

Communicative Activism and Human Rights

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Abstract

Presented here is a theoretical, historical and analytical position that re-examines human rights as discursively generated cultural products, introducing a conceptual tool, 'communicative activism', which can be usefully employed to analyse and interpret forms of human rights discourse employed by non-governmental organisations and others who seek to support and promote human rights standards and practices. Theoretically, this is grounded in Habermasian notions of communicative rationality and Foucauldian notions of critique that, although usually positioned as contradictory, are here presented as having an important commonality – an emphasis on inter-discursive modes of cultural knowledge production and legitimisation. Historically, human rights theory and philosophy is positioned in a post-ontological phase, emphasising therefore that human rights are less 'self-evident' or pre-existing and therefore able to be 'recognised' than they are discursive products in an ongoing historical process of re-articulation. Analytically, the concept of 'communicative activism' is provided with a suggested methodological framework and employed to critically engage with some aspects of contemporary human rights discourse through a case study of Amnesty International.

Introduction

From the end of the Second World War, notions of human rights have regained a prominence last seen in the western philosophical tradition in the context of the democratic revolutions of the late eighteenth century. Moreover, human rights discourse has become a part of the language of political reform and of international relations to a greater extent than it had ever enjoyed historically. During the same period the apparent achievements in development of international law and norms have been challenged by repeated failures to prevent either large-scale human rights atrocities or ongoing and persistent forms of violence enacted within the frameworks of national sovereignty, cultural integrity, and globalised market forces.

In this paper a view of human rights as culturally constructed products is presented and explored. This view considers the formation of human rights as a *communicative process*, and one in which includes *active interlocutors*, especially those that are active in the public political process. Therefore, this process is referred to as 'communicative activism'. Some discussion of the terms communicative and activism here precedes an outline of the structure of this thesis.

Scope and Focus

Communicative activism situates the processes of social change in sites of cultural production where inter-discursive tensions generate, but also resist, the formation of truths and bodies of knowledge. As will be discussed, in these processes of communicative activism, alternate forms of knowledge may find expression through the interplay of

epistemologies – of histories, truths, values and other cultural discursive regimes. This can take various communicative types: conflict, collaboration, contestation, co-option, engagement, strident demand and even (wilful or otherwise) silence. These may be critiqued, in Habermasian terms, as strategic or instrumental, employing modes of communication and associated tactics as a means to achieve a desired outcome. And they may be discussed within the framework of a Foucauldian analysis that expresses them as discursive encounters between epistemologies of legitimacy, order, surveillance and discipline that re-shape and re-constitute a Weberian 'iron cage' of rationalised modernity.

In either case, communicative aspects of social change, including the development of human rights standards and practice, are highlighted. 'Communicative', in this sense, has a number of key characteristics, beyond the emphasis on Habermasian and Foucauldian discursive structure and processes. It foregrounds these discursive relationships as the sites of production of cultural knowledge, destabilising and challenging these bodies of knowledge. This subsequently underscores the relevance of discursive practices and communicative strategies and tactics, and ethics, for individuals and groups in communicative activism. Lastly, this foreshadows discussion of research methodologies that open up explorations of forms of activism by considering them as forms of communication, such as linguistic and discourse analysis. Activism, it must be emphasised, is a contentious term, one that in contemporary political discourse sometimes drifts into a defined meaning or caricature. The term is used here far less prescriptively to denote activism as a site where, and process whereby, social change is attempted. Activism in this sense is related to the formal political public sphere but characterised by forms of political communication and organisation that go beyond it. As such, it resonates with concepts of civil society, particularly as the term

has been used in reference to the emergence of groups, organisation and movements (since World War Two and especially over the last 40 years) that seek to affect change in the political, economic, social and cultural realms of society, with particular reference in this paper to human rights activists.

The field of human rights is a particularly useful topic area for a discussion of communicative activism. For one, this is an area of study of particular significance for human rights activists – engaged as they are in challenging counter-discourses of nationalism, competing cultural traditions, strategic international relations and so on, and seeking as they are to promote, defend, legitimise, institutionalise and popularise the discourse of human rights. Not only does it open up new challenges and areas of productive work for these activists, it challenges them to look at human rights beyond the documented and enshrined instruments of international law to see human rights as an ongoing process of active engagement with those instruments and the institutions that support them, perhaps including themselves.

Furthermore, the disciplines of human rights theory and philosophy, of the genealogy of human rights, is a compelling area of study for further extrapolation of the notion of communicative activism – as are the human rights regime and networks of organisations and individuals that make up the human rights movement. This is because we can see in the genealogy of human rights a series of debates, concurrences and so on, through which human rights have been communicative constituted, noting moments of consensus, periods of contention, and other (to invoke Foucault) historical contingencies that engendered – or articulated – forms of human rights at given times in the world's various histories. We can also see, in the human rights (and 'anti-human rights') movement/s of the present, various expressions of human rights that

relate to, but are in tension with or even claim to be separate from, the institutionalised, official articulation of human rights in international human rights law.

The concept of communicative activism that is employed here to draw out these tensions is informed by a post-foundational and post-ontological, reading of human rights. This approach interrogates the proposed historical foundations of human rights, drawing out tensions within the discourse of human rights development and resituating the human rights of the present as a product of discursive contingency. This destabilises contemporary human rights discourses, refusing to allow the enshrined human rights regime an axiomatic privilege and, instead, interrogating the present dominant human rights paradigm.

This study has some clear limitations in terms of its scope. It is suggestive rather than conclusive, intended to open up some areas of inquiry for possible further exploration. The works cited and the examples used are indicative rather than exhaustive, particularly the discussion of contemporary human rights theory in Chapter Two and in the indicative case study section in Chapter Three. Lastly, the implications for human rights theorists and practitioners are considered only briefly, leaving open the potential for more directly applied studies into 'communicatively active' groups and individuals.

Although these conclusions are, therefore, necessarily circumspect, they are not without potential significance. Re-imagining human rights and human rights activism are as vitally important now as at any time in recent history, and idea of communicative activism may be a useful conceptual model through which human rights can be re-imagined and re-activated.

Structure

This thesis is divided into three sections, each with a different approach to exploration of the notion of communicative activism. In these three sections a triangulation of explanatory concepts are employed: theoretical, genealogical, and methodological.

Chapter One employs theoretical approaches, particularly the examinations of the nature of modern forms of political communication by Habermas, and Foucault's unmasking of the structures of discursive power/knowledge. These theorists, often considered in opposition to one another, are considered firstly as providing powerful critiques of modern political communication that run parallel to one another. In a functionalist sense, both Habermasian and Foucauldian approaches strengthen analyses of how systems of structures and agents in political communication function – or, as a Habermasian view might say, is *disfunctional*. Secondly, the forms of communicative practice proffered – overtly by Habermas; tacitly by Foucault – are placed in contrast with one another (particularly the notion of *Communicative Action* which Habermas discusses). The line between the two is considered as providing a creative tension in which forms of communicative action might be positioned.

In Chapter Two, the philosophical history of human rights is considered. Firstly, the ontological attempts to stabilise human rights discourse, and establish solid foundations for human rights practice are traced. Second, post-ontological views of human rights are employed to reinscribe human rights as cultural products, generated through forms of communicative activism. Habermasian and Foucauldian views of how human rights are re-constructed and re-presented are presented as summative exemplars

of how communicative activism might operate in these post-ontological contexts.

Chapter Three suggests a framework for a research methodology that might be usefully employed to examine further the concept of communicative activism by engaging with it in practice, and a brief indicative case study is used to suggest some of the possibilities of employing such a methodology. This is the third approach to communicative activism – one which suggests that it is an observable and describable process, and, one which, if analysed, may provide rich insight into (a) the characteristics of contemporary human rights and their production and (b) the activities of those actors involved in these forms of cultural production, including, and especially but not exclusively, non-governmental organisations.

Chapter One: Habermas and Foucault on public discourse and civil society

"*Communicative* action occurs whenever the actions of the agents involved are coordinated not through egocentric calculations of success but through acts of reaching understanding." (Habermas, 1984: 285)

"Knowledge is not made for understanding; it is made for cutting" (Foucault: 1977, 154)

1.1 Introduction

This investigation into communicative activism and human rights is grounded in a consideration of contributions to notions of communicative practice and discourse ethics, found in the apparently divergent, but potentially complementary work of Habermas and Foucault, especially in their examinations of the production of knowledge in the public political sphere, particularly in civil society.

Habermas, concerned with imagining and articulating the possibility of a higher quality of public discourse through which shared commitments to human rights standards may be legitimised and enshrined through democratic processes into law, proposes a discursive process referred to as communicative rationality. Such a process supports and emphasises forms of discourse that are reciprocal, rational, inclusive of difference and open to alternate discourses while aiming at consensus or at least agreements that are open-ended and permeable.

Foucault's contribution is less prescriptive, at least initially, and offers a perspective on discourse that is apparently contradictory to that of

Habermas. Foucauldian modes of discursive engagement are critical and confrontational, exposing forms and systems of power that reach into and affect societies and individuals. Two aspects of Foucault's work in particular appear relevant in their contrast with Habermas. Firstly, his rejection of the enlightenment tradition on the basis that liberal/rational paradigms have served to replace one form of coercion (monarchical authority based in divine right) with another (the forms of surveillance and control enshrined in modern institutions) leads Foucault to conclude that we have failed to free ourselves from authority – that we have failed to 'cut off the head of the king'. And secondly, Foucault's extrapolations on the classical Greek notion of parrhesia – 'truth telling' – espouse an alternate version of truth to either empirical fact or Habermasian communicative rationality, stressing instead the role of the individual truth-teller who addresses power bravely to speak their personal truth. Together, these aspects of Foucault's analysis of the discursive nature of power provide (1) a framework for examining, or exposing, systems of power produced and mobilised through the production and restricted transfer of knowledge, and (2) advocate a position from which to address these systems of power, albeit, as Foucault himself does not proffer the parrhesiastes as a model, somewhat obtusely.

While Habermasian and Foucauldian notions of (respectively) communicative rationality and the discourse of power/knowledge have been placed in conflict with one another, they are considered here in their shared emphasis of the intersubjectivity of communication, or discourse. In other words, the Habermas / Foucault conflict is a misleading dichotomy (and one which promotes inertia if not paralysis in both scholarly analysis and in social movements) – the shared, if contrasting, considerations of intersubjectivity outline a generative agonism where meanings are created, challenged, and recreated.

The tensions and confluences between the treatment of power and discourse by Habermas and Foucault provide a rich vein of provocative ideas and challenges for the concept of communicative activism. In brief, although Habermas and Foucault both trace modern civil society back to the movement away from the monarchic authoritarian state towards a state centred on national sovereignty, Foucault is specifically negative about the role of *bourgeois* civil society from the outset. Habermas is, at least initially, more positive, seeing in it the possibility for a genuinely public communications realm. In *The Structural Transformation of the Public Sphere* (1962/1989), he describes a gathering of individuals in public that became 'society', emphasising the *in-principle* capacity of individuals to reach agreements based on rational, unhindered communication and the *actual* capacity of these groups to organise collectively and communicate effectively to further their own interests and to place limits of the capacity of the State to interfere with their interests (Cohen and Arato, 1994).

Foucault shares Habermas's historical analysis of the emergence of civil society to an extent. Like Habermas, he traces liberal-democratic values such as law, rights, autonomy, plurality and 'publicity'¹ from the decline of the monarchic state and its replacement with the establishment of parliamentary democracies and the engagement of the public sphere with the forms and processes of state power. Likewise, both Habermas and Foucault trace systems of regulation and control that affect and limit modern society. For Habermas, the potential of society that flowered in the nineteenth century, in part a result of the withdrawal of the policing of the individual that resulted from the increasing separation of church and state, in part a result of the increase in the legitimacy of accountability claims made of states by their peoples during times of relatively higher taxation has not been realised. The promise of an

¹ "Publicity here refers to the trend towards openness and engagement with the public. This critical notion is developed further in part two of this section.

enlightenment philosophy that offered rational thought as an alternative to superstition, education and liberty as an alternative to ignorant serfdom had resulted in a form of thought and behaviour referred to as 'cognitive-instrumental' communication, whereby actors in society learn about their situations and circumstances and use this knowledge to achieve, through communicative process, certain goals, previously decided upon². These cognitive-instrumental communication processes have been employed, Habermas suggests, by political and economic actors to 'colonise' society. Communication, particularly that which is enacted in the public sphere, has become a process through which knowledge about society is gathered in order to make possible or more feasible a pre-ordained goal.

Foucault argues that the structures of monarchical power are reconstituted in new systems and strategies of control. Foucault is insistent that, rather than limiting state power, the 'values' of law and rights and publicity and the processes of supervision, classification and evaluation produce forms of micro-power – generated at the level of the individual, transferred throughout society to be replicated and codified in normative systems and structures legitimised by modern enlightenment values such as rationality and democracy.

For Habermas it is important to posit a possible normative system of discourse ethics that would result in greater degrees of democracy in decision-making and greater respect for fundamental rights. Habermas does so by expanding, in *The Theory of Communicative Action* (1984) upon his distinction between actions that are oriented toward success

² In this sense it is similar to forms of 'strategic communication', although the difference between the two is that cognitive-instrumental communication has reference to outside, constant, pre-existing information, rules and guidelines for communication, whereas strategic communication uses exploitative tactics that predict and attempt to manipulate the actions of the interlocutor, similar to those used in game theory.

and those that are oriented to reaching understanding. Success, in this schema,

is defined as the appearance in the world of a desired state, which can, in a given situation, be causally produced through goal-oriented action or omission. The effects of action comprise the results of action (which the actor foresaw and intended, or made allowance for) and the side effects (which the actor did not foresee). We call an action orientated to success instrumental when we consider it under the aspect of following technical rules of action and assess the efficiency of an intervention into a complex of circumstances and events. We call an action orientated to success strategic when we consider it under the aspect of following the rules of rational choice and assess the efficiency of influencing the decisions of a rational opponent (1984: 285)

“By contrast,” suggests Habermas, it is possible to speak of communicative action as occurring when “participants are not primarily oriented to their own individual successes; they pursue their individual goals under the condition that they can harmonise their plans of action on the basis of common situation definitions” (285-6).

For Foucault this is utopian and restrictive. Both identify the misuse of power as the central issue of the modern eras, yet understand power differently and advocate different approaches for addressing it. For Foucault, the Habermasian theory of communicative action promotes a system that legitimises control through constitution-writing and institutional accountability. Foucault is highly critical of these legitimising devices in his analysis of strategic struggle and conflict, emphasising the

individual and context-dependent characteristics of power and resistance (see Flyvberg, 1998; Foucault 1977, 1980; Habermas 1984, 1990; Outhwaite, 2000). Foucault's view of the history of knowledge is one in which the prospect of progress towards a legitimate political structure made valid through forms of communicative action is a dangerous and misleading furphy: dangerous because it undermines forms of transgression and limits expressions of criticism to those that fit within a prescriptive rational model; misleading because it inscribes upon history (and therefore upon the present) a teleology that he disputes.

This chapter explores the creative tensions between Habermasian and Foucauldian concepts of knowledge production through discursive practices, including political communication, attempts and validating and legitimising institutionalised regulatory regimes and structures of governance, the nature and function of public opinion, and the role of civil society.

1.2 Habermas on Public Opinion and Civil Society.

"The 'quality' of public opinion, insofar as it is measured by the procedural properties of its processes of generation, is an empirical variable" (1992/1996: 362).

Habermas's early work situates his long-standing concern with the concepts and practices described as 'public opinion'. His point of departure, in *Structural Transformations*, is the divergent uses of the term to describe either the legitimising power of the consent or criticism of the constituency in democratic political structures, or the strategic use of political communications technologies and cultural products to generate or simulate support for dominant structures, individuals and products. These differing conceptions of public opinion are not,

Habermas points out, a matter of norm and fact, or “an ideal entity and its actual manifestation” (1962/1989: 232).

Instead, the critical and the manipulative functions of publicity are clearly of different orders. They have their places within social configurations whose functional consequences run at cross-purposes to one another. Also, in each version the public is expected to behave in a different fashion...it might be said that one version is premised on public opinion, the other on nonpublic opinion” (1962/1989: 236).

Habermas based these definitions on his conception of degradation from a “culture-debating public to a culture-consuming public”³ – from a politically active public to a more withdrawn privacy. As a result, public opinion faces the prospect of relegation to no more than “institutionalised fiction”. Habermas cites Lanshut (1953), who describes public opinion as fictional in the sense that it has been transformed (or replaced) by an “indeterminate mood-dependent inclination. Particular measures and events constantly lead it in this or that direction. This mood-dependent preference has the same effect as shifting cargo on a rolling ship”. On the other hand, it is described as institutional in the sense that

³ He later acknowledged that these early conceptions of the public response to manipulative publicity were “too pessimistic about the resisting power and above all the critical potential of a pluralistic, internally much differentiated mass public whose cultural usages have begun to shake off the constraints of class” (1993: 438). In addition, Habermas drew attention to the developments in the understanding of how media consumption is a linear casual process and more context dependent, and by means of example pointed to the three interpretive strategies (submissive, oppositional, and synthetic) outlined by Stuart Hall (1980). However, Habermas persisted in his broadly outlined conception of a distinction between “genuine processes of public communication and those that have been subverted by power” and, in particular, the model of the contemporary public sphere as a “mass-media-dominated arena in which opposing tendencies clash” and society more generally as a “organisation society in which it is no longer associated individuals but rather members of organised collectivities who, in polycentric public sphere, compete for the assent of public masses in order to achieve a balance of power and interests against each other” (1993: 440).

it is still the only accepted basis for the legitimation of political domination: "The modern state presupposes as the principle of its own truth the sovereignty of the people, and this in turn is supposed to be public opinion. Without this attribution, without the substitution of public opinion as the origin of all authority for decisions binding the whole, modern democracy lacks the substance of its own truth" (1962/1989: 237-238).

Public opinion here is asserted as necessary for democratic governance but unachievable. Attempts at redefining the term and reclaiming the concept sacrificed either its general accessibility or its rationality and representativeness. The first followed traditions now possibly associated with idealised versions of a representative liberal democracy, wanting "to salvage the communication of an inner circle of representatives capable of constituting a public and of forming an opinion, that is, a critically debating public in the midst of one that merely supplies acclamation" (1962/1989: 238), restricting participation but increasing the possibility for critical-rational discourse. The latter "confines itself to institutional criteria", meaning that public opinion, and public opinion-making, is represented by political institutions, such as the parliament or the political party that wins the majority in an election or plebiscite. Habermas is particularly critical of this version of public opinion, which concerns itself with neither the representative nature of the institutions nor the critical-rational nature of the opinion-making process:

It is impossible to discern whether this "public opinion" has come about by way of public communication or through opinion management, whereby it must remain undecided again whether the latter refers merely to the enunciation of a mass preference incapable of articulating itself or to the

reduction to the status of a plebiscitary (sic.) echo of an opinion that ... has been forcibly integrated (1962/1989: 239).

In general, Habermas's concern included the extent to which the models of public opinion incorporated individual or groups (private or 'non-public opinion') into areas of formal, specialised, institutionalised 'quasi-public opinion', recognising that these two spheres are partially and inadequately linked via the mass media. He concluded that opinion can only be public (as opposed to non-public or quasi-public) to the degree that these "two spheres of communication are mediated by a third, that of *critical publicity*" (1962/1989: 248).

Critical publicity, Habermas suggests, is possible

"only through the participation of private people in a process of formal communication conducted through intraorganisational public spheres....To the extent that these organisations permit an internal public sphere not merely and the level of functionaries and managers but at all levels, there exists the possibility of a mutual correspondence between the political opinions of the private sphere and that kind of quasi-public opinion" (1962/1989: 248).

In 1962, Habermas opined that the number of individuals involved or active in such a intraorganisational public sphere via organisations such as political parties and "special-interest organisations" was a minority to the extent that the trend towards critical publicity was "on the whole insignificant" but asked whether or not this was "a growing or declining tendency" (1962/1989: 248). Moreover, he suggested that there were both general standards and empirical measures by which this tendency could be evaluated. The standards were: "the degree to which it emerges

from the intraorganisational public sphere constituted by the public of the organisations' members and how much the intraorganisational public sphere communicates with an external one formed in the publicist interchange, via the mass media, between societal organisations and state institutions" (1962/1989: 248). For the empirical measures he used criteria developed by Mills (1959) that contrasted the idealised "public" with the inferior "mass" opinion:

In a *public*, as we may understand the term, (1) virtually as many people express opinions as receive them. (2) Public communications are so organised that there is a chance immediately and effectively to answer back any opinion expressed in a public. Opinion formed by such discussion (3) readily finds an outlet in effective action, even against – if necessary – the prevailing system of authority. And (4) authoritative institutions do not penetrate the public, which is thus more or less autonomous in its operation. Conversely, opinions cease to be public opinions in the proportion to which they are enmeshed in the communicative interchanges that characterise a 'mass':

In a *mass*, (1) far fewer people express opinions than receive them; for the community of publics becomes an abstract collection of individuals who receive impressions from the mass media. (2) The communications that prevail are so organised that it is difficult or impossible for the individual to answer back immediately or with any effect. (3) The realisation of opinion in action is controlled by authorities who organise and control the channels of such action. (4) The mass has no autonomy from institutions; on the contrary, agents of authorised institutions penetrate this

mass, reducing any autonomy it may have in the formation of opinion by discussion" (1962/1989: 249).

The empirical data set required to evaluate the extent to which opinions which were 'truly public' or 'merely mass' therefore were:

1. the ratio between the numbers receiving and communicating opinion
2. the opportunities for immediate and effectively feedback into opinion
3. the extent to which opinion impacted upon action, even against authority, and
4. the degree of public autonomy from institutions.

