

## **‘ABSOLUTE UNDEFINED’: EXPLORING THE POPULARITY OF HUMAN RIGHTS IN FINLAND**

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*To say that an enormous phenomenon has formed around human rights since World War II is stating the obvious. Yet we remain largely without answers on why this development has occurred. What is the contemporary fascination with human rights fundamentally about? What kind of attributes do people invest in the concept of human rights? On the basis of my earlier research of political rhetoric, human rights education and lay discussions on human rights particularly in Finland, I have identified two decisive explanatory characteristics. The first is the assumption that human rights have an absolute and essential significance. The second characteristic is the indeterminacy of human rights as a consequence of which no-one knows exactly what their essential significance is. This duality transforms the human rights discourse into an attractive medium with which continually new interest groups can advance their specific concerns. Simultaneously it depicts human rights as articles of faith.*

### **Introduction: the language of our time**

In October 2009 the Finnish Ministry of Transport and Communication issued a new decree which defined 1 megabyte broadband Internet access a “universal service” (Liikenne- ja viestintäministeriön asetus 732/2009). The tenor of the decree, its *travaux préparatoires* as well as the accompanying information provided by the Ministry, were

matter-of-fact in nature; nothing indicated that at stake was anything but a modest legislative change. Yet, the decree awakened vast international media attention in a starkly different tone: leading news agencies including the BBC and the CNN celebrated the decree as a reminder of the amazing achievements of 'Nokia Land' in the field of information technology. They described it as reflecting the overall sophistication of Nordic welfare states, and sighed how far behind their national governments were in realizing similar initiatives. The Finnish media responded with equal zeal, and reported in turn how much international excitement the decree had received.

Why this dual-fold interest over a commonplace decree? The answer lies in the interpretation of the international media according to which Finland had become the world's first country to make internet access a "legal right". Soon online blogs and chat rooms began proclaiming that internet access was now a human right in Finland. The Finnish media echoed this language, and although the decree entailed no mention of rights and instead utilized consistently the term *universal service* – an expression created by the European Union to refer to postal and other communication services – by July 2010 when it entered into force also the Finnish Minister of Communication Suvi Lindén was calling internet a 'fundamental right'.

This conceptual transformation becomes understandable against the repeated discussions by international organizations and interest groups in recent years on the relationship of human rights and the internet. For example the EU and UN have highlighted how general internet access can narrow the 'digital divide' between developing and developed nations as well as urban and rural areas. The internet is seen as an integral tool for realizing an open society where people can more effectively fight for their human rights, as well as a key medium for securing the freedom of expression and information, both recognized as fundamental human rights by the Universal Declaration of Human Rights (UDHR) among other. In Finland the decree reflected also political desires to ensure that the country would continually be regarded as a world leader in new technology. Internet access has further acquired practical relevance due to the rapid increase of online services for example in public healthcare.

Arguments proclaiming that internet access is a human right demonstrate how much the concept has in recent decades expanded. Entities that once referred to the protection of the individual (=free male)

from the arbitrary treatment of a sovereign have become free-floating signifiers that are in everyday usage invested with all meanings imaginable. The environment needs to be protected so that people can realize their “human right to a clean environment” (Sakamoto 1996; Boyle 1996; Kolari 2004). According to the *Human Rights Quarterly*, there exists an “emerging human right to tobacco control” (Dresler & Marks 2006), and surprisingly even companies have human rights (Petersman 2003; Thomas 1998). In Spain and Austria activists have attempted to secure human rights to the great apes (The Spain Herald 2006; The Great Ape Project 2006; HS 2007b), and in the UK an activist actually utilized the human rights discourse to advocate for the right of sheep to remain homosexual (HS 2007a).

The Finnish context offers ample additional examples. A book on sleeping disorders describes how sleep and sleeping, by being constitutive of a good life, become human rights (Hyyppä & Kronholm 1998, 192). A member of the Helsinki city Council describes the functioning of libraries as essentially human rights work (Aarnipuu 2006). The food pages of Finland’s largest newspaper argue that wild greens - edible plants that grow in nature - and the pleasure brought by their finding should be human rights (HS 2006), and a known columnist of a Finnish women’s magazine hopes to restrain boaters from emptying their septic tanks into the ocean by arguing: “It is not a human right to pollute the ocean” (Sågbom 2006). Elevators are human rights, and according to a blog entry by a member of the Vantaa city Council in response to the lack of public restrooms in Finnish cities, so is urination (Saramo 2010).

### **A slowly evolving global phenomenon**

This article explores the human rights phenomenon and the temporality with which it has expanded over the past decades particularly in Finland. In attempting to understand the contemporary popularity of human rights, it highlights two central features associable with human rights claims: on the one hand absoluteness, on the other indeterminacy. Although the article’s immediate context entails numerous special features due to Finland’s distinct relationship with the Soviet Union in the post-world war II era, the discussed developments exemplify also more general developments particularly in the western

hemisphere. Through its combination of anthropological methodology, particularly participant observation, and the theoretical insights of critical legal studies, particularly the work of Duncan Kennedy (Kennedy 1997, 2002),<sup>1</sup> this article examines human rights as socially constructed entities that gain their significance from the meanings that people – both experts and laymen – invest in them in both common discussions and academic articles among others.

