humanitarian law. Yet these themes are still treated as somewhat peripheral within human rights academic debates. Since 2017, for example, five books have been published that take stock of human rights today and ask after their future, each written or edited by highly regarded human rights scholars. Not one of these general studies thematizes how technology and its impacts will test human rights law.<sup>17</sup> Similarly, the major human rights journals have focused on these questions only sparingly.<sup>18</sup> There are of course, excellent scholars now writing on technology and human

<sup>15</sup> AGI MARC, RENÉ CASSIN: *FANTASSIN DES FROITS DE L’HOMME* (1979); MARY ANN GLENDON, [A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS](#) ch. 11(2001).

<sup>16</sup> [Open Letter to the European Commission Robotics and Artificial Intelligence](#).

<sup>17</sup> ALISON BRYSK, *THE FUTURE OF HUMAN RIGHTS* (2018); *HUMAN RIGHTS FUTURES* (Stephen Hopgood et al. eds., 2017); MICHAEL IGNATIEFF, *THE ORDINARY VIRTUES* (2017); SAMUEL MOYN, *NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD* (2018); KATHRYN SIKKINK, *EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY* (2017). *But see* UPRENDIA BAXI, *HUMAN RIGHTS IN A POST HUMAN WORLD* (2007).

<sup>18</sup> *But see* 9 [LAW & ETHICS HUM. RTS.](#) (2015).

rights law,<sup>19</sup> and this symposium builds on their work. But rather than asking only how technology can be a threat to human rights, or a tool for their realization, it is a gesture towards creating deeper dialogue between human rights law and our changing self-understanding in light of scientific knowledge and evolving morality.

Second, human rights law and discourse provides a legal framework for vastly different conversations to converge. The issues areas covered by this symposium, and other emerging issues that similarly challenge us to reconsider what it means to be human, are dispersed across different areas of law and politics, and across geographic regions. Yet those pushing for animal rights, for example, can fruitfully draw insights from those in the Global South debating the rights of mother earth, and from bioethicists trying to think through the rights of the unborn to a particular genetic structure. In this way, human rights scholarship, law, and institutions could provide a site for cross-fertilization. It is a site that also puts these issue areas in conversation with the human rights debates that have preceded them, including transversal issues such as discrimination, poverty, and other forms of inequality, even as it provides a set of institutions that can help articulate new norms.

Finally, the objection leveled against the EU parliamentarians that it is too soon does not stick in the realm of scholarship, where not all thinking must be immediately tied to a case in controversy. On the occasion of the UDHR's seventieth anniversary, it seems fitting to understand being human as a long-term project, with an eye to fostering human rights law scholarship for the long now.<sup>20</sup>

<sup>19</sup> See, e.g., [NEW TECHNOLOGIES FOR HUMAN RIGHTS LAW AND PRACTICE](#) (Molly Land & Jay D. Aronson eds., 2018); [NEW TECHNOLOGIES AND HUMAN RIGHTS](#) (Therese Murphy ed., 2009).

<sup>20</sup> See [THE LONG NOW FOUNDATION](#).