In addition, Habermas suggested that the degree to which opinion is public, the degree to which the nonpublic and quasi-public communication spheres were mediated by critical rationality, could be defined and measured - but only comparatively. Finally, Habermas optimistically posited that greater levels of critical publicity would alter the means by which the processes of conflict and consensus dominate political decision-making, limiting the potential for domination and coercive power. In a final question that has future resonances in the work of Foucault, Habermas asks "whether the exercise of domination and power persists as a negative constant, as it were, of history - or whether as a historical category itself, it is open to substantive change" (1962/1989: 250).

Habermas continued to return to and develop these ideas about the role of the intraorganisational public sphere in developing a critical publicity mediating between the nonpublic and quasi-public spheres, and impacting positively on the capacity for forms of governance more closely related to public opinion via a critical rational discourse. Thirty years after *The Structural Transformation of the Public Sphere*, in *Between Facts and Norms*, he expanded and updated this work. By now,

Habermas had introduced the term 'lifeworld' to stand for the individual and group experiences that occur in the private, personal sphere of familial and informal relations, as opposed to market, administrative, and other formal relationships. He also had found that the intraorganisational public sphere he had previously described as insignificant had developed via a reinvigorated concept of civil society and its associational networks, and he had come to suggest that civil society could be the arena for limited mediation between the lifeworld and the institutional public decision-making bodies via the processes of communicative action.

In *Between Facts and Norms*, Habermas (1992/1996) outlines some of the concepts of the public sphere and civil society, some of the power structures and barriers that operate therein, some of the possibilities for movements overcoming these barriers and some the necessary legal elements of complex societies to provide for such possibilities.

"The public sphere" says Habermas "can best be described as a network for communicating information and points of view (i.e., opinions expressing affirmative or negative attitudes); the streams of communication are, in the process, filtered and synthesised in such a way that they coalesce into bundles of topically specific *public* opinions" (1992/1996: 360). The Habermasian lifeworld can be divided into two categories: those like the family, religion and education that are associated with generally reproductive functions; and those like science and morality that perform validity functions. For Habermas, the public sphere is a specialist in neither of these functions. Instead, its relationship with the lifeworld is one of provision of a communication structure and a social space by which these aspects of the lifeworld can be made public. Likewise, neither is the public sphere the locus for making final decision regarding the formation or administration of policy – these "postponed decisions are reserved for the institutionalised political process" (362).

Habermas is at pains to point out that public opinion cannot be represented statistically, should not be confused with survey results, and that polls as such are representative only "if they have been preceded by a focussed public debate and a corresponding opinion-formation in a mobilised public sphere" (1992/1996: 362). Nor is the role of the broadcast media in circulating information and opinion amongst large numbers or readers or audiences as important as "a shared practice of communication ...(a) more or less exhaustive controversy in which proposals, information, and reasons can be more or less rationally dealt with" (362). Essential to this is a critical broad public that can be convinced by "comprehensible and broadly interesting contributions to issues it finds relevant....There can be no public sphere without a public" (364). This becomes highly relevant when assessing the potential political impact of actors in the public sphere, contingent on its communicative capacity ("(t)hey can capitalise on their social power only insofar as they can advertise their interests in a language that can mobilise convincing reasons and shared value orientations") and on its transparent legitimacy, especially regarding interest groups who, as far as they can "acquire visibility only because of an undeclared infusion of money or organisational power lose their credibility as soon as these sources of social power are made public" (364).

Criticisms of this view as optimistic or naïve are valid insofar as this may not present an accurate picture of how politics operates in contemporary societies have some currency, as will be dealt with later with reference to Foucauldian challenges to the Habermasian normative approach. But for the moment it is worth remembering that Habermas spoke usually of degrees or tendencies that are or should be evident in society, as well as (and at times in comparison with) what actually occurs.

Habermas's introduction to civil society reflects his understanding of its composition as well as its role in public communication:

Civil Society is composed of those more or less spontaneously emergent associations, organisations, and movements that, attuned to how societal problems resonate in the private life spheres, distil and transmit such reactions in amplified form to the public sphere. The core of civil society comprises a network of associations that institutionalises problem-solving discourses on questions of general interest inside the framework of organised public spheres. These 'discursive designs' have an egalitarian, open form of organisation that mirrors essential features of the kind of communication around which they crystallise and to which they lead continuity and permanence (1992/1996: 367).

Habermas agrees with Cohen and Arato's (1992) characterisation of civil society as being necessarily limited by political context and in its scope for action. The first of these is that it can only develop in a liberal political culture and an already rationalised lifeworld, else "populist movements arise that blindly defend the frozen traditions of a lifeworld endangered by capitalist modernisation. In their forms of mobilisation, these fundamentalist movements are as modern as they are democratic" (1992/1996: 371). The second is that, within this form of liberal public sphere,

actors can acquire only influence, not political power. The influence of a public opinion generated more or less discursively in open controversies is certainly an empirical variable that can make a difference. But public influence is

transformed into communicative power only after it passes through the filters of the institutionalised *procedures* of democratic opinion-and-will-formation and enters through parliamentary debates into legitimate lawmaking....(Public) influence must have an effect on the democratically regulated deliberations of democratically elected assemblies and assume an authorised form in formal decisions (1992/1996: 371-2).

Thirdly and finally, as the political sphere itself is limited in its capacity to plan or manage all functions of society,

“democratic movements emerging from civil society must give up holistic aspirations to self-organising society....Civil society can directly transform only itself, and it can have at most an indirect effect on the self-transformation of the political system....Besides these limitations, one must bear in mind that the administrative power deployed for purposes of social planning and supervision is not a suitable medium for fostering emancipated forms of life. These can *develop* in the wake of democratisation processes but they cannot be *brought about* through intervention” (1992/1996: 372).

Nevertheless, Habermas is resolute in his claims that under certain conditions, civil society can exert an influence on the public sphere – albeit an influence that may well be weak in comparison to other private and public actors given the impression of “power-ridden, mass-media-dominated public spheres of Western democracies” outlined by sociological studies of the mass media (1992/1996: 373).

The 'power of the media' (namely its role in selecting and presenting – sometimes referred to as framing – issues, opinions, information and spokespeople and individualities) is identified as dominating the public sphere, severely restricting the influence of civil society other than during "periods of mobilisation, (when) the structures that actually support the authority of a critically engaged public begin to vibrate. The balance of power between civil society and the political system then shifts" (1992/1996: 379). Habermas introduces three models how issues gain prominence from the work of Cobb, Ross and Ross (1976):

- the inside access model – relying on political or bureaucratic leaders to carry the issue through to formal resolution without input from the broader public,
- the mobilisation model – where insiders initiate issues but require outside support in order to facilitate in successful formal adoption, and
- the outside initiative model – where the initiative comes from outside the political system, from "forces at the periphery", and with the necessary input of the pressure of public opinion, "compel formal consideration of an issue" (1992/1996: 379-380).

In the usual scheme of things, the first two of these models dominate. But the outside initiative model operates when forces at the periphery present cases and arguments with sufficiently effective moral force that they become presented as matters of significant controversy via the mass media and are thereby placed on the public agenda. Issues usually associated with the progressive left (anti-nuclear actions, ecological concerns, Third World poverty) and the conservative right (unregulated immigration, multiculturalism) are cited as examples of this (1992/1996: 381). Habermas insists that for this to occur, the issue must be dramatised, including the possible use of "sensational actions, mass protests, and incessant campaigning ... before an issue can make its way via the surprising election of marginal candidates or radical parties,

expanded platforms of 'established' parties, important court decisions, and so on" (1992/1996: 381). Habermas refers to acts of civil disobedience as a means of generating this type 'critical consciousness'.

1.3 Foucauldian challenges to Habermasian civil society

Habermas and Foucault have often been invoked in parallel to one another in order to "highlight an essential tension in modernity. This is the tension between the normative and the real, between what should be done and what is actually done" (Flyvberg, 1998: 210). In terms of their respective places in the pantheon of philosophical heavyweights, Foucault carries the title of "one of the more important 20th century exponents ...(of the) particularistic and contextualist tradition, with roots in Thucydides via Machiavelli and Nietzsche, ...(whereas) Habermas is the most prominent living exponent of a universalistic and theorising tradition derived from Socrates and Plato, preceding over Kant. In power terms, we are speaking of 'strategic' versus 'constitution' thinking, about struggle versus control, conflict versus consensus" (Flyvberg, 1998:228). This tension underscores much of what is understood about their respective approaches to modernity and can be seen in their divergent descriptions of the development of civil society.

While Habermas and Foucault have both emerged from a European tradition that has considered the impact of the political development of the nation-state and the cultural and social impact of the Enlightenment in their analyses of the development of modern civil society, they have done so using different methods and subsequently with greatly different conclusions.

Habermas and Foucault both trace modern civil society back to the movement away from the monarchic authoritarian state towards a state centred on national sovereignty. Both agree on the essentially *bourgeois*

origins of modern civil society in that its emergence coincided with and depended on the development of economic individuals who pursued their interests beyond the immediate realm of the family unit, separated from but in relationships with, the sovereign nation-state (Cohen and Arato, 1994 p210ff).

Whereas Foucault is specifically negative about the role of *bourgeois* civil society from the outset, Habermas has been described as seeing in it the possibility and the emergence of the gathering of individuals in public, social settings – the salons, coffee houses, and clubs that eventually became ‘society’. He emphasises the *in-principle* capacity of individuals in such societies to conduct debates and reach agreements based on rational, unhindered communication and the *actual* capacity of these groups to organise collectively and communicate effectively to further their own interests and to place limits of the capacity of the State to interfere with their interests. (Cohen and Arato, 1994 p210ff) However, and somewhat paradoxically, Habermas’s analysis has been seen to trace, in the emergence of society that communicated collectively to act against the state and in defence of individual (economic) interests, “a catastrophic fusion of state and society...(resulting) in the very core of liberal-democratic politics, a public sphere based upon the ideal of free and uncoerced discussion” (Scheurmann 1996 p.153).

Foucault shares Habermas’s historical analysis of the emergence of civil society to the extent that they both trace liberal-democratic values such as law, rights, autonomy, plurality and ‘publicity’⁴ from the decline of the monarchic state and its replacement with the establishment of parliamentary democracies and the engagement of the public sphere with the forms and processes of state power. However, where Habermas sees the unfulfilled potential of civil society, Foucault sees the systems of

⁴ “Publicity here refers to the trend towards openness and engagement with the public. This critical notion is developed further in part two of this section.

monarchical power reconstituted in new systems and strategies of control. Evoking and surpassing Marx's vision of bourgeois civil society, Foucault is insistent that, rather than limiting state power, the 'values' of law and rights and publicity serve rather to reinstate power and infuse power throughout people's lives. Moreover, he insists that these values and the processes of supervision, classification and evaluation associated with systems of law and rights and publicity (and science) produce forms of control he refers to as micro-power – generated at the level of the individual, transferred from one to another and throughout society to be replicated and codified in normative systems and structures legitimised by modern enlightenment values such as rationality and democracy.

In this sense, Foucault turns the power relationship between the state and the individual on its head: civil society here produces and legitimises the power structures articulated and legitimised by parliamentary rule rather than – as Habermas would suggest it might – acting as a limit on state power. Foucault also draws a close analogy between monarchical power and the modern state, arguing that both draw their legitimacy by referring to a judicial system based ultimately in a set of universal incontrovertible standards. Resistance, for civil society, therefore offers only the prospect of the replacement of one judicial system with another. "The right to rebel against power that has transgressed its limits, thereby violating the rights of another, is the right to reestablish legitimate, juridically bound power. According, 'the representation of power has remained under the spell of monarchy. In political thought and analysis, we still have not yet cut off the head of the king.'" (Cohen and Arato, 1992:261)

In part, the challenge posed by Foucault can be diminished by identifying the gaps in his work – his reluctance to pose a basis for addressing power, his resistance to the idea that there are clear differences between

the monarchical idea of privilege and the modern concept of rights, and, as (Habermas suggests in *The Philosophical Discourse of Modernity*) his lack of consideration of developments in normative structures within the law since the 18th century and the explosion of civil rights in the 20th century. But only in part as, to foreshadow later discussion in Chapter Three, if human rights activists are to reconcile their normative aims with Foucault's critical challenges, they will need to account for how they use their power, how they legitimise their claims, how they produce and communicate knowledge – in short, how they engage in public discourse.

1.4 Habermas and Foucault on discourse ethics

Habermas, in *The Structural Transformation of the Public Sphere* traces in the development of modern society and the public sphere – and especially the development of publicity as a tool for political action – the elements of a tradition of *liberalism* – the rights of an individual to conduct their business and the rights associated with freedom of expression, association, free speech and a free press. He is particularly interested in the role that emerging groups in society, and their technological capacity to communicate faster and wider than before, resulted in a “public of organised private people” (Habermas, in Outhwaite (ed) 1996:29).

There are two “competing tendencies” in the early Habermasian view of the political public sphere which makes up civil society. First, “*staged and manipulated* publicity displayed by organisations over the heads of a mediated public” or, second, “a *critical* process of public communication through the very organisations that mediatise it”. Furthermore, Habermas claims that the “extent to which the former type prevails gauges the degree of democratisation of an industrial society” (Habermas, in Outhwaite (ed) 1996: 29, original emphasis). Here

Habermas strongly suggests that it is possible to assess communicative behaviours against normative standards.

Public opinion, emphasises Habermas, becomes a critical mode of discursive power and political decision making, and a critical matter for analysis. It

takes on a different meaning depending on whether it is brought into play as a critical authority in connection with the normative mandate that the exercise of political and social power be subject to publicity or as the object to be molded in connection with a staged display of, and manipulative propagation of, publicity in the service of persons and institutions, consumer goods, and programs. Both forms of publicity compete in the public sphere, but "the" public opinion is their common addressee.

...

It is impossible to discern whether this "public opinion" has come about by way of public communication or through opinion management, whereby it must remain undecided again whether the latter refers merely to the enunciation of a mass preference incapable or articulating itself or to the reduction to the status of a plebiscitary echo of an opinion that, although quite capable of attaining enlightenment, has been forcibly integrated (Habermas, in Outhwaite (ed) 1996: 29).

Thirty years after Habermas published *The Social Transformation of the Public Sphere*, he had come to describe it as seriously flawed. Although in *Between Facts and Norms*, Habermas continued to pursue his interest in communicative action and deliberative democracy, he had come to the

conclusion that earlier holistic definitions of society, or an homogenous 'the people', were insufficient and that more complex systems of groups and individuals were required. He avoided the simple contrast between a liberal bourgeois golden age and the "bleak reality of contemporary capitalist democracy" (Scheuerman 1996 p.154-5). Taking "the realisation of a system of rights" as his project, he had come to the conclusion that neither "spontaneous market forces nor ... deliberate measures of the welfare state" were capable of producing the social conditions required. Hope lay in "the currents of communication and public opinion that, emerging from civil society and the public sphere, are converted into communicative power through democratic procedures" He regarded "(t)he fostering of autonomous public spheres, an expanded citizen participation, curbs on the power of the media, and the mediating function of political parties that are not simply elements of the state (to be) of central significance for this" (Habermas in Outhwaite (ed) 1996, p215).

For Habermas it is as important to posit a possible normative system of discourse ethics that would result in greater degrees of democracy in decision-making *as well as* a greater respect for fundamental rights. For Foucault this is utopian and restrictive. Both identify the misuse of power as the central issue of the modern eras, yet understand power differently and advocate different approaches for addressing it. Habermas argues for a system that is universal, context-independent and that legitimises control through constitution-writing and the development of institutions. Foucault identifies power (and resistance) as individual and context-dependent and analyses strategic struggle and conflict (Flyvberg, 1998: 227).

Although Foucault and Habermas have been contrasted along these lines, it has also been suggested that they might have been more open to the

possibilities that each of their work offered the other. Foucault needed “a model to oppose to that of the undifferentiated universality of power relations, and this might well have been found in the concept of communicative power” found in Habermas. It has been said that Habermas is “too quick to label as a deviant and pathological case the “latently strategic action” of those who enter a discourse with an ulterior purpose; but this is the norm when the discourse is rigged in advance by inequities of power and knowledge” (Outhwaite 1996, pp19-20).

It has also been argued that Foucault is closer than readily acknowledged to Habermas when it comes to the important issue of intersubjectivity. Where Habermas claims the unavoidability, at least in theory, of communicative rationality and emphasises the normative-creative power of this intersubjective discourse, Foucault describes the relationship between the subject and the other as an ‘agonism’ – borne of conflict and resistance but still creative and still potentially a communicative method that could result in something resembling understanding (Thompson, 1999).

On intersubjectivity, Foucault himself, just before his death in 1984, differentiated between modes of communication and indicated his preference. Asked why he never engaged in polemics, Foucault explained that he didn’t feel that he belonged in a world that did not concern itself with “the search for the truth and the relationship with the other.” He described “the serious play of questions and answers, ... the work of reciprocal elucidation” in which those both asking and answering have rights (for example, to remain unconvinced, to require more information) and is tied by logic to what they have earlier answered. Foucault contrasts these partners in dialogue with a polemicist who unquestioningly claims the privilege to wage war on an opponent whose “existence constitutes a threat” The purpose of the polemic is “not to

come as close to possible to a difficult truth, but to bring about the triumph of the just cause....The polemicist relies on a legitimacy that his adversary is by definition denied" (Foucault, 1986, 381-2).

On the issue of how decisions ought to be made, Habermas, suggests Outhwaite (1996), has two fundamentally oppositional principles before him:

"A Everyone affected by legal and political decisions should discuss them until there is complete agreement about them.

B Legal and political decisions are complicated matters which should be left to experts" (p.13)

Habermas has been, probably mistakenly, understood "as advocating (A), but in fact his recent work makes clear beyond any doubt, his position is a much more nuanced one. It is true, however, that while he rejects (A) on grounds of practicality, his objection to (B) is one of principle" (Outhwaite, 1996: 13)

Foucault, like Habermas, argues against technocracy, but also rejects normative structures as a matter of principle and fails to offer any alternative, other than a generic sense of personal resistance. Habermas, however, accepts institutionalised framework as long as they can be and are subject to the broadest possible public scrutiny and debate. Legal and political forms require public support for legitimacy. "The rational quality of political legislation does not only depend on how elected majorities and protected minorities work within parliaments. It also depends on the level of participation and school education, the degree of information and the precision with which controversial issues are articulated – in short, on the discursive nature of non-institutionalised opinion formation in the political public sphere" (Habermas in Outhwaite,

1996: 13) Modern societies “fail to live up to these principles” (Outhwaite, 1996: 13).

Habermas believes that claims to reason can be tested for validity. Validity is defined as consensus without force. As arguments involve force, Habermas outlines five procedural requirements of discourse ethics to ensure validity, these being:

1. no party affected by what is being discussed is excluded (generality)
2. all participants have equal possibility of presenting and examining validity claims (autonomy)
3. participants are willing and able to empathise with each others validity claims (ideal role taking)
4. existing power differences neutralised as so far as they have influence over the creation of consensus (power neutrality)
5. participants must openly explain their goals and desist from strategic action (transparency)

To these, at least one scholar has, ironically, added: unlimited time (Flyvberg 2000).

Validating arguments is in direct opposition to a Foucauldian discourse ethic. Foucault, where he discusses the role of the intellectual, resists the formulation of criteria for validating communicative processes, “not that of establishing laws or proposing solutions or prophesying, since by doing that one can only contribute to the functioning of a determinate situation of power that to my mind must be criticized” (Foucault 1991, cited in Gane, 2004: 123). This contrast with Habermas is made apparent in Foucault’s account of the Aufklärung (Enlightenment)⁵ and of

⁵ Foucault suggests this can be traced back to Kant’s exposition on the nature of enlightenment philosophy in the short article *Was est Aufklärung?* (Kant 1784/1999), in which Kant proposes:

the subsequent forms and functions of critique that have emerged since the sixteenth century, where he clearly outlines that he is not interested in establishing forms of knowledge production that are legitimate or valid:

We are therefore not attempting to find out what is true or false, founded or unfounded, real or illusionary, scientific or ideological, legitimate or abusive. What we are trying to find out is what are the links, what are the connections that can be identified between mechanisms or coercion and elements of knowledge, what is the interplay or relay and support developed between them, such that a given element of knowledge takes on the effects of power in a given system where it is allocated to a true, probable, uncertain or false element, such that a procedure of coercion acquires the very form and justifications of a rational, calculated, technically efficient element (50).

Furthermore, in his analysis of discourse as knowledge/power, Foucault adopts a position that he describes as "a neutralisation concerning the effects of legitimacy". This presents a clear contrast with the propositions in Habermasian communicative action. Habermas himself criticised Foucault's treatment of the Enlightenment, suggesting that society still needs criteria of validity and legitimacy through which it can reasonably criticise repressive institutions, and criticising Foucault for refusing to engage in making distinctions between knowledge and mystification (Horrocks and Jevtic, 2004: 144).

Enlightenment is man's release from his self-incurred tutelage. Tutelage is man's inability to make use of his understanding without direction from another. Self-incurred is this tutelage when its cause lies not in lack of reason but lack of resolution and courage to use it without direction from another. *Sapere aude!* "Have courage to use your own reason!" – that is the motto of enlightenment (7)

Foucault's preference for expressive over instrumental forms of discourse is made apparent in his discussion of the practices and processes of *parrhesia*, a term he refers to as "ordinarily translated in English by (*sic.*) 'free speech'" (Foucault, 2001: 11) but with a greater range of meanings uncovered (mostly) from classical Greek literature. The first of these is frankness:

"[The] one who uses *parrhesia*, the *parrhesiastes*, is someone who says everything he has in his mind: he does not hide anything, but opens his heart and mind completely to other people to his discourse. In *parrhesia*, the speaker is supposed to give a complete and exact account of what he has in mind so that the audience is able to comprehend exactly what the speaker thinks...the speaker emphasises the fact that he is both the subject of the enunciation and the subject of the enuciandum – that he himself is the subject of the opinion to which he refers" (p. 12-13).