This article does not comment on the truthfulness of human rights claims or take stands on the essential existence or philosophical foundations of human rights. Instead it equates the *concept* of human rights with the different *conceptions* that people hold of them, and argues that on the empirical realm it remains impossible to draw a distinction between the two. In this approach the article differs from 'mainstream' human rights scholarship by such authors as Jack Donnelly and Paul Lauren which reflects the belief that the human rights discourse rests on a universal truth on what a dignified human life consists of (Donnelly 1985, Lauren 1998).

Rather the article resonates with the approaches of science studies, particularly the path-breaking analysis of Bruno Latour (Latour 1987). The most important observation about Latour's scholarship is that his inquiry focuses not on the "final products" of research processes that is the factualness or truthfulness of scientific discoveries. Instead, he moves from "final products to production, from 'cold' stable objects to 'warmer' and unstable ones" to examine the social processes through which scientific claims acquire the status of uncontested facts (Latour 1987, 1). Latour emphasizes how it is a false conception that science studies attempt to 'relativize' scientific discoveries, and how this misconception has led to enormous misunderstandings as science studies have never aspired to present all truths as equally valid (Latour, 1987, 88-98).<sup>2</sup>

Likewise, this article offers neither a normative assessment on what the content of human rights *should* be, nor does it advocate for an 'extreme relativistic' position according to which no judgements can be made between acceptable or unacceptable conduct on the basis of cultural differences.<sup>3</sup> Rather, such ethical discussions are outside the focus of this paper, which instead explores *how* human rights arguments are utilized. In this approach it echoes with recent anthropological scholarship on rights which, reflecting the wish expressed by Richard Wilson, ventures out "into the sites of production of international

human rights laws and norms” to examine the knowledge practices of such contexts (Wilson 2007, 366). Although there are obvious differences with the fields of sciences and law, Latour’s approaches are well suited for analyzing the fields of law and bureaucracy as he has demonstrated particularly through his ethnography of the French Supreme Administrative Court *La fabrique du droit: une ethnographie du Conseil d’État* (Latour 2002). Comparisons between lawyers and natural scientists hold centre stage in his article from 2004 in which he discusses the defining professional characteristics of (archetypical) natural scientists and lawyers (Latour 2004).

This article approaches the human rights phenomenon as being constituted of three partially overlapping, empirically observable elements: the human rights discourse, artefacts and community,<sup>4</sup> and places the beginning of this phenomenon at the adoption of the UDHR in 1948. Six decades after the Declaration’s adoption, an infinite community of NGOs, experts, policy makers, volunteers, educators, politicians and ordinary citizens has emerged around human rights (Keck & Sikkink 1998; see also Halme-Tuomisaari 2010a). They form the favoured discourse of international law, politics and transnational activism, and they are talked of and praised by interest groups, journalists, columnists, food critics and osteopaths. They have become “glorified Esperanto” (Klabbers 2004, 63-77), which provide “values for a godless age” (Klug 2000); some even claim us to live in “the age of rights” (Henkin 1990).

In much scholarship this expansion is portrayed as a smooth and rapid process resulting in the unquestioned triumph of the human rights ideology (See for example Lauren 1998). A closer examination reveals a more nuanced narrative in which advancement was slow and the outcome uncertain. After the excitement over the UDHR had waned, little happened in the following decades as for much of the period between 1945 and the 1970s human rights remained for example in the UN a “minority” interest” (Evans 1996, 148; Glendon 2001, 208). Efforts to complement the ‘International Bill of Rights’, the first phase of which was the UDHR, with legally binding documents were halted, and it took a further two decades before the Covenant on Civil and Political Rights (CCPR) and the Covenant on Economic, Social and Cultural Rights (CESCR) were signed in 1966, finally entering into force in 1976 (CESCR 1976; CCPR 1976; Evans 1996, 91-95; Sellars 2002, 75-81; Craven 1995; Henkin 1981).

The 1970s became a turning point: human rights interest groups started to form and human rights references entered political rhetoric (Moyn 2010). International human rights instruments started to proliferate and states ratified them in great numbers: whereas for example the CESCER was during the 1960s ratified by only 6 states, by the end of the 1970s the number had grown to 61 (UN 2005).<sup>5</sup> The 1970s saw the appearance of several pivotal contributions such as *Taking Rights Seriously* by Ronald Dworkin (Dworkin 1977), which commenced the development of a positivist system of rights and allowed lawyers to make sense of the emerging human rights regime; the German equivalent a decade later was Robert Alexy's *Theorie der Grundrechte* (Alexy 1985). Increasing scholarly interest in human rights was also reflected in the founding of the first English-language human rights journals: *The Columbia Human Rights Law Review* in 1967 and the *Human Rights Quarterly* in 1979.