This notion of frankness has some resonance with Habermasian communicative rationality, in that the speaker is required to be and demonstrate transparency. Parrhesia's second meaning, truth, is more challenging. In this, Foucault distinguishes between rare, pejorative uses of *parrhesia* to refer to a kind of inane babble or senseless chatter that Plato used and which was later contrasted with the silence required to contemplate God and the more common form in which "the *parrhesiastes* says what is true because he *knows* that it is true; and he *knows* that it is true because it really is true. The *parrhesiastes* is not only sincere and what he knows is his opinion, but his opinion is also the truth" (14). This, suggests Foucault, is difficult to reconcile with enlightenment ideas of Cartesian evidence and may therefore "no longer appear in our modern

epistemological framework" (14). It leaves two problems: the first, shared with the Greeks, is how to recognise a truth teller; the second more a characteristic of modernity, is how can the truth-teller know that they are telling the truth (or a 'truth') in the absence of evidence. Both are questions about legitimacy or validity.

This leads to a significant departure from Habermas, for whom those engaging in discourse ought to acknowledge and welcome divergent views and be willing to consider them for the communicative process to achieve a sense of legitimacy. For the *parrhesiastes*, the truth is that which he is telling, because he knows it to be true. Any notion of admitting and considering other, divergent or opposing, views is not part of this act of communication. There is no question of validity by means of communicative rationality; instead, "[i]f there is a kind of 'proof' of the sincerity of the *parrhesiastes*, it is his *courage*. The fact that the speaker says something dangerous – different from what the majority believes – is a strong indication that he is a *parrhesiastes*" (15).

This leads to the third feature: danger:

If, in a political debate, an orator risks losing his popularity because his opinions are contrary to the majority's opinion, or his opinions may usher in a political scandal, he uses *parrhesia*. *Parrhesia*, then, is linked to courage in the face of some danger. And in its extreme form, telling the truth takes place in the 'game' of life or death.

It is because the *parrhesiastes* must take a risk in speaking the truth that the king or tyrant generally cannot use *parrhesia*; for *he* risks nothing (16).

And the source of this danger, the fourth feature: criticism above one's station,

"always in a situation where the speaker or confessor is in a position with respect to the interlocutor. The *parrhesiastes* is always less powerful than the one with whom he speaks. The *parrhesia* comes from 'below', as it were, and is directed towards 'above'. This is why an ancient Greek would not say that a teacher or father who criticises a child uses *parrhesia*. But when a philosopher criticises a tyrant, when a citizen criticises the majority, when a pupil criticises his teacher, then such speakers may be using *parrhesia* (17-8).

The fifth and last feature being duty, meaning the *parrhesiastes* will speak not because they are forced to or out of fear, but, even in situations where they are free *not* to speak, will tell their truth. The speaker

"expresses his personal relationship to the truth, and risks his life because he recognises truth-telling as a duty to improve or help other people (as well as himself). In *parrhesia*, the speaker uses his freedom and chooses frankness instead of persuasion, truth instead of falsehood or silence, the risk of death instead of life and security, criticism instead of flattery, and moral duty instead of self-interest and moral apathy" (19-20).

In Foucault's discussion of *parrhesia*, we find a formulation of discourse ethics that, in its comparisons and contrasts with Habermas's, underscores some of the key aspects of their relative conceptualisations of the role and function of discourse. Take for example their respective

treatments of the notion of truth. Neither Foucault nor Habermas resort to explaining truth as fact, universally valid and empirically provable. Both assert that truth is a matter of moral honesty, and, when using *parrhesia* or engaging in Habermasian communicative rationality, that the truth will be spoken is an essential and defining characteristic.

The difference lies in the relationship the truth-speaker has with their interlocutor. For Habermas, this is a reciprocal relationship based on the shared expectation that the truth will be spoken (and that parties to the communications can also presume the sincerity and appropriateness of the statements), and, if this expectation is violated, it will result in offence being taken and the breakdown of communication. Highlighting the importance of this notion for Habermasian conceptualisations of how human rights are developed and understood, Jacobson and Jang (2001) state that

this reciprocity of expectations in this theory provides a basis for moral rights and ultimately a universalistic theory of justice (Habermas, 1990, 1993) because these reciprocal expectations concern more than linguistic utterances. They also concern reciprocal social relations enacted through speech....Moral implications are always based at one level on matters of interpersonal reciprocity and mutual respect. The theory of discourse ethics argues that the structure and process of communication embodies these as well as other aspects of human sociation. In other words, the primary manner in which individuals depend on one another, singly and within society, is communicative

...

Unjust behaviour stirs moral sentiments not because it violates transcendental, a priori, rights, but because it constitutes a threat to the social fabric, any social fabric. As

the basis for all social interaction, forms of communicative reciprocity are learned from birth and stay with an individual through adulthood. If reciprocity itself is violated, it can be felt deeply. Here lies the origin of morals (439).

For Habermas, then, truth-telling is part of a shared, reciprocal relationship wherein moral questions, and questions of what human rights are, could be negotiated and eventually agreed upon in the public sphere, before formalisation through the institutions of law and governance. Truth is something clearly very different for Foucault's *parrhesiastes*: it is confrontational, it defiantly addresses power from a position of self-proclaimed moral superiority, eschewing notions of reciprocity for those of vehement disagreement. I am true, the *parrhesiastes* says, and you are false. This mode of discourse seeks not only its own self-assertion but the exposure of that it addresses. This is the discourse of speaking truth to power, where power is envisaged in the Foucauldian terms of the production and privilege of forms of knowledge that articulate and enforce structures of repression and control, and also result in the generation of counter-discourses of resistance. These provide powerful analytical tools to critique further Habermasian notions of human rights and civil society.

For Foucault, and particularly in light of his lectures on Parrhesiastes (or speaking truth to power), and counterpointing the potential, identified within Habermasian validity claims that it "runs the risk of obscuring our right to be different and of underthematizing the difficulty that certain voices have in getting to the negotiating table in the first place" (Lipscomb, 137), a different set of ethical claims are gleaned. As the Parrhesiastes articulates a truthfulness that rests on the individual capacity, potential and *right* to be different, to distrust, so an expressive form of validity claim is generated, an "ethic that insists on the careful

cultivation of the individual voice as it comes to contest the limits that have been imposed from without and within” (Lipscomb, 143).

1.5 Conclusion

Communicative activism is, in two senses, conceptually situated between Habermas and Foucault: firstly in how it views the communicative practices that constitute political life, and secondly in how it proscribes (or not) communicative practices that communicative agents can or ought to use to respond to the situation.

In the first sense – their respective critical analysis of political communication in modernity – Habermas and Foucault can be seen to run in parallel with one another. Habermasian critiques of the dysfunctional public sphere echo the concerns of the Frankfurt School of cultural criticism that, amongst other things, bemoans the degeneration of public life and of the culture of public political communication. Foucauldian genealogical histories of power relations can be read as critiques of the present that (while not making the same kinds of normative assumptions as Habermas) expose, describe and analyse systems of power that confine and restrict (as well as resist and drive forward) social relations. Communicative activism explores the spaces between these normative (Habermas) and expressive (Foucault) accounts, drawing on them in parallel, and unreconciled) lines of exposition and critique.

Secondly, communicative activism draws on the tensions between the seemingly divergent positions taken by Habermas and Foucault on how communicative actors ought to act. Habermas attempts to reconcile the last remnants of the promise of the enlightenment with the apparent power-ridden structures of modernity through his principle of communicative rationality, a normative (yet unrealisable) system for

establishing shared understandings and agreements. Foucault, while openly antagonistic to the idea of structuring legitimate and valid forms of communicative practice, opens up options for communicative activists through his discussions of 'speaking truth to power' and the powerful expressive potential seemingly apparent in these forms of expressive 'truth-telling'. The contrasts between these two lines of thought are compelling: one seeks to build shared knowledge, the other seeks to destabilise and disagree; one seeks to convince or be convinced by argument, logic and evidence and a shared communicative ethics, the other claims a right to remain unconvinced. In communicative activism, these tensions are not reconciled. They remain unwieldy and uncomfortable, but they are not unproductive, for they provoke forms of critical engagement, possibly promoting efforts at reconciliation or sparking radical changes in approach.

Efforts to, on one hand, build support for and legitimise institutions and regimes and, on the other, destabilise and attacks structures of subjugation, are evident in the idea of human rights and the agents and movements that have been influential in its history. The next chapter deals with the genealogy of human rights theory and activism through formal political structures and non-formal advocacy movements.

2. Human Rights and Civil Society – discourses of contention and consensus

At one level it might be thought that the existence of this international human rights infrastructure makes it startlingly simple to answer the question “what are human rights?” Cumulatively, the declarations, legal instruments, treaties and international law associated with human rights amount to very concrete objects. Perhaps paradoxically, however, it is not these items which are human rights. Rather, these items serve to declare, protect, ensure, implement, monitor and observe human rights. They are not themselves human rights; they are one step removed. (Langois, 2004: 244)

Since the aim of human rights struggles is to achieve human rights-driven policies at both national and international level – the later especially entailing agreements that cross cultural and religious lines – there is not only a theoretical interest here but also a very pragmatic political one in attempts to ground human rights in an adequate conceptual framework. We might never find the single grounding for all time. I don't think that we will. But the search and continuing dialogue are crucial. (Fields, 2003: 47)

2.1 Introduction

In this chapter, the historical and recent development of human rights is considered as a product of the generative interaction of a range of human rights discourses. These including legal, moral, religious and (other) ontological frameworks that dominated the discussion of human

rights for much of its history, as well as those ideas that appreciably and importantly impacted on more recent ways of thinking about human rights, including feminism, post-colonialism and post-ontological, post-modern and non-rational attempts to situate human rights. This genealogical discussion of human rights form the second of the three components used to draw out the themes and perspectives of this study of human rights discourses, and leads to the subsequent discussion where human rights non-government organisations' (NGOs') campaigns are considered as a important site of cultural production of human rights discourses.

This section focuses on human rights discourse as a contested arena, one where traditional political liberal values are contested by Burkean conservatives, international realists and post-colonial, post-structural cultural relativists among others. Much of this related to the failure of the post-World War Two resurrection of human rights to deal with earlier rights regimes' lack of ontological foundations, strengthened those voices seeking greater limits on the development of shared human rights standards and their subsequent implementation. In other ways, the challenges required human rights theorists and NGOs to re-think and adapt approaches, adding to an understanding of how human rights may be conceptualised and discussed more creatively. As will be suggested, the contributions of contemporary human rights scholars (as well as Habermas and Foucault) have been utilised in this regard to reconceptualise human rights for an era where ontological views of rights are discredited as insufficient or repressive.

This chapter begins with an historical account of the human rights discourses, leading to the present human rights community's foundation document, the 1948 Universal Declaration of Human Rights. It goes on to contextualise the present debate by tracing the political and

philosophical traditions that are present in the current discourse about the respective roles of government and civil society in determining and defending human rights. In this way, the evolution of the human rights movements and the ideas sustaining them is seen as a history of contestation, engagement, and action, where ideas live and die and are reborn in fluctuating but earnest, increasingly global, battles for ascendancy in which victory is usually short-lived. Finally, it characterises contemporary human rights discourse as polyvalent, polymorphic and polyphonic, a site of tactical contest, rational normalisation, and nonrationalist expressions of human rights that co-exist and contest in a network of rights talk.

The first contention here is that, while there a general consensus that human rights, in some form, exist, there is no such consensus about what those rights are, or who possesses them, or how they should be expressed, codified, implemented or enforced. It seems that although we may be living in an 'age of rights', we have not succeeded in forming a united understanding of what this means, that "while there at least seems to be broad agreement that there is something called human rights, there is not an agreement on what constitutes that thing" (Fields, 2003: 43). This may seem a difficult position to hold considering the wide range of human rights instruments outlined in international law through the various declarations, covenants and conventions negotiated by the international community through the auspices of the United Nations and signed and ratified by many if not most sovereign states on behalf of their citizens. Surely, one might assert, this represents a body of agreed rights. Likewise, the rise of the human rights movement, including advocates, groups and formal organisations from all over the world, represents a powerful constituency of people who proclaim the rights enshrined in international law. However, these assertions, as will be outlined below, are considered here to be at best a partial answer to

what human rights are and no answer at all to what we have based these definitions of rights on, which leads to the second contention in this chapter: that neither the discourses of law (and therefore of contract between state and citizen) nor the various faith-based epistemologies of the world's religions, nor the enlightenment ideas of the great rationalist philosophers, nor any other notional humanistic ontology, is sufficient *in and of itself*, to explain what we mean by rights and – much more importantly – why we are rights holders and therefore able to make rights claims.

The structure of this chapter is designed to place human rights in its contemporary context – a period which has seen the re-emergent significance of human rights that resulted from the Second World War but was swiftly complicated by strategic geopolitics, new rights claims from newly-freed peoples and newly-created nations. Therefore, the first section will focus briefly on the genealogy of the rights that became enshrined in the Universal Declaration of Human Rights before discussing its birth on 10 December 1948 and the subsequent development of International Bill of Rights and other international human rights instruments. Then, the chapter proceeds to consider a range of contemporary debates that characterise current misgivings and assertions about human rights. These form the discursive environment within which human rights claims are made. Many of these contemporary debates about human rights eschew foundationalist arguments in favour of prescribing new forms of human rights discourse that are designed to achieve human rights goals by appealing pragmatically to sentiment, self-interest, identity and so on. The subsequent chapters map the role of human rights NGOs in this regard.

2.2 An ontological genealogy of contemporary human rights discourses

The second half of the twentieth century saw an unparalleled rise to prominence of an international human rights regime and a consequent increase in relevance of human rights discourse in international diplomacy and the political public sphere. The normative influence of human rights has increased to the extent that it regularly, if rarely successfully, challenges national sovereignty as the dominant norm of international relations, and more recently has increased its impact upon the activity of non-state actors, namely the market sector and private organisations such as armed opposition groups. While being demonstrably difficult to implement or enforce, the international human rights regime is nonetheless more widespread and more influential than in any other period of history.

The rise of human rights as a normative international regime, and of organisations and individuals that work to further human rights aims, has not occurred in isolation. The actors of the present are products of their socio-political histories, and current contexts. For some this heritage is shared, the product of a western liberal tradition whose philosophical advocates include Locke and Rousseau (and whose detractors include Burke, Hume and Marx), whose claimed great historical periods include the democratic revolutions in France and the United States of America, and whose defining moment and sacred text is the 10 December 1948 Universal Declaration of Human Rights (UDHR) – a day now commemorated as International Human Rights Day and a document now widely regarded as the main touchstone of contemporary human rights standards (Fields, 2003; Falk, 2000; Roberston, 1999). Furthermore, while much of modern human rights movement often

points to the UDHR as the foundation of the subsequent body of international human rights law as well as the guiding light for human rights campaigners and advocates (International Human Rights Day has taken on some of the trappings of a consecrated anniversary), however pivotal the occasion and the document, they are as much the culmination of previous works as they are the foundation of the present human rights institutions (and the incarnation of many of their inherent fractures).

The sacred canon of human rights includes texts from a variety of spiritual cultures and faith-based epistemologies. Christians, and western civilisation, have pointed to those passages in the Bible that reflect contemporary human rights discourse: pointing Old Testament law as well as to the preachings of the Gospels and other parts of the New Testament. Buddhists refer to descriptions of a Bodhisattava in the Vajradhvaja Sutra and elsewhere. Islamic scholars have derived from the Koran legitimacy for contemporary human rights standards as they advocate for their greater application in Muslim societies. That these sacred texts have also been used to inspire, explain and justify gross acts of violence and betrayals of human dignity serves to highlight that the discourses of law, justice, compassion and tolerance has long been contested, and the uncomfortable dialectical coexistence of human rights with human wrongs. That relationships between the discourses of faith and those of rights have collided over such practices like slavery and apartheid (now unthinkable but previously accepted and, in fact, supported) and others like abortion and gay marriage (still the subject of intense current debate) suggests that this tension persists. On the other hand, as Langois (2004) suggests, the Western intellectual human rights tradition that owes so much to historical influence of Christianity has to a large degree moved on: "few of today's premier human rights theorists would accept the epistemological and ontological claims of Christianity as satisfactory for a contemporary theory of human rights" (244).

In addition to its spiritual legacies, human rights, especially in western political and philosophical traditions, human rights usually traces its origins back to the discussions of Plato and Aristotle, although, as Herbert (2002) suggests, a pivotal earlier historical period in the development of political and civil rights occurred with the conflict between clan-based organisational structure to one in which clans combined to form a polis, requiring a new system of authority based upon a shared set of laws and rights (Dike) that operated independent of the standing of individuals in their own family or clan structures (Themis). Furthermore, and importantly for this discussion, it was this "conflict between Themis and Dike, that is, Right as it is established by the ancestral religion of the clan and Right as it is established by nature, that led to the establishment of the *polis* as the guarantor of natural right" (18). In other words, the emergence of a revolutionary form of rights discourse and practice arose out of a productive contest of ideas. In interrogating these contesting forms of rights, especially natural rights, Plato employed the conception of nature developed through a philosophical account of the world of ideas. In Platonic terms, this world is made up of the objects of knowledge (*episteme*) and hypotheses (*mathemata*) which are the objects of discursive thinking (*dianoia*). Plato's student and successor Aristotle embraced this ideal version of natural rights but rejected the enforced distinction between form and matter: "Aristotle's approach is to bring the Platonic ideals into contact with things" (Herbert, 2002: 26). To Plato's world of knowledge and discourse, then, Aristotle adds the world of things and, importantly, people and therefore politics – the world where political power struggles are as important for the life of ideas as the ideas themselves. We see in Plato and Aristotle the traditions from which, respectively, Habermas and Foucault emerged. We can also see, when these parallel approaches to natural rights are considered concurrently, a nascent version of the

combination of discourse and action that is described in this paper as communicative activism.

Traditional, ancient, and classical concepts continued to heavily influence ideas about human rights through to the Enlightenment and the modern age of rights. Before then, western and Christian traditions drew further succour from Thomas Aquinas's 13th Century discussion of the prospect of a just war in *Summa Theologica* and Bartolomé de Las Casas's letter-writing campaign in defence of the indigenous peoples of South America of the 16th century New World (Ishay, 1997), both of which claimed rights for all people on the pretext that they were all subjects of God over and above more worldly systems of law. In both documents, also, the prospect of religious standards being invoked in defence of both peace and war, both violence and compassion, are evidenced and foreshadowed. The Magna Carta, signed in 1215, is given as an important early example of the emergence of secular defences of human rights although it demanded rights for the English church (Robertson, 1999). Written at a time of conflict between the king, the church and the aristocracy, it departed from earlier universalising, religious claims. On the contrary, its claims were for rights based upon position and privilege. The king's power was devolved and others gained greater degrees of freedom and agency but these were subject to their place in society as members of the feudal aristocracy or the church, or as freemen. (Nevertheless it still stands as an example of the inconsistencies between centralised or absolute power and the potential for freedom.) This attribution of rights based upon position was to persist in medieval Europe and become the basis for the struggle for universal rights through this period (Fields, 2003). This struggle intensified and by the early 1600s, Europe was characterised by raging wars between religious adherents and political constituents, as well as massive and extensive poverty and landlessness, taxation and misery. The Diggers of the 1640s

rebelled against the feudal system by squatting on feudal land and growing crops, rebelling against the property rights of the landowners and staking their claim to survival based upon the "righteous law of our Creation". Fields (2003) points to the significance of this action and declaration as an early example of the struggle for rights involving both words and deeds – rhetoric and direct action – prefiguring later debates about the appropriateness, legitimacy and effectiveness of activist strategies such as civil disobedience and other forms of communicative activism.

In the seventeenth century, the Dutch jurist Hugo De Groot's (or Hugo Grotius's) *The Rights of War and Peace* set a precedent for subsequent attempts to define universal standards of ethics and behaviour based upon natural rights. This position, with antecedents in the theological approaches to the rights and dignity of all under sacred law took a leap of secular faith when it adopted the worldly principle that natural laws are valid even if God does not exist, or does exist but does not rule over human affairs (*etiamsi daremas non esse Deum aut non curare ab eo negotia humana*). It is still the philosophical 'first principle' for universalising rights norms and standards (Keane, 2003). It is a significant moment in rights history, looking backward to the Platonic query outlined by one of Socrates' ironic questions, "Is that which is holy loved by the gods because it is holy, or is it holy because it is loved by the gods?", and looking forward to the Enlightenment philosophers by his "liberation of natural right and the law of nature from their classical theological moorings [that] puts him with those seventeenth-century philosophers who are the true authors of the modern, subjective theory of natural rights" (Herbert, 2002: 76).

Fields (2003) outlines the different contributions to the political theory of universal, individual rights and the relationship between the individual

and the state made respectively by Thomas Hobbes, John Locke and Jean-Jack Rousseau, and in turn contested by Edmund Burke, David Hume, Jeremy Bentham and Karl Marx (Fields, 2003, 7-34; see also Robertson, 1999, 1-31; Lukes, 1993, 233-247). Hobbes, Fields suggests, was the first to suggest that everyone had an inalienable right to life. He believed that human nature was such that strong, absolutist states were needed to protect this right. Locke expanded this to include property rights and argued for a less absolute and more constitutional form of government. Rousseau went further to associate rights with democratic forms of government, advocating civil rights for the enfranchised and invoking the notion of the rational 'General Will' to legitimise the institutions of law and government.

These political and moral philosophers were affected by and in return influenced the series of revolutions and declarations that marked the development of human rights and democracy, including the 1776 American Declaration of Independence, the 1789 U.S. Constitution and, in 1791, its first 10 amendments (known as the 'Bill of Rights'), and the 1789 Declaration of the Rights of Man and Citizen. Locke was particularly influential for the framers of the American documents and liberal philosopher Thomas Paine was one of the drafters of the French declaration.

Burke and Hume rejected the notions of reason and abstraction that informed Rousseau, and rejected the notion of 'natural rights'. Hume argued that not rationality but sympathy makes us human, while Burke argued that political elites (and not the 'swinish multitude') ought to be responsible for the preservation of political traditions and institutions. Utilitarian Jeremy Bentham refuted Rousseau with a conviction borne of rigid pragmatism, claiming that no one is born free or equal, being rather subject to parental and other forms of authority and (prefiguring

Foucault) placed in power relationships ('the master and the apprentice') and possessing varying abilities ('the genius and the lunatic'). These realist critiques were carried over into the twentieth century and became highly influential in the field of international relations. Marx saw the language of rights as a discursive tool for legitimising class-based discrimination based upon the rights of those in possession over those dispossessed, a criticism continued by twentieth century Marxists who see the system of rights providing for economic freedom without social responsibility.

Burke and Hume pointed to the Terror that followed the French revolution as proof positive that human rights were a dangerous futility. Seeing the concept of fraternity used initially to describe an all-embracing brotherhood of humankind be applied, firstly, to a notion of French nationhood and nationalistic citizenry and, later, to a distinction between the revolutionaries and their enemies during the Terror, Burke was convinced that rights were and could only be abstractions from the "real, living, concrete, local ways of life." This "abstract perfection" was their "practical defect," as "liberties and restrictions vary with times and circumstances, and admit of infinite modifications, that cannot be settled upon by any abstract rule". Bentham and Communitarian Alasdair MacIntyre were similarly dismissive of universalising concepts: human rights were "nonsense on stilts" (Bentham) and "witches and unicorns" (MacIntyre) (Lukes, 1993, 238).

Marx's critique was prompted, at least in part, by the failure of what he regarded as 'bourgeois revolutions' to do anything more than entrench the rights of individualistic 'bourgeois man'. Rights were "ideological nonsense" that got in the way of the class struggle against capitalism and "obsolete verbal rubbish", unnecessary in the egalitarian glow of the post-revolutionary utopia (Lukes, 1993, 239).

The madness and mayhem of the French Revolution and the strength of the convictions of those opposed to the idea of 'natural rights' led to the decline of the idea. When it re-emerged in the aftermath of World War Two, and in the shadow of the Holocaust, it had a new name: 'human rights'. The years between the French Terror and the Nazi Holocaust were characterised by repeated conflict and enduring violence, as well as being punctuated by moments of freedom. Slavery was halted in England in 1805, after the Civil War in the U.S. and in Europe in stages in 1885 and 1926. (However, slavery remained legal in Oman until as recently as 1970.) The Red Cross emerged in 1836 and made progress in its attempts to make wars more humane and minimise suffering – in 1868 in St Petersburg and in 1899 and 1907 in The Hague, major powers signed treaties to limit the development of poisonous gasses and explosive 'dumdum' bullets. Then the First World War killed 8.5 million in a brutal, pointless conflict, and neither the treaty of Versailles nor the charter of the League of Nations referred to human rights. The show trials in Stalinist Soviet Union demonstrated how a system of law could be dressed up to formalise and justify the elimination of political opponents.

In the 1880s, England intervened in Bulgaria to defend Christians from attacks when the reigning Turkish sultan refused to do so, and the U.S. waged war against Spain in the name of saving the Cuban population from the 'oppressive Spanish rule'. Still, European Jews were slaughtered in the pogroms of 1905 and Armenians subject to the genocidal attacks of the Turkish in 1915. "Who remembers the Armenians", Adolf Hitler would later rhetorically ask when questioned about the likely international response to the discovery of the 'Final Solution' (Robertson, 1999).

If Hitler was (mostly) right about the Armenians, he was proved entirely wrong about the genocide he presided over: the six million Jews, gays, communists and other minorities and political opponents killed under the totalitarian Nazi regime *were* remembered. The world shuddered in horror at what efficiency could mean in a modern, civilised country such as Germany, and it blanched in shame when forced to acknowledge that it failed to prevent it from happening. The world responded, forthrightly: 'never again'. Never would the nations of the world allow this to happen to the people of the world. The United Nations were formed in 1945 "to save successive generations for the scourge of war...and to reaffirm faith in fundamental human rights" and in 1948 they declared, with fresh memories of "barbarous acts which have outraged the conscience of mankind" that "all human beings are born free and equal in dignity and rights" (United Nations, 1948). With that, more out of desperation and determination than of optimism, the modern era of human rights was reborn.

Ignatieff (2001) in his examination of human rights as 'politics and idolatry' nominates two enduring political legacies of the Universal Declaration and the "widening reordering of the normative order of postwar international relations, designed to create fire walls against barbarism" (5): the legal recognition, for the first time in international law, of the rights of individuals (previously only states had rights); and the "advocacy revolution" which has made use of the international instruments to enable victims of human rights violations to gain "historically unprecedented power to make their case known to the world" (8). He also notes the tendency for human rights to be idealised or idolised, as symbolised by the UDHR's widespread appeal.

"Fifty years after its proclamation, the Universal Declaration of Human Rights has become the sacred text of what Elie

Wiesel has called a 'world-wide secular religion.' UN Secretary General Kofi Annan has called the Declaration the 'yardstick by which we measure human progress.' Nobel Laureate Nadine Gordimer has described it as the 'essential document, the touchstone, the creed of humanity that surely sums up all other creeds directing human behaviour.' Human Rights has become the major article of faith of a secular culture that fears it believes in nothing else. It has become the lingua franca of global moral thought, as English has become the lingua franca of the global economy" (53).

Given the UDHR's ongoing legacy and its relevance as a guiding document or moral touchstone for human rights NGOs and a number of national constitutions, and given the continuing tensions between various actors and philosophies about the role and functions of the UN and international law, it is pertinent to recall that, despite the sense of collective horror and guilt that pervaded international relations immediately post-World War Two, both the UDHR and the UN were significantly restricted from the outset. The UDHR was not, suggests Falk (2000) "initially perceived to be a significant development." Rather, it was "at most conceived as an admonishment to governments, and more relevantly, as a kind of heterogeneous wish list cobbled together by representatives of liberal individualism and collective socialism" (37-8).

Opposition was virtually immediate. Eight nations abstained from voting for the UDHR, including the USSR, Saudi Arabia and South Africa even though, by using the language of a declaration, it was clear the contents were never going to be treated as binding. In fact, remembering the extent of oppressive European colonial rule in Asia and Africa and repressive military dictatorship in Latin America, Falk (2000) for one

finds it difficult to believe that one of the main reasons for signing the UDHR was that it was nothing "more than a paper tiger" (38). In the US, early idealism soon met urgent and determined antagonism, as Madeleine Albright (2003) has recalled:

One day before the U.N. General Assembly convened in 1952, Republican Sen. Joseph McCarthy of Wisconsin began hearings in New York on the loyalty of U.S. citizens employed by the United Nations. A federal grand jury then opened a competing inquiry in the same city on the same subject. (Some U.N. employees called to testify even invoked their constitutional right against self-incrimination.) The furore generated massive indignation and mutual U.S.-U.N. distrust. J.B. Mathews, chief investigator for the House Un-American Activities Committee, declared that the United Nations "could not be less of a cruel hoax if it had been organized in Hell for the sole purpose of aiding and abetting the destruction of the United States" (Albright, 2003 para 5).

In Australia, attitudes towards the UN and international human rights were initially positive. The Chifley Labour government's Foreign Minister, Dr H. V. Evatt, played a major role in the drafting of the UN Charter and Declaration and the establishment of the roles played by the General Assembly and the UN Economic and Social Council. The Menzies conservative government that succeeded Labour to return to power in 1949 pursued a human rights policy that reflected Australia's close alliance with 'great powers' at the height of the Cold War. This meant a move "away from economic and social rights to concentrate on civil rights. Civil rights were of consequence insofar as they were abused by communist states. Yet, their observance was not regarded as a universal requirement, as for instance, in the case of authoritarian yet anti-communist regimes supported by the United States" (Kent, 2001, 259).

It ought to be emphasised, then, that from its earliest days the human rights regime that became enshrined in international law was (and remains) the product of intensely political processes, bound up in the power relationships of strategic politics. Like any law, suggests Langois (2004),

it has to go through all the vicissitudes attendant upon the processes of creating any law. The initial concern must be brought to the attention of the relevant law-making body. Advisors and drafters comment and create models which are tested for their propriety. Those pushing the process lobby for support. Compromises are made, deals are done, understandings of appropriate interpretation negotiated. Finally, a new law is created. Then the fun really begins, for laws at work can often take on an unanticipated life of their own. They can be used and abused; they are subject to interpretation, to institutional architecture. They have different consequences in different environments – political, legal, social and psychological (246).

Throughout the Cold War, strategic and political interests continued to delimit and define the slowly developing human rights regime. The first legally-binding convention, against genocide, entered into force in 1951 but it was not until 1966 that the covenants on civil and political rights, and economic, social and cultural rights were presented, and not until 1976 that the requisite 35 nations had ratified them, bringing them finally into force. The Convention on the Elimination of All Forms of Racial Discrimination was proposed in 1969, as were conventions outlawing discrimination against women (1981) and torture (1987) and affording specific rights to children (1989). International tribunals were formed to try those accused of genocide in Rwanda and the Former Yugoslavia and,

in 2002, the International Criminal Court entered into force and in 2003 began operating, establishing a permanent international process for the trial of those accused crimes against humanity.

The UN has not been the only transnational institution to pursue the acknowledgement and defence of human rights; regional bodies have also formed to articulate rights standards and attempt to enforce rights norms, with mixed success. The European Convention for the Protection of Human Rights was signed in 1950 and the European Social Charter followed in 1960, the American Convention on Human Rights (1969) and the African Charter on Human and People's Right (1986) left Asia and the Pacific as the only regions without a human rights charter to call their own. The Helsinki Agreement (1975) forged links between the USSR and US with an agreement on human rights standards amid the tensions of the cold war.

The proliferation of international human rights documents has not been matched by observance of the standards they enshrine. Observers and scholars have, sadly, regularly bemoaned that recent decades have seen the proliferation of rights talk matched by the persistent violations of the standards these documents embody. It is sobering to recall what this has meant for those who have borne the consequences of the international community's failure to enforce the rule of international law. Rwanda, Tiananmen Square, and Srebrenica stand as proof positive that the world's promise to itself that the Holocaust would not happen again has been broken. The failure of humanitarian intervention in Somalia condemned future attempts. Fifty years before the world had heard Soviet envoy Andrei Vyshinsky respond cynically to the pronouncement of the UDHR: it was, he said, "just a collection of pious phrases". Was the passage of time proving him right?

The hope and determination of the founders of the United Nations has been tempered by its failures as much as it has been buoyed by its achievements, but there have been bright moments. Falk lists six "impressive achievements":

- changing the discourse of international relations,
- the elaboration of normative architecture,
- enhancing the role of human rights within the UN system,
- historical struggles against oppressive circumstances,
- the engagement of civil society, and
- extensions to the humanitarian law of war and crimes against humanity (53-56).

Falk (2000) goes on to argue that while the politics of human rights has flourished, to the extent that it is entrenched in the language of political diplomacy and international relations, this should not be confused with a schema for the effective implementation of human rights (see also Roberston, 1999). The primary contentions are that (a) the realists are in charge of foreign policy and (b) the neo-liberal elites have subjugated all other human rights to the fundamentals of free markets and basic individual civil and political rights. Falk cites the change in official US policy on human rights in China, during the second term of the Clinton Administration, from 'constructive engagement' to 'cordial engagement', signalling that human rights would have taken second place to a developing relationship with an emergent economic superpower and major trading partner (41). This has been replicated by the foreign policy of many nations, including Australia (see Kent, 2001, 256-77). The normative power of human rights, international law and morality are running a distant second to the political, economic and military power of those commanding the strategic heights of security and development. While there have been instances where the normative aspirations of human rights have been seen, at least in part, to coincide with the

realistic pragmatism of international relations, there remains a strong sense that the regime of international human rights law has fallen on fallow ground, that the aspirations of human rights activists have encountered persistent failure: "first of all the failure to be consistent – to apply human rights criteria to the strong as well as the weak; second, to our related failure to reconcile individual human rights with our commitment to self-determination and state sovereignty; and third, to our inability, once we intervene on human rights grounds, to successfully create the legitimate institutions that alone are the best guarantee of human rights protection" (Ignatieff, 2001: 48).

The first two of these failures reflect the historical paradigm - state sovereignty and powerful national interests standing resolutely against attempts to subjugate state (and corporate) power in the name of individual or minority human rights. The third of these reflects a more contemporary dilemma – the ambivalent, reluctant, contradictory or hostile attitudes towards institution-building. Habermasian support for institution-building requires negotiation and consensus; Foucauldian resistance towards reconstituting power structures and new forms of social control disrupt and de-legitimise these processes. Moreover, the tactically polyvalent discourse of human rights is open to appropriation by groups whose purposes are contradictory, who may be in competition with one another for resources, or may simply be representing specific purposes. "Global human rights consciousness...does not necessarily imply that the groups defending human rights actually believe the same things. Many of the NGOs espouse the universalist language of human rights but actually use it to defend highly particularist causes: the rights of particular national groups or minorities or classes of persons" (Ignatieff, 2001: 9).

2.3 Post-ontological Human Rights

The attacks on ontological views of rights by, on one hand, the Historical School and the Bethamite Utilitarians, and, on the other Marxist socialism was successful to the extent that philosophical interest in universal, natural rights dwindled throughout the first half of the twentieth century.

It has been noted above that the resurrection of the concept of rights followed closely and resulted from the events of the Second World War including especially the public reaction to the mass killings undertaken by the Nazi German regime and subject to investigation and eventual successful prosecution by military tribunals, and given the new name of 'crimes against humanity' and, later, 'genocide'. The moral convictions expressed being so strong, and the political moment so opportune, those who took on the challenge and responsibility of drafting a new framework for the outline of minimum standards of protection were able to reclaim and re-proclaim rights.

Herbert (2002) outlines how, in reconceptualising rights as human rights, "it was the Marxist critique of the social, economic and legislative victimising of the powerless that provided the moral illumination for the new concern for rights" (324). (Utilitarian and Historicist claims that rights devolve from the community and reside in the nation meant that nations could hardly be held responsible for rights they did not recognise.) However, this critique, it was noted, was being now utilised to argue *for* a rights regime that was similar in many ways to the notion of rights it had previously been used to argue *against*. The solution for the founders of the post-World War Two rights era was to distinguish *human* rights from natural rights, with their amoral connotations and

emphasis on rational self interest, legal rights, which required an authorising legislature and therefore offered no protection in “unenlightened despotisms where ‘crimes against humanity’ were most likely to occur” (Herbert, 2002, 324). The new nomenclature of human rights also served – as did natural rights – to assert their universality.

This assertion of universality, claimed for all humanity by virtue of their humanity, has not been underpinned by ontological or metaphysical claims the likes of those made by Kant or Locke. The absence of such claims is conspicuous in the Universal Declaration of Human Rights, where the – legal, moral, theological – origins of human rights are not discussed. Instead, human rights are introduced, articulated and defended in the preamble as “the foundation of freedom, justice or peace in the world” and “the highest aspiration of the common people”. They are something “the peoples of the United Nations have ...reaffirmed their faith in”. Furthermore, they are “essential to promote the development of friendly relations between nations”, “to promote social progress and better standards of life in larger freedom” and – especially important – because “disregard and contempt for human rights have resulted in barbarous acts which outraged the conscience of mankind”. In other words, human rights are foundational aspirations, or matters of faith, invoked in response to morally outrageous acts in order to improve lives and promote international cooperation.

For Herbert (2002) rights in their post-World War Two reincarnation became “linguistic tools which, through the philosophical clarification they provide (thorough their persuasiveness), produce the means for pursuing whatever are the current goals of philosophical and moral activism” (324). This position implies human rights derive largely from outrage and hope. They cannot be established by either analysis of logical form or empirical verification: they are “neither true nor false;

they are unverifiable expressions of feelings" (325). So, and significantly for human rights NGOs, activism, including forms of protest or advocacy, are reduced to the venting of feelings, having "only linguistic and emotive meaning, and only for those who share the same emotions and who talk the same "rights talk" (365). Rorty (1993) is an influential contributor to this idea of human rights being based on a nonrational and specifically sentimental commonality that we share by being human. For Rorty, the 'manipulation of sentiments' is preferable to the Platonic dependence on a rational knowledge of a truth that sets us free:

For as long as we think that there is an ahistorical power which makes for righteousness – a power called truth, or rationality – we shall not be able to put foundationalism behind us

The best, and probably the only, argument for putting foundationalism behind us is ... [i]t would be more efficient to do so, because it would let us concentrate our energies on manipulating sentiments, on sentimental education. That sort of education sufficiently acquaints people of different kinds with one another so that they are less tempted to think of those different from themselves as only quasi-human. The goal of this manipulation of sentiment is to expand the reference of the terms 'our kind of people' and 'people like us' (263).

This appeal to human rights as a way of relating emotionally with those otherwise unknown or regarded as 'others', resonates in Ignatieff's (2002) appeal that we "stop thinking about human rights as trumps and begin thinking about them as a language that creates the basis for deliberation. In this argument, the ground we share may actually be

quite limited: not much more than the basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for me. But this is already something" (95).

It may be something, notes Fields (2003), but it may not be enough or - worse - it may inspire different, less benign responses:

Direct experience with suffering sometimes seems to have a hardening effect on the victims who are determined that it will never happen to them again, 'Never Again!,' and leads them to adopt uncompromising and often very cruel postures toward 'others' who are seen as possible threats (49).

Where the reliance on sentimental appeals have failed, it has not always been because of a victimised cultures determined or vengeful response - often it is a result of indifference in the face of a world full of troubles. In response to such indifference to the distant troubles of foreign or unknown people (and in an ironic twist on the rhetoric of cosmopolitan universalism that is often used in the interests of the local) the rhetoric of self-interest is beginning to emerge from within the human rights movement. Echoing a rhetorical device that has become common in the environmental movement, the global is brought into sharp local focus; the tyranny of distance is overcome by the interconnectedness of globalised modernity. Inside the institutions dominated by the cosmopolitan paradigm of international human rights law and diplomacy, voices of reform have been urging a considered, and considerable, rethink of the fundamental premises for human rights, and have called for a re-imagining of the project, including a new or revitalised vocabulary for use in public discourse about human rights.

One of these is William F. Schulz, current Executive Director of Amnesty International USA, is also a member of the US Council on Foreign Relations and former president of the Unitarian Universalist Association of Congregations. He expresses concern that the arguments made for human rights, particularly those made on moral or legal grounds, fail to satisfy those who seek a rationale based on more personal motivations. In doing so, he is responding to traditional challenges from the realist tradition of international political relations and taking into account what he sees as the new realities of a globalised world.

He frames this argument by remembering a question put to him by a talkback radio caller, after he had been discussing the situations in places like Myanmar, Bosnia and China. The caller asked: "I'm sure all agree that these kinds of human rights violations are morally repugnant...But if I'm barely scratching out a living in East Tennessee, worried about having enough money to get my kids a decent education or to make the payments on a bigger house, what difference do all these abuses taking place so far away mean to me?" (Schulz, 2001: 1).

Schulz goes on to consider the moral and legal imperatives that lead to the framing of the Universal Declaration of Human Rights in 1948. He reiterates the argument that the moral repugnance of the Second World War and particularly the Holocaust in Nazi Germany lead the newly formed international community to pledge that such horrors would never happen again. Coexisting with this sense of moral outrage, Schulz suggests, was a commitment to see justice done. This was initially evidenced by the War Crimes tribunals in Nuremberg and Tokyo and later became manifest in national constitutions that adopted the UDHR as a guiding instrument and in international treaties, covenants and conventions that together form the body of international human rights and humanitarian law. "These two forms of discourse," he begins "- the

moral and the legal – have remained for more than fifty years the principal argots in which human rights are discussed. This is because they reflect two of the most invaluable resources we can bring to bear in the struggle to end human agony – the appeal to conscience and the resort to court” (6).

These arguments, Schulz continues, remain powerful and pertinent but are not persuasive enough for a large portion of the population. Having seen the repeated litany of emotionally-draining disasters broadcast in real time and around the clock, most otherwise sympathetic and charitable people are reluctant sufferers of ‘compassion fatigue’ and disinterested in long-winded pleas for respect for law spoken in a strange new English Creole spoken largely in isolated pockets of New York and Geneva and characterised by its affection for acronyms and its attempts to revitalise parts of the dead Latin lexicon: “(W)hichever part of the population is not turned off by the persistence of the brutality will be put to sleep by they legalisms” (7).

“What we need to make the human rights ‘sale’ – to build a broader constituency for human rights, to convince large numbers of people that human rights matter – is a third form of rhetoric, a third set of arguments, a third understanding of suffering’s significance. What we need are compelling practical reasons why respect for human rights is in the best interests of the United States” (7).