Expansion is further illustrated by Finnish examples (see more generally Halme-Tuomisaari 2010b). Although Finland had by the 1980s established a steady record of membership in different UN human rights bodies (Törnudd 1986, 22-28; 276-285) and received favourable feedback in its commitment to human rights (Törnudd 1986, 287), internally the position of the discourse remained marginal. In the 1960s and 1970s the Finnish society was marked by deep ideological division: in one corner were the student groups holding close ties to Western Europe, yet exerting limited societal influence, in another were the more influential left-wing groups from social democrats to communists – with the group *taistolaiset* obtaining the highest profile (Relander 4/1997) – which harboured close relations to the Soviet Union. Whereas the first group sympathized with the human rights discourse and established for example the Finnish branch of Amnesty International in 1974,<sup>6</sup> the left-wing groups viewed the discourse as anti-Soviet propaganda perpetrated by the US and opposed any reference to it.

Public attitudes began to change only with the new winds of Glasnost. In 1990, following Finland's membership in the Council of Europe, Finland ratified the European Convention on Human Rights (ECHR) (European Court of Human Rights 2007), which reflected a more general shift in Finland's foreign policy in the mid-1990s from disarmament to human rights. This temporality reflects the historic event that was required before human rights became the enormous

global phenomenon that we recognize today: the end of the Cold War. Only this elevated human rights into ideological trumps, and transformed them into the moral backbone of the new world order, bringing “the end of history” (Fukuyama 1993). In their desire to join the liberal world, new post-socialist states hurried to become parties to human rights conventions as well as the international regime around them as this signified the abandonment of old ideologies in favour of the one embedded in the human rights discourse. For example the CESCRC was in the 1990s ratified by the Former Yugoslav Republic of Macedonia, Turkmenistan, Uzbekistan, Slovakia, Slovenia, Moldova, Georgia, Czech Republic, Croatia, Bosnia & Herzegovina and Armenia, as well as all the Baltic countries.<sup>7</sup>

By the end of the 1990s the Covenant had 50 members, making the decade almost as active in terms of ratifications as the 1970s. The importance of the mid-90s is also reflected in the founding of international English-language human rights journals. After the first journals in the 1960s and 1970s, a few more publications emerged in the 1980s, yet real proliferation only commenced in the 1990s, with a total of 12 new journals appearing during the decade. The pace intensified further in the first years of the new millennium, and by 2005 12 new journals had appeared after the year 2000.

In Finland at the beginning of the 1990s, the internal position of the human rights discourse was still in a flux and it was not viewed as the sole discourse on rights. For example a book on Finnish constitutional law published in 1994, a volume used as a textbook in Finnish law faculties, discusses the origins of “certain inalienable rights” by calling them “which can be named e.g. human rights or fundamental rights” (Hidén & Saraviita 1994, 272; translation by author). The reference to fundamental rights introduces an alternative discourse of *perusoikeudet*, which is more indigenous to the Finnish legal culture as well as holds a significantly longer pedigree. Fundamental rights have traditionally been distinguished from human rights also in terms of substance as they referred to the rights of Finnish citizens enlisted in the Finnish constitution, whereas human rights referred to rights deriving “from treaties of international law that bind Finland, or through other arrangements” (Scheinin 1988, 1; see also Scheinin 1991, Ojanen 2003; Ojanen & Haapea 2006) The textbook from 1994 upholds this distinction between the two by stating: “[a]lthough by no means identical to each other, in many central substantive ques-

tions the contents of fundamental rights and human rights norms correspond to each other" (Hidén & Saraviita 1994, 273; translation by author).

This distinction has been interpreted as being radically altered by the fundamental rights reform of 1995 (Ministry of Justice 1995). Veli-Pekka Viljanen discusses how as a consequence of the reform human rights and fundamental rights have become mutually complementary instead of competing orders and how the substantive differences between the two have been effectively annulled as human rights have been constitutionalized into the Finnish legal culture (Viljanen 1996; see also Scheinin 1996). During the new millennium the human rights discourse has stabilized its position at the centre of the Finnish society as is exemplified by changes in political rhetoric: whereas Finland's Foreign Minister Erkki Tuomioja mentioned human rights in 1999 in only one in eight and in 2000 in one in five of his speeches, by 2006 the frequency was two speeches out of three (Halme-Tuomisaari 2010a, 54).

Examples from policy making illustrate this shift further. The Foreign Affairs Ministry's report on human rights from 2000 mentions the increased centrality of human rights as an explicit goal for foreign and security policy (Ministry of Foreign Affairs 2000). This emphasis was repeated by Finland's 2004 Human Rights Report (Ministry of Foreign Affairs 2004),<sup>8</sup> as well as by the Finnish Government Programme from 2007 which mentions active promotion of the global advancement of human rights as a central government goal (Finnish Government 2007). Human rights have also been highlighted in recent educational reforms. In the governmental decree from 2002, "respect of life and human rights" were mentioned as forming the foundation of high school education (Finnish Government 2002), an emphasis repeated by the Finnish Ministry of Education in 2003 (Ministry of Education 2003). According to Finland's 2004 Human Rights Report human rights education should in the future begin in primary school (Ministry of Foreign Affairs 2004), and the educational plan by the Ministry of Education for the years 2006-2008 characterizes human rights as "foundational values" for education (Ministry of Education 2006).

## Human rights as absolute

Today most Finns are familiar with the human rights discourse and view it with great favour – a finding that applies to a certain extent also globally. Why has the language of human rights become so popular; why does it continue to inspire people in highly differing circumstances? From a governmental perspective adherence to human rights language holds numerous advantages. It forms an important element through which Finland is characterized in different global assessments as “the best place in the world” to live in (Newsweek 2010). A high international profile offers significant motivation to participate for example in UN treaty body proceedings. Sally Engle Merry mentions a Finnish delegate noting, of the proceedings of the CEDAW Committee, which monitors compliance with the Convention on the Elimination of All Forms of Discrimination against Women, how “it is good for the government ministers to come to the hearings to hear the questions and the praise the experts give to countries such as her own that have made notable progress toward gender equality.” This provides valuable feedback about “Finland’s place and image in the world as a leader in women’s human rights” (Merry 2006, 85).

To examine the embrace of rights rhetoric and ideology more generally, the analysis of Duncan Kennedy, writing from the perspective of “The Critical Legal Studies Critique of Rights”, is helpful (Kennedy 2002). Kennedy argues that rights “mediate between factual and value judgments” (Kennedy 2002, 184). He states that whereas values are supposedly subjective, facts are objective, which leaves the making of normative assertions, including moral or utilitarian assertions, uneasy. According to Kennedy “the point of an appeal to a right ... is that it *can’t be reduced* to a mere “value judgment”.” Thus “rights are mediators between the domain of pure value judgments and the domain of factual judgments” (Kennedy 2002, 184).

Mediation means that rights are understood to have properties from both sides of the divide: “value” as in value judgment, but “reasoning” as in “logic,” with the possibility of correctness. As a consequence “[r]ights reasoning ... allows you to be right about your value judgments, rather than just stating ‘preferences’” (Kennedy 2002, 184-185). Kennedy continues that this becomes possible because of two crucial properties: First, rights are seen as being “universal”, mean-

ing that the values or needs they articulate derive from preferences that "every person shares or *ought to share*" (italics added). Second, rights claims are "factoid," in the sense that "once you acknowledge the existence of the right, then you have to agree that its observance *requires x, y, and z*" (Kennedy 2002, 184-185). Whereas the statement "be good" is understood as too vague to help resolve concrete conflicts, even though it is universal once a *right* has been derived from universal needs or values,

it is understood to be possible to have a relatively objective, rational, determinate discussion of how it ought to be instantiated in social or legal rules" (Kennedy 2002, 184-185).

Kennedy emphasizes how these two parts – rights as universal and factoid – are equally important. Rights attract by offering the possibility to trump mere 'preferences' about a desired human condition due to their universal factualness.

As a consequence, human rights are considered – both by scholarly descriptions and lay discussions – as embodying absolute facts with a distinct, predefined essence. This understanding is illustrated with an example on how human rights are taught in a Scandinavian Network of Human Rights Experts, SCANET. SCANET is a pseudonym for a loose coalition of some 60 human rights experts from the Scandinavian and Nordic region including Sweden, Norway, Denmark, Finland and Iceland, and it was formed in 2002.<sup>9</sup> Its members are professors and senior scholars as well as leaders of human rights institutes with predominantly legal backgrounds; many act as government and interest group consultants as well as UN experts. The most important feature of SCANET operations are the courses of some days to a week it organizes in changing localities to help researchers in their ongoing PhD research. The following glimpse is based on material acquired through participant observation in years 2002-2005 carried out, to use the terminology Jean Lave and Etienne Wenger use to describe learning processes, from the perspective of a *legitimate peripheral participant*, a 'new-comer' aiming to acquire the status of the community's full member (Lave & Wenger 1991, 36-37).

SCANET gains its wider context from numerous recent initiatives around human rights education such as the UN Decade of Human Rights Education (1995-2004) (UN 1995). Scholars have emphasized

how the decade was the logical outcome of emphasis placed in education already in the UDHR and since reified in numerous documents such as the UN World Conference of Human Rights (Andreopoulos 1997, Baxi 1997, Vienna Declaration 1993). This emphasis has also been reflected in the massive increase of human rights master's and other educational programs particularly in Europe (Halme-Tuomisaari 2010a, 117–124).