Schulz argues that the national interest and the realists’ view of international relations are not as disjointed from the notion of universal moral codes as many foreign policy makers – and human rights

advocates – would suggest⁶. He says that says that, in order to make cogent, relevant arguments, advocates must end their contempt for the realist tradition of self-interest and instead articulate why it is that repression of aids activists in China, for example, has potential and actual impacts on talkback callers from Tennessee – they must develop a discourse of new realism that takes the interconnectedness of a globalised world into account. To fail to do so, Schulz says, has allowed advocates “to be dismissed as a idealists or ideologues, as either to mushy headed in our thinking to be taken seriously or too rigid in our priorities to be trusted with power” (13).

He quotes *The Economist* as evidence that he is not alone in thinking there are connections between human rights and national interest:

Morality is not the only reason for putting human rights on the West’s foreign-policy agenda. Self-interest also plays part. Political freedom tends to go hand in hand with economic freedom, which in turn tends to bring international trade and prosperity. And governments that treat their own people with tolerance and respect tend to treat their neighbours the same way. Dictatorships unleashed the first and Second World Wars, and most wars before or since (14).

And he reports his response to the talkback caller from Tennessee:

⁶ Langois (forthcoming) suggests that one of the implications of adopting a view of human rights as part of a “‘realist’ project of self survival”, then we may have to “accept that on a traditional understanding of morality as a component in the life of the good person (meaning in part, not self-centred, selfish and narcissistic but transcendently oriented to the good / God) human rights are not morally distinguished (meaning that they become of instrumental value only for the dubious goal of self survival, rather than ends in themselves)” (9).

Well if that person's child is in the military and might be stationed in Haiti or Bosnia, it certainly has a lot to do with him or her. Or if the person holds a job that might be lost because U.S. companies are attracted by lower wages in countries that abuse labour rights, it has a lot to do with him or her. Or if the person is concerned about drugs and learns that U.S. arms to fight the Colombian drug lords have been diverted to kill innocent people, he or she might want to give a thought to human rights. If you've ever made an investment in an international stock, or if you're in a pension plan that does, you better believe human rights have something to do with you (16).

This is further evidence of a utilitarian shift in the (rhetorical) discourse of human rights, and certainly a long way from the 'truths' that were held to be "self-evident: that all men are created equal" of the US Constitution and from the first Article of the UDHR: "All human beings are born free and equal in dignity and rights." By playing fast and loose with the fundamental premises of post-Holocaust era human rights – universality of possession, universality of obligation, and essentialist humanism – Schulz invites speculation about what other discourses of specificity and relativity might be utilised under the mandate of human rights. In other words, while emphasising the connections between the global pursuit and the local ramifications of human rights, and by doing so specifically in order to demonstrate that it is in 'our best interest' to take an interest in human rights, he invites actors in society to argue human rights on the basis of the relationship between the global and the local, specific and personal. Schulz seems to have here underacknowledged the possibility that arguments can and have been made in favour of human rights abuses and against an international system of human rights protections. Examples abound. In the name of

the national interest, Australia has arbitrarily detained (and possibly tortured) asylum seekers, enshrined discrimination against the disabled in the migration system and denied land rights to the nation's original property owners; the U.S. has tortured detainees as part of the war on terror and executed mentally disabled offenders (one of whom had so little understanding of what was happening to him that he left his final meal 'to eat later') in the name of a war on crime.

Furthermore, Schulz, and Rorty in the earlier cited example, share an assumption that requires further exploration – that human rights can be realised if those individuals (and communities) who would otherwise be less inclined to recognise rights, or are hostile towards those they see as 'others' (and therefore for whom it is not necessary or desirable to recognise rights claims) can be brought around either through a process of sentimental education (Rorty) or rational argument about self-interest (Schulz). Fields (2002) develops this line of thinking also in his proposed 'holistic' model of human rights, wherein he presupposes that being human (and therefore be able to lay claim to human rights) entails possessing a capacity 'to know', a capacity for 'affective development' (pp). Here, the basis to feel empathy for those who are suffering and to come to the conclusion that doing something to alleviate this suffering is expedient, appropriate or in some way or another right or desirable.

This approach begs some questions that are taken up in the concept of communicative activism. Firstly, how are this knowledge produced, transmitted and learnt? Habermasian communicative rationality points to one proposition, an idealised version of discourse ethics in which those participating are both free to discuss and disagree and obligated to test the validity and legitimacy of their own arguments as well as those of others and therefore permit themselves to be convinced by the arguments of others. But this is an incomplete (and hitherto

unachievable) solution, omitting two key aspects of the politics of power that Fields identifies: (1) the material and cultural preconditions in which these communicative practices are played out, and which may prevent or limit the capacity for human rights advocates to make their cases, or for those convinced by the arguments for human rights to do anything about it, and (2) the prospect that shared affirmations about human rights (or any agreement about the conduct of public life) that are enshrined into law can themselves become structures of power which allow (or promote, or obscure, or legitimise, or distract from) actual human rights abuses (pp). As Fields overtly (and Foucault implicitly) suggests, this suggests that the struggle for human rights is never ending, that the process is one of ongoing critique or current standards, ongoing consensus-building about reform, ongoing review and re-interrogation of what has eventuated from this process of advocacy – a process of communicative activism that is critical and political as well as collaborative and legitimising.

This opens up another area of consideration for the human rights community (or exposed an old one): that of human rights as the site for political discourse, one where the rhetorical devices of persuasion are employed. This contrasts with the views of human rights as an essential aspect of western liberal democratic traditions (and its associated cultural, economic and political imperialism) or human rights as a universal moral code. In doing this, Schulz signals both the failure of the contemporary human rights movement to articulate a universal foundation for human rights and the opportunities that spring from the employment of non-essentialist human rights discourse. There may be many reasons to support, develop, defend or transform human rights discourses and practices, this suggests, and human rights advocates may be well advised to avail themselves of arguments beyond those entrenched in the normative standards of international law. For example,

while it is possible to point to international legal obligations when objecting to, say, the detention without charge, and possible torture, of detainees in Guantanamo Bay, it is also possible to point out that these practices may have more tangible outcomes: inadmissibility of evidence in trials, lionisation of suspected terrorists resulting in propaganda (and subsequent recruitment and fundraising) coups for terrorist groups, decline in diplomatic support in some countries, and a decline in the moral legitimacy of associated actions. With regards to the same example, this approach also invites open consideration of the other possible contradictory outcomes, such as increases in electoral or diplomatic support, or acquisition of intelligence, which can then be countered by advocates. This approach is not possible when the level at which human rights discourse is engaged is at that of the international lawyer focussed solely on the obligations enshrined in international law but may be relevant when the debate is occurring at the level of the talkback caller, or, for that matter, with anyone of the vast majority who do not fully know and understand the international human rights instruments and fully support the premise that international law is universally binding.

Taken further, this undermines the variation on the history of human rights discourse which, echoing Fukuyama, sees the emergence and codification of the international human rights as a result of uni-directional history resulting, at last, in a universal standard – a new covenant between peoples, who will be saved from hell if the laws are observed. What emerges in its place is an ongoing struggle over what human rights are, who they are for and how to achieve them.

The contemporary nature of this struggle can be understood in its historical context, particularly regarding the emergence of Lockean rights

in the context of the transformation from medieval to modern societies and the consequent 'creation' of the private individual sphere,

"closely linked to the rise of a new and more complex division of labour, the resulting changes in class structure (particularly to rise and then dominance of the bourgeoisie), and a new vision of the individual's relationship with God, society and the state...The social changes of modernisation, urbanisation, and technological development, in the context of capitalist market economies, replaced the all-encompassing moral role of traditional or feudal society with a much more segmented order. Politics was separated from religion, the economy and law (which were likewise separated from one another). Individuals too were separated from society as a whole; no longer could they be reduced to their roles, to parts of the community (Howard and Donnelly, 1996: 270-1).

The impact of the transition from medievalism to modernity for Goodhardt (2003), resonates in the contemporary era of economic globalisation:

In Polyani's view, the capitalist economy – including the account of individual, uniform, universal rights it entails – disrupts extant social, economic, and political relationships. Something like a Lockean account of rights helps to explain and justify this transition. And while the process is described in different terms – privatisation, deregulation, market discipline – contemporary SAPs associated with neoliberal globalisation have similar disruptive and

transformative effects and rely on similar justifications (954).

There are divergent views on this relationship between modernity and human rights. Howard and Donnelly (1996) see the emergence of individual human rights as a bourgeois response to the threat of an increasingly powerful state:

The newly rising bourgeois class was initially a principal backer of the newly ascendant princes and kings, who also wanted to free themselves from the constraints of the old feudal order. As the state's power grew, however, it increasingly threatened the individual citizen. Bourgeois 'freeman' thus began to demand that they indeed be free.

Such demands eventually took the form of arguments for the universal natural rights and equality of all people. In this new and socially mobile society in which entrance to and exit from the bourgeois class was relatively unpredictable, a new set of privileges could not readily be reserved for a new elite defined by birth or some similar characteristic. Therefore, in order for some (the bourgeoisie) to be able to enjoy these new rights, they had to be demanded and at least formally guaranteed for all. Thus human rights came to be articulated primarily as claims of any individual against the state. Human rights lay down the basic form of the relationship between the (new, modern) individual and the (new, modern) state, a relationship based on the *prima facie* priority of the individual over the state in those areas protected by human rights (270).

Goodhardt (2003) noting that Donnelly's "case for universality is based on the ubiquity of the modern threat to human dignity and the necessity of a liberal response to that threat" (944), reflects that this liberal basis has subsequently informed much of the debate about universal approaches to human rights and cultural relativist responses to them. He cites this as one of the main problems arising out of essentialism, which "[e]mphasising validity rather than effectiveness – or treating validity as a problem of genesis rather than effectiveness – is perhaps useful in analysing ontological and epistemological problems but is less helpful in asserting human rights as a political response to globalisation" (942).

Goodhardt, with reference to Shapiro (1986) repositions Locke and problematises individual human rights, acknowledging the loss of grounding in medieval social relationships that contained their own relationships of power and dependency as well as community and the normalisation of Lockean rights which "might have formally equal (uniform and universal), [but] there was little equal about their effects...the Lockean account puts an egalitarian gloss on distinctively inegalitarian social relationships" (950). Locke's version of rights is shrouded in "a negative libertarian shadow", and "Locke's deep commitment to toleration, stemming from his own dissenting religious views, establishes a strong prima facie case against government interference in private affairs and matters of conscience...This emphasis on non-interference, Shapiro concludes, endows liberalism with a decidedly conservative ideological slant" (950).

In the face of global forms of neo-liberalism and neo-conservatism, Goodhardt suggests, the applicable lessons from this massive social transformation and the subsequent normalisation of individual rights:

Instead of debating whether the modern Western view is valid or appropriate in non-Western contexts, one might more profitably ask what happened to transform the West from a communally-orientated society emphasising harmony and guaranteeing social rights – including extensive rights to social and economic security – into a society characterised by the ‘rational, atomised individual in pursuit of his self-interest’? The answer is that the advent of capitalism, facilitated by a framework of Lockean rights, transformed Western societies, as globalisation is transforming non-Western ones, in ways that made the traditional arrangements untenable” (956).

But rather than any rejection of globalised capitalism in the name of social harmony or traditional communal relationships, Goodhardt goes on to suggest that as “the increasingly global nature of capitalism suggests that a universal or global approach might be unavoidable” (961) and “because formally individual, uniform, and universal rights are central to the logic of the capitalist systems, which has spread them around the world through globalisation, arguments couched within the framework of rights might prove particularly effective in achieving a range of important values” (960).

As Schulz argues pragmatically for the discourse of self-interest (or national interest), so Goodhardt argues for the discourse of liberal rights. Although in both cases the authors advocate no more than alternative rhetorical approaches to the ongoing task of instituting and normalising human rights values, they articulate expressive challenges to the values of universalism and cosmopolitanism that usually inform and limit the discourse of international human rights advocates. Other counter-discourses supporting, counter-intuitively, human rights from a position

of specificity and localism, including re-emergent nationalism, have "considerable appeal in a new period of disillusionment with prospects for implementing human rights" (Ishay and Goldgischer, 1996: 396). In these strategies we see the rejection, paradoxically, of the universalisation of humanism in favour of the localisation and reaffirmation of cultural values, reflecting the tension between Habermasian and Foucauldian views of human rights. As Flyvberg (1998) outlines, "Habermas's approach is oriented towards universals, context-independence and control via constitution-writing and institutional development. Foucault focuses his efforts on the local and context-dependent and toward the analysis of strategies and tactics as a basis for power struggle" (227).

Ishay and Goldfisher argue that the strategic appeal to cultural specific values based upon national identity has influences beyond that of the domain of human rights: "[a]ppeals to national solidarity encourage popular submission to an elite, a process further facilitated by the invoking of external and internal threats to 'national security' (396) but the drive towards self-determination is nevertheless compelling across political divides, as "progressive liberals who emphasise participatory democracy within a free market economy, and socialists who stress the impossibility of workers' rights under capitalism, have historically been tempted to at partially embrace the legitimacy of rights of 'national self-determination'" (397).

The appeal of national identity and associated self-determination is reinforced when other aspects of democratic polities are examined. As much their (limited) capacity for representativeness, the relative degree of transparency and accountability in democratic institutions offers greater opportunities for realisation of rights, including social and

economic rights, when compared to other forms of political organisation, suggest SJORBERG, GILL and WILLIAMS (2001):

To judge by recent historical evidence, famine results not from shortages of food but from the gross maldistribution of this vital resource. It is this maldistribution that can be overcome through the transparency that is associated with a democratic order. In other words, the minimal human right to the basic necessities of life can, in part, be realised through expanding the democratic process, which subjects such matters to searching inquiry" (40).

At the same time that democratic states are being reconsidered as vehicles for protection of human rights and scrutiny of human rights violations, agents for national unity are, in some cases, presenting arguments for human rights:

Chinese human rights activists insist that the best long-term guarantee of Chinese national unity is a democratic regime that respects human rights. They also point out that trade liberalisation and free markets do not necessarily bring human rights and democracy in their wake. It is quite conceivable to combine authoritarian politics with free markets, despotic rule with private property. When capitalism enters the gates of a closed society, it does not necessarily function as a Trojan horse for human rights. Human rights come to authoritarian societies when activists risk their lives and create a popular and indigenous demand for these rights, and when their activism receives consistent and forthright support from influential nations abroad" (Ignatieff, 2001: 24).

National or local specific appeals to self-determination, and development of human rights cultures with reference to local cultures, are associated with a variety of approaches towards human rights. Popular sovereignty legitimises national juridical arrangements and undermines the imposition of universal standards, leading to cases where international treaties are resisted or, when ratified, limited in their jurisdiction by caveats upon their applicability. In the U.S. ratification of some of the key international instruments – the International Convention on Civil and Political Rights, the Convention Against Torture, the Convention on the Elimination of Racial Discrimination – included a declaration that the substantive articles of the treaty are ‘not self-executing’, that is these treaties “cannot be used to trump societal legal arrangements...a general underlying principle seems to undergird the actions of the U.S. leadership – notably the effort to exempt the U.S legal system from being trumped by the contents of the particular treaties that have been signed” (Sjoberg, Gill, Williams, 2001: 30). Ignatieff (2001) highlights the apparent irony of this U.S. tradition.

America’s reluctant participation places it in a highly paradoxical relations to an emerging international legal order based on human rights principles. Since Eleanor Roosevelt chaired the committee that produced the Universal Declaration, America has promoted human rights norms around the world, while also resisting the idea that these norms apply to American citizens and American institutions. The utopia to which human rights activism aspires – an international legal order with the capacity to enforce penalties against states – is inimical to the American conception that rights derive their legitimacy from the exercise of national popular sovereignty (13-4).

Evidently, then, there are different and contending versions of human rights that have generated distinct forms of human rights discourse and supported various voices in the human rights debates. Rather than the development of a singular and essentialist ontology, a range of ontologies is identifiable in contemporary human rights discourse. These ontologies rub up and wrap around one another in the greater field that is human rights, thus what is meant by human rights in one context is not necessarily the same in another, what rights are, who can claim them, how those claims might be legitimised and how the existence (or not) of rights might be recognised and defended – all these are concepts that are in contention, forming a picture of human rights that is much less a panoramic view of the emergence of a now solid edifice and much more a montage of various narratives, ideas and so on. Human rights is not sustained by a single ontology and is not required to find an ontology to legitimise its claims, for it is sustained by the discursive processes in communicative activism which, in its various forms of contest and collaboration, of critique and consensus, is highly generative of new ways and means of describing rights and articulating rights claims.

Herbert (2002) proposes that the move to post-ontological, discursive conceptions of rights is analogous to postmodernist views that have come to prevalence in late-twentieth century. He cites Lyotard's deconstructive re-interpretation of the 1789 French Declaration of the Rights of Man and Citizen and Derrida's similar analysis of the American Declaration of Independence, outlining where they have explored the linguistic ambiguity in these key texts – chiefly those where the text uses *performative* phrase regimes ("We hold these truths to be self-evident: that all men are created equal") as the equivalent of a *prescriptive* phrase regime, such as 'people ought to treat one another equally'. He also outlines how Lyotard and Derrida suggested that such linguistic

ambiguity served to reinforce the exclusivity of these (and by inference later) human rights documents, firstly by being exclusionary by their very nature (there are always communities and peoples left out from under the banner of protection human rights documents proclaim, and communities and peoples upon whom behalf rights – or obligations – are proclaimed, but for whom these may be an unwelcome imposition) and secondly by invoking authorities (God, the people, 'all mankind') that create the illusion of timeless, universal applicability, and thus the sanctified, unalterable nature of these rights regimes.

Foucault expanded upon Derrida's and Lyotard's critiques, particularly the idea that rights exist as a proclamation of sovereignty and a manifestation of sovereign power, authorising a rights regime through the production of truth through power. What is right, and what are rights, in this sense, becomes that which are generated and legitimised through the hierarchies of (legal and social) power and control. Rights, in this form, are the products of, inseparable from, and contributors to, subjugation. Rights discourse is the production of truth through power, and these truths serve power. As for any possible re-thinking of rights to challenge (it being unthinkable to escape) these structures of domination, Foucault, as is noted in chapter one, is sketchy at best, suggesting "it is not towards the ancient right of sovereignty that one should turn, but towards the possibility of a new form of right, one which must indeed be anti-disciplinarian, but at the same time liberated from the principle of sovereignty" (Power/Knowledge, 108).

Amnesty International and others, he suggests, is a form of this new kind of right:

"We must reject the division of labour so often proposed to us: individuals can get indignant and talk; governments will

reflect and act. It's true that good governments appreciate the holy indignation of the governed, provided it remains lyrical. It think we need to be aware that very often it is those who govern who talk, who are capable only of talking, and want only to talk. Experience shows that one can and must refuse the theatrical role of pure and simple indignation that is proposed to us. Amnesty International, Terre des Hommes, Médecins du monde are initiatives that have created this new right – that of private individuals to effectively intervene in the sphere of international policy and strategy. The will of individuals must make room for itself in a reality of which of which governments have attempt to reserve a monopoly for themselves, that monopoly that we need to wrest from them little by little and day by day" (1984 / 2001: 475).

Considering the roles of NGOs such as those cited here by Foucault, it is valuable to consider also how Habermas has named Amnesty International and others as having significant roles in the production, resistance or legitimation of discourses in civil society:

Influence develops in the public sphere and becomes the object of struggle there. This struggle involves not only the political influence that has that has already been acquired (such as that enjoyed by experienced political leaders and officeholders, established parties, and well-known groups like Greenpeace and Amnesty International). The reputation of groups of persons and experts who have acquired their influence in special public spheres also comes into play (for example, the authority of religious leaders, the public visibility of literary figures and artists, the reputation of

scientists, and the popularity of sports figures and movie stars). For as soon as the public space has expanded beyond the context of simple interactions, a differentiation sets in among organisers, speakers, and hearers; arenas and galleries; stage and viewing space. The *actor's roles* that increasingly professionalise and multiply with organisational complexity and range of media are, of course, furnishing with unequal opportunities for exerting influence (1992/1996: 363-4)

It is worthwhile reflecting on how these two passages represent the convergences and distinctions between Habermasian and Foucauldian notions of human rights and the roles of NGOs, social movements and other actors in civil society. These are outlined in greater depth in chapter one but are briefly reprised here as an introduction to the next section – that of activists' rhetorical struggles for human rights and the prospects for communicative activism.

In these two passages, Habermas's and Foucault's views of activists and social movement organisations are distinct but similar; they come from different positions but are correlated. Both relate human rights to the actions of those who participate in human rights discourse, stressing that human rights are something to be struggled for, that a contest of ideas and political power takes place at the core of the generation of human rights. But they differ in a key idea: that of the source of the speakers' (in this case, the activists') legitimacy or validity. For Foucault, this source of legitimacy lies in the fact of the speaker *not* being a part of the structures of democratic or civil public life in the sense that they are not part of the structures of governance but are free to speak from, to an extent possible, outside these formal structures and from a position of that speaks to and in contention with these formal structures of power

and governance. For Habermas, the role that activists play is one that is shared with other actors who share a discursive arena where public communication is played out with the ultimate arbiter of public opinion being the public. For Foucault, then, activists are engaged in a form of *parresia* – an individual positioned to speak of truth to power; for Habermas, they are part of a community of discursive actors through which forms of governance are negotiated and contested.