In SCANET activities participants are divided into *faculty* and *students* on the basis of their academic status. Faculty members are experts who are invited in to hold *lectures* whereas students – PhD candidates with varying disciplinary backgrounds – are invited in to give *presentations*. Both lectures and presentations are assigned an equal amount of time – commonly 45 minutes – but the division of time differs: in lectures it is occupied by approximately 40 minutes of faculty monologue followed by a 5 minute discussion of *questions* and *answers*, in presentations it is divided between a 15 minute student monologue and 30 minutes of expert *comments*. The other students are expected to be present during presentations, yet the division of time annuls their possibilities to contribute in the public debates; their participation is reduced into that of a silent audience.

This division of time depicts lectures and presentations in a distinct light: as scarcity of time virtually annuls multifaceted exchanges, lectures are portrayed as sites of *ready* human rights knowledge not in need of public debate or challenge. Student presentations, on the other hand, emerge as raw data that are to be transformed into human rights knowledge by listening to and adopting the comments forwarded by experts. These patterns introduce human rights knowledge and the content of the human rights discourse as “object(s) to be received” instead of as something that evolves through a “continuous process of inquiry and reflection” (Meintjes 1997, 64–79, 66–67). Human rights are portrayed as entities with an absolute and clearly defined essence, and learning as a process where this essence is disseminated from knowledgeable individuals to those who are seen to lack it. Such conceptions of learning have been starkly criticized over past decades, and they have been seen as particularly ill-suited for human rights contexts which should by contrast emphasize the emancipation of participants from rigid authority structures (Meintjes 1997, 66)

Human rights were portrayed as having an absolute essence also in a SCANET discussion that turned to the drafting of the UDHR, a

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source of ongoing research that has in recent years resulted in numerous contributions (see for example Lauren 1998, Morsink 1999, Glendon 2001). Many researchers have invested distinct attention on exploring the Western influences of the drafting process: while some scholars perceive their impact exaggerated (Waltz 2001, Glendon 2003), others acknowledge this legacy, yet construe that the global spread of the human rights phenomenon has made it insignificant (Alfredsson & Eide 1999). In the SCANET discussion a third approach emerged, namely one that saw these influences as irrelevant. This is illustrated by the statement of one SCANET expert during a discussion accompanying a student presentation:

I don't really see why it is relevant where the human rights discourse emerged. So what if it is of Western origin? That doesn't mean that it is not universal. That kind of an argument does not make sense. By the same logic you could argue that the theories of relativity or electricity are Western creations merely because they were invented in the West.

This statement equates human rights knowledge with the findings of 'hard' sciences, to phenomena that exist as objective facts. Yet, assessed from the perspective of scientific methods, this equation entails a problem of logics: whereas the existence of electricity or the accuracy of the theory of relativity can be verified with empirical experimentation, the same is impossible for human rights – no empirical methods exist with which it can be unequivocally proven whether a given claim is a human right by its essence or not.

### **Human rights as undefined**

Other examples from SCANET activities demonstrate how in different instances human rights knowledge and the human rights discourse were assigned with a totally contradictory quality: instead of being treated as absolute and ready, they were introduced as being unfinished, open-ended and in need of further defining. These instances became examples of how human rights are seen as being simultaneously absolute and undefined. In SCANET activities this outcome was embodied in arguments of legitimacy. The increased use of legitimacy arguments has been described as a fundamental change in international and human rights law argumentation since the end of the Cold

War, and one of their central functions has become to defend expansive interpretations of the content of human rights treaties (Koskeniemi 2003).

In SCANET activities this rhetoric emerged, for example, in a discussion on the juridical status of UN human rights treaty bodies monitoring state compliance with central international human rights conventions. A prominent SCANET expert presented the authority and functioning of treaty bodies as enjoying an expansive and unambiguously defined authority in matters related to treaty interpretation. This presentation was significantly more definite than that conveyed by the general sources of public international law. For example, Article 38 of the Statute of the International Court of Justice mentions judicial decisions as one of its sources, as well as the teachings of the most highly qualified scholars of various nations, yet it makes no reference to the documents produced by treaty bodies (ICJ 2007). As the expert was asked on this matter she adopted a different approach by emphasizing that it was not relevant or perhaps even possible to determine the authority of treaty bodies from legalistic sources, as it derived above all from their legitimacy. This answer gave rise to a distinct conception of the human rights discourse and the international regime around it: the answer emphasized that the regime was not complete, and stressed the importance of extra-legal domains.

This highlights the other common quality invested in the concept of human rights: despite of being treated as entailing an essential and absolute significance, this essence is never fully defined but instead remains continually open for the inclusion of new issues. Duncan Kennedy's analysis is again helpful in elaborating this finding. As he discusses the relationship of rights and law, he outlines how rights exist both "inside and outside the law"; how they are "either rules or reasons for rules" (Kennedy 2002, 185). Kennedy continues by noting how the American Constitution outlines highly abstract principles such as freedom of speech, which are invoked to support practices not exclusively listed in any particular legal provisions.