This distinction is common in discussions of the tactics and strategies that movements and activists use in their pursuit of human rights goals. Parisi (2002), for example, outlines how sections of the Feminist movement have engaged in sustained debate over the best – the most appropriate or the most effective – forms of activism. For example, the First World Conference in Mexico in 1975, which both initiated the UN Decade on Women and heralded a new era of transnational women's activist networks, is seen as a time when different forms of feminist theory were shown to have guided feminist activism. In particular, two strategies were identified: gender mainstreaming, which "promotes collaboration between feminist NGOs, international institutions and state governments", and the politics of disengagement, which "rejects such collaboration and focuses on creating alternative organisations grounded in feminist praxis" (575). As these competing strategies continued to be employed by various actors within the broader women's rights movement, Parisi suggests, the relationships between larger international, more traditional and often liberally-minded human rights NGOs and more localised or radical feminist groups began to converge. More women's groups formed into NGOs, in part in order to meet the formal requirements for participation in United Nations conferences. Through participation in these conferences and by formalising their organisations to a degree required to satisfy procedural requirements, the women's rights movement began to look and act as if part of an

emerging global civil society. In return, human rights NGOs such as Human Rights Watch and Amnesty International took on women's rights to degrees that they would not have considered earlier. This required these NGOs to expand their views of human rights from first to second generation rights, and from human rights in the private sphere to those in the public sphere.

2.4 Forms of Human Rights Discourse in Civil Society / Non-Governmental Organisations

Examples such as that outlined above highlight how human rights discourse is generated through forms of contention and consensus-building both between various actors within civil society and social movements, and between these actors and other relevant parties: governments, international institutions, communities, non-state actors and so on. Exploring this further, Ely-Yamin (1993) identifies three forms of advocacy that human rights campaigners engage in. These are outlined here and will be further employed in the following chapter in developing a methodology for further analysing human rights NGOs employing the concept of communicative activism.

The first dimension of advocacy Ely Yamin (1993) outlines is the pursuit of human rights for individuals who have suffered violations. This may take various forms, including:

- the letter-writing campaigns that (although they have a heritage going back centuries) rose in prominence due to their employment by Amnesty International on behalf of 'prisoners of conscience' (a term coined by Amnesty International's founder, Peter Benenson) or those facing torture, or the death penalty, or indefinite and arbitrary detention, or forced return to a country where they face grave human rights violations;

- various forms of public petition to governments or parliaments on behalf of individuals who face or have endured human rights violations; and
- acting as a representative or advocate in court hearings, review tribunals or other legal proceedings on behalf of individuals in similarly fraught circumstances.

This dimension places advocates and campaigners, on one hand, in a form of contention with institutions and positions of power. This is most clearly evident when advocates operate within adversarial legal system on behalf of victims of human rights violations or those threatened with such, where the tactics and strategies employed are those of arguing a position in defence of those at risk, who may not be in a position to defend themselves having neither the skills nor the authority or status within that discursive environment. It is also apparent in the forms of public appeal, such as petitions, letter-writing campaigns (and their contemporary versions via postcards and email), in which proponents of human rights appeal (a) through the communication channels that have become part of the formal process of democracy and (b) on behalf of an individual at risk, (c) usually with reference to a wider set of proscribed standards, principally international human rights instruments or their expression in national laws. These appeals place the advocate in a less directly adversarial position, and may take the form of a request that a commitment to human rights, previously made, is kept. Although this may include an (implicit or overt) accusation that the interlocutor is infringing upon international or national law, it is essentially an appeal to those in power to engage with this form of communicative activism as an actor in a democratic process and to act in accordance with those agreements formed within the international community; it is therefore an communicative act that seeks at least agreement if not consensus.

The second dimension of advocacy, as outlined by Ely-Yamin (1995), is manifest where human rights NGOs seek to influence the frameworks in which human rights violations occur, such as when

“Amnesty International, Human Rights Watch, and other international nongovernmental organisations all attempt through their reports to identify causal factors as well as patterns of violations, and to make specific recommendations as to how the human rights record of a country may be improved” (649).

This form of advocacy sees campaigns intended to change the legal and institutional framework within which human rights are defended. Ely-Yamin emphasises the importance many human rights NGOs have placed upon the constructive of legal instruments which identify and name actions as human rights violations and codify their prohibition in law. The narrative typically used to outline how this type of advocacy is practiced begins with research into systematic human rights violations, which is published in the form of a detailed report. Recommendations either form part of the report or follow soon after, and include calls for governments to sign and ratify an existing international human rights instrument, or to support the development of a new treaty, covenant, convention or protocol. This is in part an appeal based on seeking agreements that lead to new forms of international cooperation between nation-states. But it can employ other communicative forms, including strategic communication that emphasise individual interest, such as that outlined by Schulz (2002) above, or in national or (in the language of international relations) strategic interests. In these appeals to the concerns of those in positions of power or privilege, asking them to accede to popular demands, this form of advocacy may be criticised as

failing to address those forms of power that had contributed to human rights violations in the first place.

The third dimension of advocacy considers how human rights NGOs might contribute to the empowerment of individuals and groups through the development of a 'critical consciousness'. In this respect, Ely-Yamin (1993) marks an important distinction between forms and purposes of human rights education as, on one hand, a course that introduces international human rights law and its uses and, on the other hand, a program which introduces human rights as a critical framework through which students can examine the society of which they are a part.

The first of these:

"marginalises the subject of human rights *a priori*, teaching it only to a select, and often already converted, group of students. The goal of this form of human rights education is to familiarise students with the legal guarantees that are available to them in the international system" (652).

Although this takes place mostly in higher education or similar institutions, Ely-Yamin notes the efforts to take knowledge of human rights instruments and the capacity to engage them as a method of securing rights or seeking redress to marginalised groups such as prisoners and indigenous peoples, a process referred to as 'capacitation' in some Latin American nations. While this type of human rights education does engage in changing the forms of political discourse and legal power available, "no discussion of the theoretical underpinnings of human rights comes into play in these programs that might shape people's consciousness" (653).

The second form of human rights education takes a more critical view of human rights and a more radical view of pedagogy. It speaks to Lukes' (1974) third form of power, which asserts that power can act to shape the way we view the world, leading to an acceptance of the way things are. This form of power, Ely-Yamin (1993) notes, can be generated through "'creating a consensus' not through the mobilisation of a systematic bias such as a one party system, but through faith or ideology" (654). Ely-Yamin supports a program of human rights education that explicitly challenges this form of power, suggesting that "human rights advocacy must identify and restrain this insidious form of control as well as the more obvious ones" (655). This lends itself to forms of communicative activism that are critical in the sense that they interrogate current social and political normative discourses but also have the potential for new forms of consensus building among the disenfranchised through the process of empowerment and coalition building. It is a view full of creative possibilities – the capability for new discourses of human rights, new sites of engagement or confrontation, and new individual or group identities that are framed therein. Importantly, these arise from moments of communication, both critical and consensual. Echoing the argument that Habermasian and Foucauldian views on discourse and communication have much in common in that they both depend upon the notion of intertextual or interdiscursive generation of meaning and knowledge, the suggestion here is that these forms of advocacy can be seen as variants of a form of communicative activism wherein sites of communication between or among stakeholders ('friends' or 'foes' or 'others') are foregrounded as sites of activism. This emphasises to NGOs and other engaged in human rights activism are, to a significant degree, engaged in acts of communication which, in turn, highlights the need for human rights NGOs to consider their position in relation to those with whom they are communicating and the extent to which the forms of communication they

employ, and the language they use to communicate, are appropriate. (In the language of contemporary public relations, this might be referred to as considering an organisation's key messages and the media or methods used to communicate with its stakeholders or publics.)

What becomes apparent therefore is the need to consider the communicative environment in which human rights NGOs operate and the actors that are contained in and make up this environment, as well as the communicative strategies and tactics that are used by activists. How this might be further examined is the subject of the following chapter.

2.4 Conclusion

A genealogical exploration of human rights discourses shows a number of significant aspects about the nature and origins of human rights. Firstly, it demonstrates that the grand meta-narratives of previous eras – religious morality, secular humanist rationality – are powerful yet unsustainable ontological bases for human rights. Religions, though clearly remains an important means of defining modes of moral action and purpose for many people but divisions between and within religions mean that faith-based understandings of human rights have not provided a common ontology. Moreover, rationalism and the rise of scientific positivism, as well as secular humanism, succeeded – at least partially – in challenging the religious worldview. The philosophies and politics of the enlightenment provided new understandings of the self – the individual, rational human subject – and led to new forms of political structure, including the nation-state legitimised through forms of popular sovereignty. Both the potential of rationalism and the sovereign nation-state were demonstrably de-legitimised through the practices of colonialism and the brutal efficiency of the gulags and the Holocaust.

Loss of faith in the sacred was therefore followed by a loss of faith in human morality – neither was seen to be a sufficient basis for human rights when the post World War Two age of human rights. One result of this is that the legal instruments that are now considered to be the basis for international human rights lack a shared philosophical foundation. Instead, the basis for their legitimacy, in a legal positivistic sense, lies in the forms of political communication that engendered and the political structures that sustain them, namely, the nation-states that sign, ratify and implement them. The implications of this are stark: the same set of principles that were in part espoused in order to limit the power of governments over their subjects have in fact re-established the authority of states over people.

This, at least, would be the case were human rights confined to international law. But, as the discussion about post-ontological human rights demonstrates, there is a wide variety of approaches, understandings, and purposes to human rights. This heterogeneity of human rights discourse and practice destabilises human rights. Yet, it also generates productive tensions between discourses, processes of contestation and negotiation between views of human rights – including those who for whom human rights are not a priority, or those who see human rights as a threat to their authority.

These processes, we suggest, can be meaningfully explored though considering them as forms of communicative activism. By recognising from historical and contemporary discussions that human rights are incomplete and imperfect, and likely never to be complete and perfect, a communicative activism approach to repositions human rights as a site of dynamic production of new knowledge. The critical aspects of concept of communicative activism foreground rather than understate the

political character of the inter-discursive production of human rights. The following chapter considers how communicative activism might be employed to investigate and analyse forms of human rights discourse and the political structures that limit and sustain them.

3. Operationalising Communicative Activism – methodology and indicative case study

3.1 Introduction

The research strategy, methods and tools introduced here are proposed as means of operationalising the concept of communicative activism as an analytical tool, paying particular attention to the notions of human rights discourse through contest and consensus, as informed by the work of Habermas and Foucault. This methodological discussion acts as the third of a triangulation of conceptual approaches to communicative activism, considered alongside the theoretical and genealogical accounts in the previous two chapters.

Already we have seen that these forms of discourse have been observed throughout the history of human rights and the human rights movement. Furthermore, in current and recent literature on human rights discourse, we can observe that in the post-ontological era of human rights, the notions of discursive contest and consensus move to centre stage. There are also indications that NGOs themselves regularly resort to discussion about the strategic benefits and ethical propriety of various discursive strategies when asking questions of themselves (and others) of how to effectively act in order to achieve human rights goals.

In this chapter, a methodology is proposed through which these discursive discussions and debates can be further explored. The chapter begins with an introduction to the subject of the case study and a rationale for this choice, before discussions of the methods used, namely case studies, the uses of texts, and discourse analysis.

The chapter concludes with a discussion of the research methodology, some consideration of the limitations of this approach and some recommendations for further study in this area. This leads into the subsequent, final chapter where the findings of this case study are included in a summation of the implications of the concept of communicative activism for actors in the human rights movement including NGOs, and for actors in civil society in general.

It should be noted from the outset that the focus of this chapter is the methodological approach to communicative activism. As a study of Amnesty International, the findings are indicative but not conclusive. The implications for other NGOs and actors in civil society are suggestive and to some degree provocative, but need to be read with caution. It is however claimed that the methodology proposed highlights how the concept of communicative activism might be usefully employed in further studies to analyse specific NGOs communications strategies, with productive results that might enhance understandings of those NGOs and human rights activism in general.

3.2 Case Studies

The research method proposed is a case study of Amnesty International, employing forms of discourse analysis to probe suggestively into Amnesty International's public communications strategies and tactics. Case study research can be used as a method to develop and test theory in ways that contribute to a theory's relevance and validity, as well as demonstrating a theory's viability (Bryman, 2004; Burnham et. al, 2004; Eisenhardt, 1989; Yin 2003). Burnham et. al. (2004) argue that the role of theory is crucial for case study research: "In order to have a wider impact than that of merely being a detailed account of a unique case, a strong theoretical dimension is often incorporated into case study design. A good example of this is the critical case study. Here the researcher has

a clearly defined hypothesis or theory to test and the case study is designed so that wider generalisations can be drawn" (54). Yin (2003) lists other examples where a single case study may be appropriate, including where the case is extreme or unique, representative or typical, and "revelatory" – where a researcher obtains special access to a previously inaccessible phenomenon (39-42).

Case studies can be employed to form grounded theories, using inductive reasoning and applying it to a deep analysis of a particular individual, organisation or location, and case studies can be used to test theories formed using deductive reasoning. Bryman (2004) suggests that the broad research methods chosen usually dictates the form of reasoning used or tested: "When the predominant research strategy is qualitative, a case study tends to take an inductive approach to the relationship between theory and researching; if a predominately quantitative strategy is taken, it tends to be deductive" (50).

Bryman adds that, for such a study, "the case study is an object of interest in its own right and the researcher aims to provide an in-depth elucidation of it" (50), suggesting that the subject of the study itself requires greater attention than simply as the source of data which challenges or supports a pre-existing theory, or suggests a new theory. However, Burnham et.al caution that "even in descriptive case studies there must be a focus for the research so that it does not become a haphazard collection of material about the selected case study" (54).

Yin (2003) also emphasises the importance of theory for case study research, and stresses that there can be various forms of case study – exploratory, descriptive, or explanatory – that utilise various methods of case study analysis, dependant upon the types of questions they are

considering, with 'how' and 'why' questions lending themselves to more explanatory analyses (5-6).

In the case study proposed, the theory to be applied as the focus for the research, and to be tested by the data collected, has been clearly outlined in the previous chapters. The types of questions asked, as seen below, lend themselves to explanatory analyses as the key concerns are how the organisation in question communicates and why. As to judging whether or not this is a valid research design, Yin (2003) offers the following criteria: external validity, replication, construct validity and internal validity (33-39).

External validity is a concern raised by critics of case study design who doubt that a single case study can be usefully used to demonstrate the applicability of a theory more broadly, and suggesting that survey research is more reliable in this regard. However, this comparison between survey and case study research is an invalid one, as "survey research relies on statistical generalisation, whereas case studies...rely on analytical generalisation ...[where]...the investigator is striving to generalise a particular set of results to some broader theory" (Yin, 2003: 37). This concern can therefore be safely addressed if the theoretical foundations for the research are secure, and if the study can be replicated. In order to enable the possibility for such replication, it is recommended that the research methods be documented in such a way as to enable a repeat of the research sufficient to test the results of the initial case study. This chapter should therefore be read, in part, as such a document.

The method of analysis used is referred to in Yin (2003) as explanation building analysis, where the goal is to build an explanation about a case,

“not to conclude a study but to develop further ideas about it” (120), as befits an explanatory case study.

3.3 The Research Subject – Amnesty International

As a subject of research, Amnesty International provides a number of opportunities and challenges for research in general and this research in particular. Since its launch in London in 1961 as a campaign for six prisoners of conscience, it has expanded formally into over 60 countries and has reported on human rights in every nation in the world. It has grown to now count its membership or support base in the millions. It has developed its mandate in response to changes in the human rights framework to include campaigns against the death penalty, torture, gender-based violence and human rights violations in the context of economically exploitative nations and international systems, and working (to some degree) for human rights for refugees, for environmental activists, and for people subject to heterosexism. It was awarded the Nobel Peace Prize in 1977 and has been lauded by governments, international organisations and members of civil society for its work. Its famous symbol of a candle wrapped in barbed wire has become one of the human rights’ movement’s most recognisable and enduring images. It has also accumulated significant resources, with multi-million dollar budgets, hundreds of staff and offices in over 60 countries. It has also been the subject of academic critique and criticism from various sectors of society: governments that have been subjects of Amnesty International reports; voices within public political debate that dispute its role in representative democracy; and those who read it as playing a significant cultural and economic role in the neo-colonial empire (Hardt and Negri, 2000; Petras and Veltmeyer, 2001).

There are reasonable grounds for suggesting that Amnesty International is representative of a certain part of the post-world war two human

rights movement. Amnesty International is regarded as the one of the world's most prominent international human rights NGOs. Together with its US-based counterpart, Human Rights Watch, there are numerous studies into its purpose, methods, impacts and influence of international human rights NGOs (Mutua, 2001; Falk, 2004) including some that focus extensively or exclusively on Amnesty International (Clark, 2001; Power, 2001; Winston, 2001; Rabben, 2001). Indeed, Amnesty International has been referred to as an example of a form of civil society organisation or a 'New Social Movement' by both Habermas (1992/1996: 363) and Foucault (1984/1994: 474-5). In brief, there is ample evidence to suggest that Amnesty International is significant enough to warrant academic study and to be treated as representative of a certain aspect of the international human rights movement, and of an actor in public political discourse.

In this sense, Amnesty International can be regarded in some ways as *structurally* representative of an aspect of the human rights movement that inhabits and forms global civil society, mediating between human rights discourse at a global level with struggles for human rights that take place in localised, specific contexts. It operates transnationally, linking networks of individuals and groups (organised locally or through communicative fields into groups of interest or speciality, such as lawyers or students) with each other, with others in similar local, national and international organisations, with forms of regional and global governance including of course the relevant United Nations bodies such as United Nations Commissioner for Human Rights and the International Criminal Court.

Amnesty International is also representative of the formalised and bureaucratic structures that characterise many international NGOs (human rights focussed or otherwise). Headquartered in London, its

historical birthplace, the International Secretariat stands at the hub of the organisation's networks, the central location of the organisation's administration and of Amnesty International's research staff, although attempts have been made to decentralise the Secretariat's functions, establishing regional offices. However, most of Amnesty International's organisation is structured through a network of national Sections or Structures⁷, which in turn are organised into smaller units that vary in size and complexity from state-based regional offices (in Australia - not all Sections have these) to local groups based on a small number of members that meet regularly and run events and activities locally. The various lines of communication and accountability mean that all Amnesty International members, groups, networks, Structures or Sections are linked back to the International Secretariat and rely upon it for the bulk of their campaigning information, although Sections take on the lead role in producing locally-adapted campaigning materials, developed from material provided by or approved by the International Secretariat. Sections also form the basis of Amnesty International's main body of governance: the International Council is made up of representatives elected or appointed by each Section in accordance with the number of members and groups that Section has. The International Council meets bi-annually to discuss and decide on matters relating to most aspects of Amnesty International's governance, its mandate, and its organisational goals. At this meeting also, the International Executive Committee is elected; this committee is the peak international body that governs the affairs of the organisation throughout the interim period between meetings.

While this particular governance structure may vary to greater or lesser degrees from other human rights NGOs, and, specifically, the role and

⁷ The difference between a Section and a Structure is a formal distinction made by the organization: Structures are normally emerging nationally-based organizational nodes that eventually become Sections once certain criteria are met.

extent that its wide membership of the organisation can have in its governance and decision-making processes may be greater than, for example, Human Rights Watch or the International Commission of Jurists, the fact remains that its methods of organising create structures of hierarchy and bureaucracy that are comparable to, if not precisely representative of, other human rights NGOs and other actors in civil society.

Amnesty International is also *methodologically* representative, exhibiting many of the forms of human rights activism now associated with human rights NGOs. Its now famous letter-writing campaigns combine with other forms of direct advocacy, including formal submissions to governments, parliaments and sub-governmental bodies such as national human rights commissions. These are combined with campaigning methods that are variously referred to as outreach, publicity or informal human rights education – these include activities such as: providing speakers for schools, universities, religious groups, unions, community groups and business groups; working in and with the press to promote coverage of human rights issues (and attempts by the organisation to address them) via the mass media, producing reports, pamphlets, advertisements, websites and other forms of mass communication for distribution through its membership and supporter networks and beyond, and so on.

Therefore, Amnesty International is an organisation that demonstrates how important forms of communication are for its existence, its growth and its success. As a result of all these forms of communicative practices, Amnesty International itself can be seen as a discursively generated actor in civil society. This makes the modes of discourse that are employed in the generation of Amnesty International are crucial in the understanding of how human rights – or, at least Amnesty

International's version of human rights – are themselves discursively generated.

But Amnesty International can also be seen as being *ideologically* representative of a part of civil society and of the human rights movement that shares a heritage steeped in liberal democratic traditions, a membership that in a large part represents western liberal and cosmopolitan norms (and a support base and an organisational structure and internal politics that professes democratic principles at the same time as it struggles to make itself more relevant to (and representative of) constituencies of support for human rights that are based in the global South. In this sense, Amnesty International represents an area of productive contention between various ideological discourses of human rights and civil society, a site (to a degree that will be considered below) of critical communicative praxis.

Finally, there are some practical reasons for choosing AIA as a case study subject. Access to organisational documents and to key interview subjects was made more likely by the researcher's long-standing and close relationship with AIA. This relationship lends itself to research methods associated with participant observation and action research, and related issues of research ethics and objectivity.

3.4 Document and Archival Analysis

The use of documents in case study research requires, initially, consideration of the authenticity, credibility and representativeness of the documents in question before addressing the manner of how meaning can be drawn from these sources of data.

In considering these criteria, May (1997, 157-171) firstly classifies documents as being either primary, secondary or tertiary sources, the first of these being recorded by someone directly involved and in close temporal and spatial proximity to the events described or the matters discussed, the second being written at least 'one step removed' – at some distance in time and with less direct involvement – and the third being sources designed to enable other sources to be found, such as indexes or bibliographies. Burnham et. al. (2004) suggests that “[o]nce equipped with a rudimentary understanding of how documentary sources are classified, the aim of the serious researcher will be to attempt to work with as many primary documents as possible” and that “the essence of a primary document...is that it is not written with a view to inform historians or political scientists” (166). With this in mind, Burnham et.al. (2004) stress the importance of considering the credibility (“the conditions under which the document was produced and material interests that may have driven the author to write the document” [p.186]) and representativeness (“researchers should be sure that the documents consulted are ‘representative of the totality of relevant documents’” [citing Scott, 1990 at 187]) of the documents in question. Both May and Scott (1990) also emphasise taking account of the purpose of the documents when drawing conclusions about their authenticity, credibility and representativeness. In this regard, Scott classifies documents by authorship (either private, official-private and official-state) and access (either closed, closed, restricted, open archival or open published) (pp. 19-35).