Importantly these definitional processes address something more fundamental than mere interpretation; they govern whether novel claims are accepted as *being* absolute human rights or not. In regards to law, this outcome leads to circumstances where rights "straddle"; they are on the one hand "legal rights embedded and formed by legal argumentative practice (legal rules)", on the other, entities existing

“prior to and outside such legal instruments as Constitutions, subsequently becoming assertions about how an outside right should be translated into law” (Kennedy 2002, 186). Thus rights acquire a dual characteristic: they exist both inside and outside the law; they are either rules or reasons for rules. Even if an issue has *not yet* become recognized as a legal right, this does not mean that the issue is not a human right in an absolute, essential significance. In the SCANET example the sources of public international law – rules – did not recognize the clearly defined legal status of treaty bodies, and thus human rights as understood in the absolute essential significance became the reason for overriding these rules.

Open-endedness invest the language of human rights an important dynamic: the discourse becomes a suitable medium for forwarding universal and factoid claims in continually novel circumstances without any interests being excluded merely because they have *not yet* been recognized as absolute human rights either in legislation or by general opinion. Further, whether a claim will gain more general acceptance as a human right issue becomes dependent on wider social processes. Examining the expansion of the human rights phenomenon the over past decades reminds us on the tremendous number of issues that, whereas they were not regarded as human rights issues when the UDHR was adopted, are today an integral part of the discourse. The transformation of women’s rights into women’s human rights (Cook 1994; Keck & Sikkink 1998; Peterson & Parisi 1998; Pentikäinen 2003; Tyler 1995; Riles 2002) or the human rights of indigenous people and minorities (Margalit 2004; Cowan, Dembour & Wilson 2001; Samson 2001; Fried 2003; McIntosh 2003; Sieder & Witchell 2001; Halme 2005) offer merely two central examples.

The processes through which an issue becomes recognized as a human rights issue are illustrated by the case of sexual minority or LGBT-rights: lesbian, gay, bisexual and transsexual rights. This issue offers a rare example of a group of concerns the status of which remains continually contested as a recognized part of the international human rights regime for example in international legislation. Although occasional arguments suggest a much longer background (Sanders 2002), the first initiatives on LGBT-rights in an international forum emerged in the late 1970s (ILGA 2001), reflecting the discussed expansion of the human rights phenomenon.<sup>10</sup> Yet little advancements were made at the time, and interest group continued lobbying efforts until the

new millennium before the issue started to gain visibility for example at the UN. Over the past decade the issue has been addressed numerous times by the organization. In 2002 the General Assembly discussed the fact that no intergovernmental body had elaborated the concepts 'sexual minority' or 'sexual orientation', and in the following year the Brazilian delegation of the UN Human Rights Commission proposed a resolution prohibiting discrimination based on sexual orientation. The resolution was discussed in subsequent sessions in 2003 and 2004 and received vast support, but proved eventually too controversial for adoption (Redding 2006; Marks & Clapham 2005).

Initiatives at the UN continued in 2006 when the General Assembly adopted a Statement on sexual orientation with great support. 2008 saw another high profile initiative as the General Assembly included a reference to sexual orientation and gender identity in a statement reaffirming its commitment to the UDHR upon its 60<sup>th</sup> birthday (Human Rights Watch 2008). In spring 2011 a joint statement focusing on sexual orientation and gender identity was introduced to the UN Human Rights Council (ILGA 2011), and in June 2011 the Council adopted a resolution that expressed grave concern at the violence and discrimination experienced by people because of their sexual orientation or gender identity and called for a global study to document the suffering they face (UN 2011). These initiatives have been accompanied with favorable legislation in many Western countries as is again exemplified by the Finnish context: in 2002 same-sex couples gained the possibility to legally register their relationships (*Laki rekisteröidystä parisuhteesta* 2002) and a legislative change in 2009 offered registered same-sex couples the possibility of inter-familial adoption (*Laki rekisteröidystä parisuhteesta annetun lain 9 §:n muuttamisesta* 2009).

Yet, the issue has also met with extensive and well-orchestrated counter-reaction. Internationally this opposition has emerged particularly from many Islamic and African states, where homosexuality is continually illegal and even punishable by death. It has been embodied in joint statements against the initiatives introduced above; also the UN Human Rights Council resolution adopted in June 2011 passed with a slim majority as almost an equal number of countries voted against its adoption. Consequently the creation of international legal norms to recognize the status of LGBT-rights as human rights remains unlikely in the near future, or at least any such norms would

meet with restricted state approval (for a summary of LGTB-Rights, see IGLHRC 2011 and ILGA 2011). Despite of recent legislative changes, strong opposition continues also in Finland as was demonstrated in fall 2010 by the 'gay debate', an intense societal discussion following a live television debate in which conservative Christian politicians declared that homosexuality is a sin.<sup>11</sup>

This forceful international opposition or lack of legislation have, however, in no manner been interpreted by LGBT-right advocates to mean that the issue is not, or has not been, a part of absolute human rights since the very dawn of the discourse and concept. By contrast, interest groups have continually embraced the human rights discourse as a medium for rendering their claims visible, and human rights appear internationally further as the sole discourse utilized by LGTB-activists. To connect these findings to Duncan Kennedy's analysis, they show how arguments of LGBT-rights acquire the quality of being on the one hand universal, meaning that the issue is by advocates seen as embodying preferences that "every person shares or *ought to share*" (italics added). That there exists vast orchestrated opposition around the issues is not seen as signaling that LGBT-rights are not human rights in the absolute essential significance. Rather the people opposing these rights are considered as being wrong in their views, as interest groups emphasize that they *should* recognize the universality of LGBT-rights. Second, remembering Kennedy's description of rights claims as "factoid," in the sense that "once you acknowledge the existence of the right, then you have to agree that its observance *requires x, y, and z*", recognition of the universal factualness of LGTB-rights gives rise to the logical need for such concrete legislative changes as the right of same-sex couples to adopt. Thus LGBT-concerns become reasons for rules.

### **Human rights as the "last utopia"**

This article has discussed two central characteristics of human rights claims – that human rights are absolute and undefined – and illustrated the consequences that ensue from them with examples from the Finnish context. It has simultaneously argued that these qualities contribute to the massive global popularity of human rights. A few observations remain. The first relates to the instance where hu-

man rights were in SCANET activities equated to scientific facts. This equation denies the importance that social processes have in defining human rights, and instead construes human rights as something that merely *exist*. Such a characterization induces significant consequences on the conception of human rights: while they are portrayed as entities with an undisputed absolute essence divorced from empirical reality, human rights are transformed into articles of faith. Approaching human rights from this angle aids also in understanding the educational patterns described earlier: if human rights knowledge is construed as a ready object with an absolute – even sacred – essence, a self-evident learning process becomes one where this object is passed from knowledgeable individuals to those lacking it – from faculty to students.

The conception of human rights as article of faith emerges also in the manner that different ‘schools’ of international law – such as NAIL, New Approaches to International Law<sup>12</sup>, and SCANET – view each other. One prominent NAIL scholar stated how she has “*no patience for the human rights believers*”, and another described a human rights educational context much like SCANET as forming a “*human rights church*”. By contrast, SCANET scholars may often call NAIL scholars as cynics or even nihilists. Simultaneously the characterization of human rights as articles of faith was accepted, for example, by a prominent SCANET expert who, upon being asked on the matter, stated “*I have no problem to accept that human rights form a secular religion*”. In other contexts she described certain human rights as “*sacred*”, reflecting the commonly cited characterization of Michael Perry (Perry 1998)

The idea that human rights form a secular religion has been frequently addressed in scholarship. For example Boaventura de Sousa Santos has noted how the emergence of human rights in political rhetoric and diplomatic practices signals essentially “the return [...] of the religious” (Sousa Santos 1997, 2). The religious undertones of human rights can also be connected to the analysis of Paul Johnson who describes how in the contemporary era

the decline and ultimately the collapse of the religious impulse would leave a huge vacuum. The history of modern times is in great part the history of how that vacuum had been filled... In place of religious belief there would be secular ideology (Johnson 1992, 48).

E.H. Carr observed the same already prior to World War II, describing how

[a]n ethical standard was required which would be independent of any external authority, ecclesiastical or civil; and the solution was found in the doctrine of a secular 'law of nature', whose ultimate source was the individual human reason (Carr 2001[1939], 25).

Particularly after the Cold War human rights have increasingly filled the vacuum of religious sentiment, becoming the secular law of nature appealed to in diverse contexts. Samuel Moyn has argued that as other global utopias – socialism, fascism, nationalism – have waned, the human rights ideology has become the 'the Last Utopia'. This development can be clearly seen in regards to nationalism which held previously a powerful role in the founding of 'imagined communities' (Anderson 2003 [1983]). Like nationalism, the human rights ideology creates a paradox of objective modernity to the eyes of a historian and a sense of subjective antiquity to its supporters. It is further characterized by an imagined community formed around deep, horizontal comradeship, paired with the realization that it is impossible to personally know each of the persons belonging to the community (Anderson 2003, 5). However, differing from nationalism, the human rights ideology does not envision itself as finite; whereas Anderson notes how no nation imagines itself coterminous with mankind, this very notion – the community of *everyone* (Anderson 2003, 6–7) – is constitutive of the human rights ideology.

Over the past six decades the ideology embedded in the human rights discourse has proven a tremendously potent tool for inspiring a sense of belonging in people worldwide. Yet, Moyn has importantly phrased the position of human rights as the last global utopia so far, thus recognizing the possibility that others will follow (Moyn 2010). Whereas it at present remains difficult to envision an ideology that could challenge the contemporary popularity of human rights, it is possible to envision factors that would cause the human rights ideology and discourse to lose some of their appeal. One such factor may emerge directly from their current popularity: extensive use of the discourse may result in global fatigue, and lead in its subtle downplaying in political rhetoric among others.