The access and purpose of the documents consulted was an important consideration firstly in their selection, then in the forms of analysis employed and in the limits of this approach. In this regard, the documents were either open-archival (such as records of organisational governance, decision-making and policy development) or open-published

(such as media releases, promotional and fundraising material). As such, they can be analysed to explore how notions of human rights are generated through forms of (mostly) public discourse.

3.5 Discourse Analysis – genre, vocabulary, narrative

The texts used in this study have been scrutinised individually (with attention paid to their vocabulary and narrative structure), regarded together in networks of texts, categorised according to genre and as genre 'chains' (Fairclough, 2003) or genre 'families' (Martin and Rose, 2003) in order to outline how the discourses of human rights and civil society are constructed and represented within Amnesty International. As outlined in the earlier chapters, there is a rich body of theoretical and philosophical work to be drawn from when regarding the natures and functions of various discursive practices, including the discourses of human rights and civil society, such as the work of Habermas and Foucault.

To briefly reiterate, Habermasian views lead to a view of discursive practices in which knowledge, meaning and discursive and social actions are (potentially) constructed through the ongoing processes that Habermas calls communicative rationality. Foucauldian approaches articulate a view which is often seen to be countervailing, namely that discourse are generated by and through (and generate) systems of power/knowledge, which exercise forms of surveillance and control and at the same time establishing frameworks against which subversive discourses can emerge. The forms of intertextual relationships that both Habermas and Foucault imply are, I suggest, coexisting and interdependent forms of discursive practice that I am calling communicative activism.

Fairclough (2003) suggests also that discourses emerge from and in a number of relationships:

“Different discourses are different perspectives on the world, and they are associated with the different relations people have to the world, which in turn depends on their position in the world, their social and personal identities, and the social relationships in which they stand to other people. Discourses not only represent the world as it is (or rather is seen to be), they are also projective, imaginaries, representing possible worlds which are different from the actual world, and tied in to prospects to change the world in particular directions. The relationships between different discourses are one element of the relationships between different people – they may complement one another, compete with one another, one can dominate others, and so forth. Discourses constitute part of the resources which people deploy in relating to one another – keeping separate from one another, cooperating, competing, dominating – and in seeking to change the ways in which they relate to one another (124)

Fairclough here outlines how the study of discourses and the relationships between forms of discourse represent one element of the various relationships in social life, including those of exclusion, competition, domination and cooperation. The parallels with the intertextuality of Habermasian and Foucauldian ‘discourses on discourse’ are clear, including the focus on language as discourse, as a means of presenting, representing, re-imagining and reshaping the social world, as

a means of relating the public sphere with the lifeworld (in Habermasian terms) and as relating the structures of power/knowledge (in Foucauldian terms) to the social worlds rendered therein.

In considering the documents, the use of forms of genre, vocabulary, and narrative are noted, examined and interpreted as demonstrating forms of discursive practice. The use of genre to examine texts is historically located in film studies, media studies, cultural studies and the like (Fairclough, 2003: 25). At its most elemental, genre is used to classify documents and texts according to type through the description of its contents. "Certain document types constitute – to use a literary analogy – *genres*" suggest Atkinson and Coffey (2004), "with distinctive styles and conventions. These are often marked by quite distinctive uses of linguistic *register*: that is, the specialized use of language associated with some particular domain of everyday life" (59). The documents were classified as belonging to at least one (but often more) of the genres of promotion, advocacy, and governance, and the genres of human rights, civil society or organisational communication as set out in table 4.1.

Table 4.1 Genres in human rights NGO communicative activism

- addressing individual cases,
- promotion of human rights standards
- promotion of a critical consciousness

Going beyond description, Martin and Rose (2003) suggest that genres are also purposeful, "a staged, goal-orientated social process. Social because we participate in genres with other people; goal-orientated because we use genres to get things done; staged because it usually

takes us a few steps to reach our goals" (7-8). In this sense, the texts examined were interpreted in light of their purpose, a summary of which is provided in table 4.2.

Table 4.2 Some genres and goals in human rights NGO communicative activism

Some Genres	Goal
First: addressing individual cases	To investigate and bring to light cases where individuals are subject to prescribed human rights violations in order that these individuals are no longer subject to these violations
Second: promoting human rights standards	To identify the structural causes of human rights violations in order to change the systems within which human rights violations occur, including legal and political structures, and To engage in public discourse about human rights in order to highlight human rights standards and their <i>de facto</i> protection in accordance with agreed standards.

<p>Third: developing critical consciousness</p>	<p>To develop human rights as a critical discourse, and To empower people to engage in communicative activism.</p>
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These genres were formed in relation to the discussions of human rights NGOs by Ely-Yamin. They are not proffered here as exhausting the range of genres that may exist within human rights discourse, however it is suggested that they are representative of a significant range of activities – or communicative tactics – employed by human rights NGOs. These genres should therefore be considered as ways of ordering or framing forms of human rights discourse but also, Following Fairclough (2003), it is noted that some of these formed “genre chains” (30) whereby a subject or event moves from one genre to another, shifting discourses along the way. For example, to cite a typical pattern, a published report on an individual prisoner of conscience may initially be seen as a form of human rights advocacy, later to be used in different documents as an example case in human rights promotional materials, and in promotion of the organisation and of civil society more broadly. Also, the same document can commonly contain elements of more than one genre: Annual Reports frequently promote organisations and are part of an accountability regime.

It is possible to further this exploration of human rights discourse in Amnesty International by examining in greater detail the content in texts. Content analysis is typically viewed as a “method for describing and interpreting the artefacts of a society or social group” (Marshall and Rosman, 1999: 117). This is, perhaps inevitably, selective, as examinations are often conducted by researchers to explore texts to test

aspects of theory, beginning by “delineating certain dimensions or aspects of text for analysis, and ... making a choice – subjective, albeit generally informed by the theoretical framework and ideas which circumscribes his or her research – and indicating that the dimensions chosen for analysis are the important or significant aspects to look at” (Hansen et. al., 1998: 95).

Hansen et. al. (1998) outline how since early studies in qualitative semantics there has been a ongoing interest in “the symbolic meaning of words...focused on the quantitative analysis of key symbols (such as ‘liberty’, ‘freedom’, ‘authority’)...and their uses in texts” (p.113). In the lexicon of human rights and civil society, these terms – liberty, freedom, authority, are signifiers of note, as are many, many others. For the purposes of this study, a lexicon of significant terms was developed through an analysis of the selected texts. These words were identified as being significant according to how they represented Amnesty International within the framework of communicative activism as outlined in chapter one. In doing this, it is recognised and highlighted that choices made in selection of vocabulary (or genre, or narrative) are “never neutral: the choice of one word rather than another to express more or less the same meaning, or to denote the same referent, may signal the opinions, emotions, or social position of a speaker” (Van Dijk, 1991: 53 quoted in Hansen et. al. at 113). That is to say that the choice of certain lexical sets - of cosmopolitan liberalism, of corporate governance, of speaking truth to power, of ‘conspicuous compassion’, of universalism, of individual contribution (‘making a difference’), of international law, and so on – may all be seen in part as indicative of the position taken (and the positions not taken) by Amnesty International.

In a similar vein, the way these typological sets are employed to form narratives (within genres) can point to how Amnesty International seeks

to represent itself, its views on human rights and its role in civil society. This inquiry into organisational narratives goes further than, as Marshall and Rosman (1999) suggest, the assumption “that people’s realities are constructed through narrating their stories” (122). It understands that “the unfolding of narrative is far from being accidental or natural, rather, it is the result of information being manipulated, edited and released for specific narrative purposes...temporal and spatial relations are directed towards the logical narrative sequence of cause and effect, rupture and remedy, enigma and resolution” (Hansen et al, 1998: 155).

In some ways, then, these analyses of genre, vocabulary and narrative are read as expressions of authorial intent on the part of the organisation and, as such, clearly certain caveats apply. Firstly, making any assumptions about intent requires clarification that the process is necessarily interpretive. Secondly, the mere fact that Amnesty International may intend for its use of certain language to have a certain effect does not suggest that they will be, in fact, successful in achieving this aim. Texts, of course, exist in contexts and have subtexts – discourses are not generated, resisted, reproduced or transformed in isolation, and discourses can be tactically re-employed (or co-opted) by other actors in the public sphere to alter their meanings and the ways in which they (perhaps malevolently) generate counter-discourses. Therefore, the lexical set that Amnesty International privileges and presents as a matter of considered choice speaks to the decisions that organisation has made with regards to how it constitutes human rights and its role in civil society – but one that cannot be considered in isolation from the discursive (and political, and economic) environments that produce or promote such lexical sets. As Fairclough (2003) suggests:

“The most obvious distinguishing features of a discourse are likely to be features of vocabulary – discourses ‘word’ or ‘lexicalize’ the world in particular ways. But rather than just focusing atomistically on different ways of wording the same aspects of the world, it is more productive to focus on how different discourses structure the world differently, and therefore on semantic relationships between worlds.”
(129)

In the next section, this methodology is partially applied using an indicative case study. Before this, however, some attention ought to be given to one other aspect of such an analysis – the motivation and risks of potential bias inherent in such an interpretive method. Yin (2003) for example, suggests a “test of this possible bias is the degree to which you are open to contrary findings. For example, researchers studying ‘nonprofit’ organisations may be surprised to find that many of these organisations have entrepreneurial and capitalistic motives” (62). The approach taken here therefore has certain (to refrain from calling them biases) motivating factors that are here outlined:

1. Firstly, and most importantly, these documents are analysed in order to explore methodological approaches to ‘communicative activism’.
2. Secondly, the analysis is partial and indicative.
3. However, in undertaking such an analysis, certain implications for human rights NGOs and Amnesty International in particular, become apparent and are therefore subject to discussion. In this sense, the third motivating factor ought to be reiterated from the introduction – namely, an intention to critically examine how NGOs operate discursively in order to provide such organisations (and

other actors within civil society and the human rights movement) with analytical tools to better understand their roles in the discursive environments they operate in.

4. This implies that NGOs, including Amnesty International, are not currently doing this, or doing this sufficiently. This suggestion is not one that will be refuted here. Instead, a fourth motivating factor is offered instead: a desire to be provocative, to suggest change is required or at least that the current levels and methods of critical reflection undertaken by the organisations are insufficient – and that this method may be one way to address this.

3.6 Description and Discussion of human rights discourses in Amnesty International

In employing forms of critical discourse analysis to examine communicative activism in Amnesty International, three sets of documents were considered, representing the three genres in human rights discourse. Each of these in turn are described and discussed in terms of the vocabulary (especially tone and register) and (overt or implied) narratives, their communicative relationships with other texts, genres and discourses and, finally, how they contribute to a distinct meta-narrative of human rights that contains some, but importantly not all, of the genres of human rights communicative activism outlined above.

Letter-writing campaigns: Individual Advocacy for Individuals

In the first genre, approaching individual cases, examples include regular letter-writing appeals on behalf of long-standing prisoners of conscience, or those facing the death penalty or at risk of torture. These are a very common form of communicative activism in Amnesty International and have been so from the initiation of the original 'Appeal for Amnesty, 1961' (Benenson, 1961) in which people were asked to write to political

leaders of behalf of six prisoners of conscience, to ask for their release or for a prompt and fair trial. They are often supported by high-level lobbying by senior figures within the organization, such as the Secretary General or a Section President. This form of communicative activism, as Rabben (2001) notes, was by no means pioneered by Amnesty International; rather, petitioning leaders on behalf of others who are prevented from speaking on their own behalf (or whose pleas are ignored) has a rich heritage and, in the form of a written letter, can be traced as least as far back as Bartolomé de Las Casas's 16th century campaigns. Neither is this type of activism in any way undertaken exclusively by Amnesty International – Human Rights Watch, the Asian Centre for Human Rights and others use more or less the same campaign tactic. Nevertheless, the letter-writing campaign has become closely associated with Amnesty International, which has expanded the range of letter writing forms to include Urgent Actions (which, as the name suggests, require immediate communication on behalf of someone who faces imminent danger), fax campaigns, email campaigns and so on. It is important to note that not all letter-writing appeals on behalf of individuals or even small groups. There are rare occasions where an entire population has been deemed to be at risk, such as in East Timor in the wake of the ballot regarding self-determination in 1999 (Amnesty International, 1999). More common, however, are letter-writing appeals that call for changes in government policy or the implementation of an international agreement, such as calls for governments to ratify the Rome Statute of the International Criminal Court (see, for example, Amnesty International (2004b) as a recent example – in this case an appeal to the Jamaican Government). These are, however, engaged in addressing legislative and legal frameworks that make up national commitments to the international human rights regime, and as such are closer to the second genre.

There are usually two communication processes undertaken in any letter-writing appeal: the first is from the organization to the member or potential letter writer; the second is from the letter-writer to the addressee/s. In the first, the emphasis is on the individual at risk, their professional or cultural background, and the forms of human rights abuses they are enduring. These are often accompanied, where possible, by photographs of them and, at times, their families (see Figure 3.1).

Figure 3.1 Letter Writing Appeal (adapted from Amnesty International, 2005b)

China: release "Re-education through Labour" prisoner of conscience

Mao Hengfeng is currently held in an RTL facility in Shanghai. She has petitioned the state authorities for many years over her coerced abortion, her right to work, and other basic rights. In April 2004 she was sentenced to 18 months RTL by the Shanghai Municipal Public Security Bureau.

Mao Hengfeng has reportedly been subjected to torture and ill-treatment in the labour camp. In October 2004, she was suspended from a ceiling and severely beaten. In November 2004 her wrists and ankles were bound with leather straps and her limbs pulled in opposite directions. This continued for two days, during which time she was also denied food.

Her refusal to confess to any "wrongdoing", even under torture, appears to have influenced a decision in December 2004 to increase her original sentence by three months.

Subsequently she has reportedly been held in solitary confinement for short periods, and strapped down on her bed for hours on end. It is also reported that she has been force-fed with an unidentified substance that is turning her mouth black.

Take action!

Amnesty International considers Mao Hengfeng a prisoner of conscience and is calling for her immediate and unconditional release.

Amnesty International is also urging the Chinese authorities to abolish RTL altogether, as the formal criminal justice system already provides a sufficient basis to punish a broad range of minor offences.

The direct appeal has the effect of personalising the individual in question. It identifies them as a human rights activist in grave peril, or a person who requires saving. Therefore the relationship between the letter writer and the 'victim'⁸ is established as one in which the letter writer is removed, and at some distance from, the victim, whose identity is constructed through the human rights violation she is enduring. Also, the letter writer is presented as potentially active – in a position to 'Take Action!' – while the 'victim' is disenfranchised and in need of the letter writer's support, setting up a narrative in which the letter writer takes up this request and, out of sense of personal motivation, acts on behalf of a hapless and largely unknown 'victim' by petitioning their authorities on their behalf.

The vocabulary employed in the actual letters is formal and precise, using the polite tones of international diplomacy. An obvious indicator of this is the insistence on the use of formal salutation and honorific regarding the addressee; others include the formal and polite tone signalling the clear distance and lack of familiarity, in the relationship between the letter writer and the addressee.

By employing a formal register, Amnesty International is signalling to the addressees (and to those that write the letters) that it is important to demonstrate respect, even deference, for those in positions of authority. Also, and in related fashion, the narrative implied in relies on a set of deferential attitudes towards existing power structures. This narrative begins with a protagonist (the writer) bringing to the attention of the antagonist (the addressee) the fact that they are in a position to prevent

⁸ This term is used with reluctance but serves to highlight the apparent active and passive positions of the letter writer and the individual at risk outlined in the discussion.

a third person from suffering ongoing human rights violations. The narrative continues by contrasting this present, unacceptable position with that outlined under international human rights law and requesting that this be resolved. The end of the story is undisclosed, but is driven by the tension between the authoritative antagonist's two possible choices: either to comply, and therefore submit to, or concede, or at least recognise the authority of human rights and the protagonist's right to present this polite challenge to his position; or to ignore or refute these claims and reassert their own position of power as superseding those of the claimants. In a way, this is a kind of discursive game played between the addressee and the writer – on one hand, they agree to respect each others positions in a power structure (that of supplicant and authority) and on the other hand, there is an implied mutual respect for the 'civilised' discourse of both human rights and the appeal letter. This forms a kind of consensus about their respective roles that differs from the ideal contained in Habermasian communicative activism in that there is a clear power imbalance. Likewise, the form of critique employed in these circumstances is hardly Foucauldian, for the power structures in play are not exposed as such but, rather, are allowed to remain hidden.

Individual appeals take place in competitive discursive environments. The competition is played out between the rival authorial narratives of international human rights and an individual leaders' authority (buttressed by the discourse of sovereignty, often legitimised through discourses of democracy). Or, viewed through a Habermasian lens, this context becomes one where convincing argument reigns and where agreement is sought based upon shared principles. Where the first of these may be characterised (or caricatured) as Machievallian but valuable for highlighting the ubiquity of power structures, the second may be accused of being idealistic but valuable for demonstrating why NGOs undertake these approaches. As stated in the first chapter on

Habermas and Foucault, it is contended here that while neither of these approaches are without criticism, both of these approaches can be complementarily applied to highlight that what is happening when NGOs engage in these appeals is a process of communication. This opens up rich areas of analysis and discussion, particularly when considered as part of inter-textual and inter-discursive sites of production of human rights power/knowledge and when placed in relationship with the other communication forms that form the 'genre-chains' to which Fairclough (2003) refers. The clearest of the links formed in these chains is between the first and second genres, that is, between individual advocacy and calls for systematic reform – in Amnesty International's case, between letter-writing and its report-based campaigns.

Country and Theme Reports: Calling for Systematic Reform

Although Amnesty International is historically associated with its individual letter writing appeals, the second genre - promoting international human rights standards – rivals the first (both of which, as we will see, dwarf the third) as a core communicative activity of the organization. This is clearly so in the Statute of the organization, which outlines its methods as:

AMNESTY INTERNATIONAL addresses governments, intergovernmental organizations, armed political groups, companies and other non-state actors.

AMNESTY INTERNATIONAL seeks to disclose human rights abuses accurately, quickly and persistently. It systematically and impartially researches the facts of individual cases and patterns of human rights abuses. These

findings are publicized, and members, supporters and staff mobilize public pressure on governments and others to stop the abuses.

In addition to its work on specific abuses of human rights, AMNESTY INTERNATIONAL urges all governments to observe the rule of law, and to ratify and implement human rights standards; it carries out a wide range of human rights educational activities; and it encourages intergovernmental organizations, individuals, and all organs of society to support and respect human rights (Amnesty International 2003).

It is important to note who Amnesty International explicitly outlines in its methods that it addresses – not people, either the potential or actual constituency of supporters for human rights, or the disenfranchised, the forgotten or the ‘wretched of the earth’ (Fanon, 1967). Rather, the ‘key targets’ for much of this communicative activity are “governments, intergovernmental organizations, armed political groups, companies and other non-state actors”, and the ‘key messages’ are calls for respect for and compliance with international human rights law. Predominantly, this second genre carries these messages through reports that outline systematic human rights abuses and recommend plans for addressing them. (Although it also includes briefing papers for those involved in negotiations at the United Nations and other relevant international forums, and other high-level approaches similar to those mentioned in relation to individual cases).

These reports have become an integral part of the role Amnesty International plays in exposing systematic human rights abuses as part

of their strategy for building support for the recognition and implementation of international human rights law by nation-states and others. In many ways they complement the letter writing appeals, acting as flagship publications to either (1) launch campaigns on a nation or on a particular human rights concern, or a combination of both, or (2) in the case of the Annual Report, summarise the human rights situations in much of the world and highlight certain over-riding themes or dominant concerns in any given year.

While these reports often include individual case studies (supplemented and contextualised by historical accounts of ongoing political and social situations) they are significantly different in their purpose from the appeal letters in the first genre. Individual instances of human rights abuse are included in order to personalise and dramatise the type and extent of human rights violations, as is powerfully demonstrated in this example from a recent report on the impact of the arms trade in the Democratic Republic of Congo (DRC).

Eastern DRC is falling prey to a rapid rise in armed banditry where roaming bands of gunmen, former rebels and militia fighters are looting villages, exploiting mineral deposits, imposing taxes and kidnapping civilians to earn cash. In these areas, arms are being used primarily to kill, rape, torture, maim and terrify civilians. Most so-called military operations are in fact directed against unarmed civilian communities, with the aims of looting, committing rapes and otherwise punishing populations for their suspected allegiance to opposing armed groups. In many cases military activity also coincides with controlling and

exploiting the country's rich mineral wealth: forcing civilians to mine gold, diamonds or other minerals at gunpoint, or extorting money from communities attempting to make a living from the mines. Groups of fighters also regularly use arms to chase civilians from agricultural land and steal their crops or livestock, a phenomenon that has added greatly to food insecurity and levels of malnutrition in the east. The rampant insecurity has sometimes prevented humanitarian assistance from reaching many parts of the east, severely exacerbating disease, malnutrition and poverty.

The following examples illustrate the link between small arms and human rights abuses in the DRC. They represent only a small proportion of the hundreds of such testimonies received by Amnesty International in the course of its research. The names of survivors have been changed to protect their identities.

....