Another challenge may come from such claims as arguing that the internet is a human right. If this claim becomes a clearly established legal human right in Finland, for example, and the right's realization is guaranteed, for example, by public funds, this will exclude large parts of the global population from its enjoyment due to the right's elitism: only people with sufficient wealth, either private or public, have the possibility to enjoy this right. This circumstance may in turn feed into a sense of isolation from the discourse, and undermine its continued capacity to inspire a sense of global unity among people. Thus the duality discussed in this article forms an important prerequisite for the continued triumph of human rights: in order to continually function as the 'idea of our time', human rights will also in the future need to be regarded as both absolute and undefined. Only this duality will preserve the discourse as both sufficiently vague and powerful, thus continually capturing people's imagination and inspiring them to adopt the language of human rights to articulate their diverse concerns.

NOTES

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1. The indeterminacy of rights claims is a central insight of critical legal studies. In addition to Duncan Kennedy, the issue was particularly in the 1980s developed, for example, by Mark Tushnet (1984), James Boyle (1985) and Nicholas Onuf (1985) and Martti Koskenniemi (1989). Much of the more recent 'Crit' scholarship builds on their insights.
2. This approach has led for example Marianne Valverde to describe science studies as more conservative than Foucaultian post-modernism, in which the term 'science' can be utilized in the plural form to emphasize the particularity of Western science (Valverde 2003, 5-9).
3. This terminology refers to the six decades of 'universalism-relativism' debate of which the first official marker was the Statement on Human Rights of the American Anthropological Association from 1947 (AAA 1947). Today the concept of relativism is increasingly utilized by liberal multiculturalist scholars as something the 'temptation of which should be avoided' (see, for example, Benhabib 2002, 29; Freeman 2002, 9). Yet, as has been marked by Clifford Geertz, the meaning of the concept has largely remained confused. He notes how it is associated with such 'moral and intellectual consequences' as "subjectivism, nihilism, incoherence, Machiavellianism, ethical idiocy, aesthetic blindness, and so on" (Geertz 1984, 263).
4. In this terminology this article reflects the approach utilized, for example, by Mark Mazower (2004), and Saladin Meckled-Garcia and Basak Cali (2006). Many other scholars talk of the 'human rights movement' which is, nevertheless, considered too restrictive for the present purposes.
5. In the 1960s the CESC was ratified by Cyprus, Tunisia, Syria, Colombia, Ecuador and Costa Rica. Slow momentum can in part be ascribed to the necessity of bringing domestic legislation into conformity with the provisions of the Convention before ratifying it.
6. Amnesty's operations in Finland began in an informal manner in 1964, and the Finnish chapter was founded in 1967. However, at that time it did not achieve national following. Thus a new board was selected in 1974, which started a new era reflected by growing membership numbers (Amnesty International 2006).
7. Of these ratifications, six are successions continuing former treaty relations from the Soviet era.
8. The Report from 2004 was celebrated as the first of its kind. Although similar reports were published in 1998 and in 2000, the 2004 report was greatly more expansive and featured domestic elements, contrary to earlier ones; yet the main emphasis has remained on external affairs. The report follows the model of Sweden, where similar reports have been drafted for decades (Mänskliga rättigheter i Sverige 2001).

9. Scholars have differing views on the use of pseudonyms (see Halme-Tuomisaari 2010, 11). This article uses a pseudonym for SCANET not principally because of desires to conceal SCANET participant identities – after all, their educational activities are public, and thus no reasons exist to protect anonymity. Rather the pseudonym assists in upgrading the utilized analytical level by treating SCANET above all as a characteristic example of artifacts and communities of the contemporary human rights phenomenon.

10. In 1978 the International Lesbian and Gay Association was founded (ILGA 2006) and in 1981 the first case, *Dudgeon v. United Kingdom*, was adjudicated at the European Court of Human Rights, affirming the protection of lesbian and gay rights by noting that a law criminalizing consensual homosexual conduct in Northern Ireland violated the ECHR (for a summary of jurisprudence on sexual orientation and gender identity, see Human Rights Watch 2008). However, this remained the only favourable ruling of the 1980s, and in 1986 Klaus Törnudd stated ‘there are no United Nations norms specifically concerned with the human rights of homosexuals’ (Törnudd 1986, 269). The 1990s were characterized by positive rulings particularly at the European Court of Human Rights, a development continuing in the new millennium.

11. These views generated a massive response: for the next two weeks the issue was at the centre stage of the Finnish media, and reportedly over 35 000 people resigned from membership in that period – a dramatic figure against the trend of past years according to which church membership numbers decline by 30 000-50 000 annually.

12. ‘NAIL’ scholars are in other contexts called ‘Crit’-scholars. One defining characteristic of this ‘school’, however, is that its very existence is contested by people who outsiders would classify as members (Riles 2006; Skouteris 1997).

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