Tens of thousands of women and girls, and also men, have been raped at gunpoint by weapons-bearers, individually or collectively, in private or in public. The rape of boys is apparently on the increase. The rapes are often accompanied by other acts of extreme violence, including bayonet or gunshot wounds to the genitals of the victim. Many women have testified that they were raped after seeing their husbands and sons gunned down at point blank range: the rapes were then committed next to the corpses of their loved ones.

The victims are left physically ravaged and emotionally traumatised, and many thousands suffer devastating long-term effects.

...

In June 2001, in the Fizi territory of South-Kivu province, a soldier stopped 25-year-old Corinne and a female friend as they were on their way to attend a funeral in a nearby village. The soldier ordered Corinne to follow him. After a few metres, he forced Corinne at gunpoint into some bushes and there raped her. Then he shot her in her lower stomach.

"I didn't feel anything, perhaps I fainted. After an unknown amount of time, I raised myself and I started to run. My friend came looking for me when she heard the shots. She was led to me by the trail of blood I was losing. We started walking -- at that time I was still able to walk -- through the forest until we reached the village where some kind people took me to the hospital."

Corinne's bladder and uterus had been almost completely destroyed by the gunshots. She was transferred to another hospital in eastern DRC where five surgical operations were made to reconstruct her internal organs. Nine months later, Corinne was still permanently incontinent and in constant pain. Her husband abandoned her and she was evicted from the house where she was staying. Finally, with the assistance of national and international human rights organizations,

Corinne was transferred abroad for a further round of surgery that was ultimately successful. However, thousands of other women who have suffered similar injuries after gunshot or knife wounds to their genitals remain in need of reconstructive surgery and other extensive medical care. Sexual violence by weapons-bearers continues on a daily basis in eastern DRC (Amnesty International 2005a paras 32-38).

These reports and those of similar organizations such as Human Rights Watch and the International Crisis Group, provide research into grave human rights violations and are utilised by journalists, academics and others as an historical record. However, and as outlined earlier, the purpose of these reports is not only – or primarily – to document systematic human rights violations, but to do so as part of a communicative process which engages key stakeholders and requests action from them. This is made explicit in the final section of every report, where recommendations are outlined for a number of (interrelated and overlapping) groups⁹ that usually focus on intergovernmental organizations and individual nation-states. But in scrutinising their vocabulary and narratives, it is evident that the targets of the reports, in terms of their communicative activism, extends beyond these groups, especially when they are considered in the context of the genre-chains they form with individual appeal letters and other forms of communication.

⁹ In the case of the report referred to above, those ‘stakeholder groups’ are listed as:

- The United Nations Security Council,
- all States,
- the Governments of DRC, Rwanda and Uganda
- States trading or aiding the DRC, Rwanda and Uganda.

The narratives employed in Amnesty International reports can be separated into three discrete sets: personal testimony, structural and historical contextual accounts, and formal recommendations for action. The first of these, the testimonies of those who have suffered, highlight, clearly, the violations individuals suffer but also emphasise the ongoing physical and psychological suffering endured by those people. This can have the effect of placing improper labels on these 'victims' of human rights violations as being somewhat incomplete or damaged by their experiences. One report on violence against women, for example, entitled 'Broken Bodies, Shattered Minds' (Amnesty International, 2001) leaves such an impression – one that may reinforce images of the women in question that may arguably be closer to that intended by the perpetrators of the violence than the self-images that supporters and trauma counsellors would promote. In some cases, the women represent themselves as being physically or psychologically changed by their ordeals, yet this self-representation forms only part of their identity – their decision to participate in the campaign against violence (or in other campaigns) indicates an attempt to exercise agency on their behalf, as do the stories (and photographs) that present them as being survivors that have lives beyond their identities as victims. Bina, for example, a Bangladeshi woman awaiting plastic surgery after suffering disfiguring burns from an acid attack, holds a picture of herself before the attack as a reminder of what has been done to her, while at the same time she tells of being a competitive athlete in the United States at the college where she studies (Amnesty International, 2001: 11). Similarly, Camil Magalhães Lima, from Brazil, poses for the camera in her wheelchair, which highlights the impacts of gun violence in her life while her campaign t-shirt ("Arma, Não!, Ela ou Eu"¹⁰) and her position in front of her desktop computer, signify her active role in campaigns against gun violence in her native Brazil (Amnesty International 2004a: 29).

¹⁰ "Choose gun-free! It's your gun or me". This slogan is used by Brazilian NGO Viva Rio as part of a campaign with women's organizations to urge women to pressure their partners to give in their guns.

In every report the role of these personal testimonies is consistent. It is an opportunity, certainly, for women's voices to be heard, but, more importantly, they serve a purpose: to highlight the human rights abuses by personalising them. In discursive terms, these testimonies personify the human rights violations that are contextualised historically, politically and culturally in the report as a whole. The personal testimony links individual human rights violations with, firstly, the factors that cause and perpetuate them and, secondly, the human rights frameworks that either exist (but are not implemented), or are required, to prevent future human rights violations. These broader accounts employ the language of the authoritative researcher, positioning Amnesty International as (somewhat partial, but reliable) observer and analyst, positioning the organization to call for certain forms of action to be taken. These calls are most often for states to comply with international human rights obligations (see, for example, Amnesty International 2001, 2004a, 2004c, 2005a)¹¹. Members and supporters of Amnesty International and others are also asked to build support within their communities for these human rights instruments and their government's compliance with them, marking them clearly as being representative of the second genre of communicative activism in human rights.

The relationships in these communicative processes bear this out. There are implied positions of consensus around the value and purpose of the international human rights instruments; the strong suggestion is that implementation of the human rights regime by nation-states party to them will prevent the acts of violence in question and therefore support for these instruments ought to be encouraged and prioritised. Individuals are asked to act as citizens or as members of their community to support

¹¹ This is perhaps most clearly explicit in the report *Making rights a reality: the duty of states to address violence against women* (Amnesty International 2004) which outlines in substantial detail the implications for states of a extensive selection of UN instruments, reports from Special Rapporteurs, general recommendations and platforms for action.

international human rights, call for their implementation and act in accordance with them. This may place them in positions of critique or conflict with localised cultures (such as traditional gender roles) or legislation (such as laws relating to, for example, domestic violence or gun ownership). Amnesty International is clear about its unequivocal relationship with local cultural or legislative frameworks that may contradict international human rights standards or impede their recognition and observance:

Violence against women, particularly in the home, is often hard for women to escape from because of traditional or cultural practices sanctioned by the state. These include forced or early marriage; limitations on women accessing divorce or maintenance; and restrictions on women's ability to work and support themselves, or to secure custody of their children, when they are without husbands or some other male family member to support them.

The Convention on the Elimination of All Forms of Discrimination against Women states explicitly that any kind of excuse based on culture, tradition or religion which leads to discrimination against women (and, by extension, to violence against women) is not acceptable (Amnesty International, 2004c: 53)

Amnesty International's support for international human rights law is complete, ubiquitous, unquestioning and exhaustive. (However, importantly, it is selective in its emphasis and its prioritisation of specific human rights campaigns.) The international human rights regime is

proffered as the best and only framework for social justice and an end to violence and challenges to the international human rights system are swiftly dismissed and their advocates rebuked. Clearly, the organisation's support for the international human rights regime is extremely valuable in promoting standards that offer some protection, or the hope of some protection, to the vulnerable. Its support for the discourse of human rights also helps to legitimise human rights as a language of protest and empowerment for those making claims on their own behalf.

The absent genre: critical consciousness-raising

Amnesty International's comprehensive and robust commitment to and engagement in the first two genres of communicative activism serves to highlight what can be described as largely an absence of the third genre, namely that support for the development of critical consciousness. This is perhaps highlighted by its rapid fire and somewhat dismissive response to cultural or traditional responses that are seen to undermine international human rights. Many have argued for re-imagining forms of human rights that take cultural specificity more seriously, acknowledging that attitudes towards individuals and groups and rights holders, for example, can contribute to and enrich notions of human rights.

These debates are extremely useful and important. As noted in the genealogy of human rights, there have been ongoing processes of cultural production leading to contemporary human rights. To disengage from a view of human rights as a site of ongoing cultural production, as this insistence on the definitive, fixed, immutable and unchallengeable versions enshrined in human rights law seems to do, has serious implications for Amnesty International, and by inference for other human rights NGOs who rely exclusively on building support for the international human rights regime. This can be demonstrated when (a) the

Habermasian and Foucauldian ideas that inform the notion of communicative activism are employed to critique this response to cultural and traditional resistance to human rights, and (b) the creative potential of employing the third genre of human rights communicative activism is considered.

By engaging Habermas's prescriptive criteria, it is possible to comment on an institutional framework's legitimacy or 'validity', defined as consensus without force. These criteria are: generality, autonomy, ideal role taking, power neutrality, transparency. It asks if, or to what extent¹²:

- all relevant parties have been included in this discussion,
- those parties have had opportunities to present and examine each others claims
- the parties involved are empathetic to one another
- power relationships between the parties are neutralised, and
- parties are open about their goals (Flyvberg, 2000).

In answering these questions about Amnesty International, it is possible to generalise about its engagement with discourses that resist the idea that international human rights preside over localised cultural traditions (or, for that matter, populist political agendas). The contention is that by insisting on respect for human rights, in a way that Ignatieff (2001) describes as a religion or an ideology, Amnesty International runs the risk of not including other parties in this communicative process, not openly examining other claims and being willing to have others examine

¹² The modifying phrase 'to what extent' gestures towards a methodological dilemma that Habermas recognised in the application of these criteria, namely that it is not practical to expect that "everyone affected by legal and political decisions should discuss them until there is complete agreement about them" (Outhwaite, 1996, p13). By rephrasing the question to be one that asks to what degree the process is 'communicative', this replaces absolutist definitions (communicative/non-communicative) with an evaluative schema (more/less communicative).

their own in a mutually respectful manner¹³. The conclusion is that Amnesty International's approach, while a clear statement about support for legal principles, is not a form of communication that engages with its interlocutors in ways that Habermas suggests are valid, that is declarative rather than communicative and therefore, in Habermasian terms asserts but does not demonstrate the legitimacy of the human rights institutional frameworks¹⁴.

In Foucauldian terms, this approach under-examines how international human rights discourse and localised cultural discourse generate and resist forms of power and knowledge. It fails to expose those networks of cultural power that resist international human rights standards. And it fails to recognise those networks of cultural power that support human rights from outside the framework of the international legal instruments. This is firstly a diagnostic oversight: Foucauldian approaches that expose and interrogate the micro-structures of forms of knowledge production and consequent cultural power have the potential to provide rich veins of analytical information about the sites of resistance to and support for human rights, pointing to ways of addressing these resistances and engaging with this potential support, using appropriate forms of communicative activism.

¹³ Although, it should be acknowledged that Amnesty International is overtly open and transparent about its goals.

¹⁴ Some provisos are required here. Firstly, there may be occasions where Amnesty International does engage more fully with localised cultural practices but these have not been evidenced in the documents examined. Moreover, the emphasis of respect for and observance (without exception) of, human rights is a core value of the organization and enshrined it in Article 1 of its Statute:

AMNESTY INTERNATIONAL's vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards (Amnesty International 2003)

Secondly, it would not serve to see recommendations that might fall out of this Habermasian critique as appeals for an uncritical view of cultural practices that overtly or tacitly result in human rights violations. Respectful yet robust and critical engagement with cultural discourses does not imply a self-effacing cultural relativism.

It is also risks opportunities for creative human rights campaigning going unrealised, through the insistence that all forms of human rights campaigning correspond to and rely solely on international human rights instruments. This undermines the central importance that the enactment of rights has for their legitimacy. This is counter-logical given the genealogy of modern human rights for, as the history of human rights demonstrates, human rights campaigns preceded the international regime in which human rights are now enshrined¹⁵, and these campaigns relied upon a range of discourses – moral, legal, spiritual, philosophical, political and so on – to build support for human rights, none of which were, or are, able to claim an ontological foundation for human rights, leaving human rights articulated in law yet without foundation in universally agreed principles underpinning them. It is as though the articulation of international human rights was recognised as a communicative and consultative process over time but the implementation of these same rights (the process described often as ‘making rights a reality’ (Amnesty International 2004c) is being treated very differently – as a process more akin to the enactment of laws than the building of support through communicative activism. When calls for support for and implementation of human rights insist upon using international standards as the *only* permissible and *irrefutable* form of human rights discourse, it becomes clear that such a monotone metanarrative is easily dismissed or ignored by counter-discourses. By refusing to engage with these counter-discourses, Amnesty International is relying upon an approach which is limited and unlikely to succeed.

Critical consciousness development, the third genre of communicative activism, is a way of addressing this. This form of communicative activism would employ and encourage forms of critical engagement with

¹⁵ Significantly, this includes the first ‘Appeal for Amnesty’ which does not refer to human rights as such and predates the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights by five years (Benenson, 1961).

local cultural discourses as a way of addressing abuses or attitudes that condone them. Many local human rights NGOs employ similar communicative strategies. For example, the Cairo Institute for Human Rights Studies uses forms of artistic expression to demonstrate the history of human rights is a part of Egypt's rich cultural heritage. The Sisterhood is Global Institute likewise engages with traditional myths and stories to highlight the human rights principles implicit in material familiar to Muslim women (The New Tactics for Human Rights Project, 2004: 147). These approaches demonstrate that, as Ignatieff (2001), suggests "human rights activists are under an obligation, inherent in human rights discourse itself, to respect the autonomy and dignity of agents. An activist's proper role is not to make choices for [those] in question but to enlarge their sense of what the choices entail" (72).

The argument about human rights being in 'in our own self-interest' is one approach that directly addresses narratives of indifference or nationalist isolationism (Schulz, 2001). Rural Australians for Refugees, similarly, highlighted the valuable economic contribution many refugees were making in their communities to build support for their ongoing asylum claims, making use of discourses of parochialism that had previously been employed to position the refugees outside the community.

In other contexts, forms of engagement are more overtly antagonistic and critical of contemporary practices, more akin to Foucault's *parrhesiastes*, speaking 'truth to power' in ways that challenge power structures directly by exposing and confronting them. This type of human rights activism has a familiar history, for example in forms of civil disobedience¹⁶ and, more controversially, violent struggles that were part

¹⁶ Ghandi, for example, supports the principle of 'holding on to truth' (which he refers to as 'Satyagraha') in which aims in part to address human rights violations by challenging the perpetrators through appeals to conscience and reason and the use of forms of civil disobedience.

of the history of the anti-colonial movements and the associated claims for national recognition and associated civil and political rights. A more recent form of communicative activism, referred to as 'creative confrontation' is demonstrated by, for example, the Yes Men, who use deceptive performance to imitate but misrepresent corporations they hold responsible for human rights and social justice abuses¹⁷. In other examples, organisations such as Witness International arrange for filming of human rights violations that are then used to directly confront those responsible for them in court rooms or via the media (The New Tactics in Human Rights Project, 2004: 40).

These are all human rights campaigning tactics that are, in part, designed to highlight systemic abuses in order to build support for international human rights. However, they also demonstrate how third genre communicative activism can expose social, cultural and economic structures that lead to human rights violations. This approach seeks to de-legitimise institutions, to introduce or promote distrust, and in some ways therefore it can be described as antithetical to a Habermasian approach. These types of campaigns can, however, exist in parallel with those that seek to build support and respect for international human rights while constructing critiques of institutions and discourses that perpetrate or perpetuate human rights violations.

This becomes more complex and apparently contradictory when the building of a critical consciousness leads to an interrogation of the international human rights regime itself. As noted earlier there are

¹⁷ For example, in October 2004, to mark the 20th Anniversary of the chemical leak in a fertilizer factory in Bhopal, Indian (that has killed over 100,000 people and is often described as the world's worst chemical disaster) one of the Yes Men successfully masqueraded as a representative of Dow Chemicals, the current owners of the Bhopal factory, and was interviewed by the British Broadcasting Corporation (BBC). During the interview he claimed responsibility for cleaning the site and gave notice that compensation was going to be paid to the survivors. The interview was broadcast before the ruse was uncovered and the subsequent scandal embarrassed both the BBC and Dow Chemicals.

reasons why international human rights can be seen as a cultural product of historical western liberalism and an aspect of contemporary economic and political structures, and we suggest here, there are other ways of addressing human rights violations than relying exclusively on the international legal instruments. So there are both theoretical and pragmatic reasons for interrogating human rights. Moreover, encouraging and supporting, through third genre communicative activism, forms of critical engagement with the international human rights regime can promote both deeper forms of legitimacy in a Habermasian sense, or can outline ways in which the present human rights regime is inadequate for or contradictory to human rights goals.

3.7 Conclusion

The use of discourse analysis can serve to highlight how communicative activism operates. The methodological approach outlined here indicates how it is possible to identify how one particular human rights NGO engages in the discursive practices that construct, define and delimit human rights. These practices are both Habermasian and Foucauldian in that they build support and legitimacy one hand and they expose structures of power on the other, in a process described as communicative activism. These processes have been categorised according to three genres: acting for individuals; building support for systemic changes that take account of and act in accordance with the human rights regime; and developing a 'critical consciousness' regarding human rights and the cultural contexts in which they operate. From this study, the following conclusions can be drawn:

1. It is possible to analyse how human rights discourses are employed in human rights campaigns by considering how the concept of communicative activism operates at an organisational and sectoral level,

including how these discourses intersect with, interact with or meet resistance from, alternate discourses.

2. There are numerous forms of communication that can be usefully categorised according to their content and purpose into the three genres of communicative activism. Based on the evidence at hand, and confident that this evidence is a reasonable representation of Amnesty International's usual campaigning methods, the first two of these, defending individuals and building systemic support, are clearly evidenced in Amnesty International's communications activities and relate to one another in ways that form mutually supporting 'genre chains'. The third genre, developing a 'critical consciousness' is comparatively absent. This is, as we have seen, reflects organisational rules and guidelines that emphasise the importance of the human rights regime and limit Amnesty International's positions and activities to those that support it.

3. This points to a significant absence in Amnesty International's practice of communicative activism, one that can be traced to its ongoing principled and determined public support for the international human rights regime (a key defining characteristic principle of the organisation) which, in and of itself, is commonly regarded as being of considerable value. This absence might be generally summarised as a lack of critical engagement with either (a) the discourse and institutions of international human rights or (b) the more local (or national) discourses, institutions and other structures of governance, and other sites of cultural production that resist, transform or engage with human rights.

There are some unanswered questions that remain that may indicate some parameters to be placed on the general applicability of these findings and also point to possible future research agendas:

1. Does this account fully for Amnesty International and have a more general application outside that organisation? This question notes the limitations of the evidence presented above in that, although it can be confidently read as representative as a significant and fundamental aspect of Amnesty International's campaigning activities, there are other aspects of its work (its promotional and fundraising campaigns are one example; its human rights education programs are another) that would also be useful sites of further analysis. Also, and more importantly, there is a much greater variety of communicative strategies and tactics in the broader human rights movement than evidenced in Amnesty International. This is partly indicated above in the comparison with organisations such as Rural Australians for Refugees and the Cairo Institute for Human Rights Studies. Exploring other organisations may not only provide more examples of campaigning than are demonstrated here, but may challenge, problematise or expand the categorisation of communicative activism genres suggested in this framework. Therefore, there are some unresolved empirical and methodological issues to be taken up.

2. How does this analysis take account of its potential for exploitation by countervailing discourses in a global political context that undermines support for multilateralism and international human rights? This question recognises that these types of analysis do not exist in a political, ideological or moral vacuum. It asks if promoting forms of critical engagement with human rights and human rights NGOs might be interpreted as supporting arguments that are sceptical and de-legitimise human rights in favour of potentially threatening discourses of national sovereignty, market liberalism, fundamentalist expressions of traditional and cultural values, greater state regulation of civil society and so on. This is an important area of study and of critical contemporary interest

for human rights organisations in a number of remarkably divergent contexts. In Australia, for example, attacks on NGOs are based on a perceived de-legitimisation of the role NGOs play in democratic governance, undermining NGO claims to be representative of sectors of society (that do not have the access to resources or the organisational ties to formal politics that might otherwise enable them to plead their case). This directly threatens to limit participation in public advocacy through revising the legislation that supports fundraising efforts through tax concessions. In other political contexts, NGOs are undermined as being representative of a globalising order that institutionalises and bureaucratises forms of political advocacy, marginalising local expressions of discontent and calls for systematic change. In other cases, NGOs are positioned as part of a cosmopolitan moral order that threatens local ways of life. The position taken in this thesis goes so far as to emphasise that these countervailing discourses can be critically engaged through forms of communicative activism, noting the risks and opportunities. Further examination of these sites of critical engagement and production of knowledge of and cultural values relating to human rights is required.

Concluding Remarks and Remaining Questions

The aims of this thesis were to introduce the concept of communicative activism, and propose a triangulation of approaches to the discussion of this concept. The three approaches – theoretical, genealogical and methodological – offer a variety of lines of inquiry into human rights and civil society. Although distinct from one another, they converge around a communicative activism which foregrounds the discursive struggles which variably generate, resist, delimit and legitimise concepts and practices in human rights.

Human rights, when seen through this paradigm, become destabilised, uncertain and fragmented. But they are also sites of productive engagement, living cultural knowledge and practices rather than fixed and impenetrable axioms. This opens up forms of critical engagement with human rights activists, and suggests ways for human rights practitioners to engage with discursive communities and environments, and potentially re-imagine their communicative tactics and strategies.

This thesis also provokes further lines of enquiry. What might the wider implications of the suggested proposed methodological approach suggest about the types and range of communicative practices? How could communicative activism be broadened to apply to actors in civil society beyond those who focus on human rights? Might this approach be usefully employed to analyse contemporary debates about NGO legitimacy or accountability? Questions such these remain to be addressed.

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