Introduction

This book, as the sub-title indicates, aims to confront a number of enduring and significant myths and misunderstandings which afflict both the theory and the practice of human rights. Many other academic human rights books approach the subject by means of a conventional classificatory structure which distinguishes between such things as the different categories of human rights, enduring themes and concepts within the subject-matter and established issues in the application of human rights to the ‘real world’. Many of these works have made a vitally important contribution to the understanding of human rights amongst students and practitioners alike. The extent of their success can be gauged by the relatively little that remains to be usefully written within this genre. In an effort to avoid mere repetition, I have opted for a different approach to the subject. Human rights have become, in many parts of the world, a household term. In some parts of the world, human rights have become a veritable totem around which campaigns for social justice and against oppression have taken root. An awareness of and an appeal to human rights have spread beyond the realm of elite political and intellectual communities and have come to exert a profound influence upon many people’s political, economic and social projects and aspirations. It would be wrong, or at least deeply egocentric, to claim that we, that is everyone, now live in a veritable age of human rights. This is, if you will, the foremost myth in need of correction. After all, the ultimate criterion for determining whether we live in such an age is the extent to which all people everywhere can be said genuinely to possess and exercise their fundamental human rights. This age has yet to arrive, as evidenced by the countless millions, if not billions, of human beings whose basic human rights are systematically denied every waking day of their lives. Like many other so-called historical ‘ages’ or epochs before, the age of human rights remains a relatively rarefied property of the privileged few, who are sometimes too quick to misconstrue their own conditions for those of others. A commitment to human rights entails, however, a commitment to satisfactorily securing the conditions required for a world finally free from the effects of systematic misery and avoidable suffering. Only then can we genuinely declare ourselves to be the bearers of an age of human rights. In recent years, despite a number of deeply significant geo-political developments and ever-expanding global wealth, there have emerged a number of
challenges to human rights claims to normative hegemony. These have come from various quarters and have taken various forms. The principal aim of this book is to explore and respond to a selection of these challenges, which I have labelled, uncharitably perhaps to some, myths and misunderstandings.

The basis and the legitimate parameters of human rights cannot be excluded from critical analysis and scrutiny. To this extent, human rights are no different from any other potential subject of intellectual inquiry. I do not, therefore, consider all challenges to human rights as being merely wrong in a moral or an epistemological sense. However, a significant proportion of the intellectual ‘friction’ within the theory and practice of human rights needs to be confronted with slightly less intellectual tolerance than is appropriate for other forms of deliberative dispute and disagreement. A commitment to human rights is not equivalent to a preference for a particular art-work or a consumer commodity. Human rights, in so many ways, affect the very capacity and opportunity to engage in deliberation and differences of opinion in the first place. They are, in this sense, truly foundational. This does not absolve human rights from any and all criticism, but we need to remind those who challenge the basis and moral authority of human rights that they can do so only to the extent that their own human rights are not unduly restricted and denied in these respects. To amend von Neurath’s familiar metaphor a little, we cannot dismantle the lifeboat our very existence is largely dependent upon so long as we remain on open and tempestuous seas.

Myths differ from mere misunderstandings in some important respects. Without resorting to the Oxford English Dictionary, I take myth to possess a decidedly and all-important intentional quality. Myths are deliberately created by some agent or collective body of agents with the aim of achieving some purpose or end through representing reality in a particular way. The reality represented is ‘mythical’ to the extent that it can be shown to be objectively ‘false’, partial or inaccurate. Misunderstandings can also be shown to be false or based upon erroneous reasoning, but lack the more overtly purposive and intentional quality of myths. The origins and motives of misunderstandings are typically far more random than their mythical counterparts. However, the ultimate distinction between the two is not completely cut and dried and, like many other discursive phenomena in these non-binary times, is better understood as marking opposing, idealised points on a spectrum. Having said that, it is useful to distinguish between the two in respect of human rights to the extent that it enables one to distinguish between the depth and potential intractability of the notion in question: misunderstandings are more easily overcome than more entrenched myths to the extent that the latter have more purposive ‘weight’ behind them. I draw the distinction in order to support the broader normative ambition of this work.

The scope of the ensuing discussion is intended to provide a sufficiently
comprehensive and detailed engagement with human rights to enable a reader relatively new to the academic literature to gain a solid understanding and knowledge of the principal landmarks in this field. It is, however, necessarily limited and is not intended to address all of the most important aspects of understanding human rights in the current age. The content of this book is selective and some readers may lament the omission of their own particular areas of interest. I apologise for that. However, what is covered here aims to encourage all students and practitioners of human rights to reflect upon what they consider the basis and scope of human rights rightfully to be. To that extent, I have chosen to include myths and misunderstandings from across a wide range of specific positions within the academic human rights field. While some of the specific myths and misunderstandings considered have been chosen precisely because of their scepticism of or hostility to the doctrine, others have been chosen that are actually fully affirmative of the doctrine. I have chosen these because and only to the extent that their particular claims can be shown to be ultimately harmful to the moral authority and legitimacy of the doctrine: they ask for too much in the name of human rights and seek to extend human rights claims to areas of life where they do not apply.

Chapter 1 begins with an analysis of a misunderstanding and addresses an established tendency to confuse social privileges with human rights. I argue that this tendency has its roots within human rights theory and the difficulty in determining the basis and scope of what it means to be human in the first place. After considering the two dominant theoretical approaches to justifying human rights I propose an understanding which aims to restrict the application of human rights to essential conditions of human well-being.

Chapter 2 takes aim at a myth and engages with human rights as a distinct moral doctrine. The myth in question is that which views human rights in strictly legal terms and claims that human rights can only be said to legitimately exist as legal entities. Legal-positivism has had a profound effect upon the development of jurisprudence and has figured prominently in the critical literature upon human rights. My criticisms of these arguments offer nothing new to the debate but aim to remind us of the necessary persistence of the distinctly moral dimension of human rights, which is not reducible to, or dependent upon, legal recognition and codification.

Chapter 3 extends the argument of Chapter 2 to address the myth of human rights as a universally valid moral doctrine. This may appear, as stated, to be a simple contradiction on my part. Typically, refutations of legal-positivism have rested upon an appeal to moral universalism and a characterisation of legal-positivism as a form of moral relativism. This is correct. However, many, but not all, of the arguments presented in favour of human rights' universal validity have failed to engage with, or even acknowledge, the social basis to human rights. Continuing to insist or imply that human rights can be defended
without engaging in analysis of the social conditions which have influenced them is intellectually naïve. It has also consistently run the risk of being criticised as a form of Eurocentricism. This chapter argues that successfully extending human rights’ legitimacy requires a serious engagement with society and culture and aims to develop an argument which goes beyond merely repeating the mantra that culture and society have no bearing upon globally acceptable justifications of human rights.

Chapter 4 shifts focus to the relationship between human rights principles and nation-states. There is an established misunderstanding of human rights as a doctrine which is ultimately incompatible with the modern state. The origins of this view lie, to some degree, in a latent form of cosmopolitanism which, on some readings, accords little constructive role to the state in initiating or instituting a global morality. The singular role of the state as an abuser of human rights has also reinforced this view. I argue that a correct understanding of human rights as a contemporary moral doctrine must include a comprehensive and accurate account of the institutional capacity of the state to protect and promote human rights. As the world is presently structured, human rights cannot be achieved without utilising state power and resources.

Chapter 5 retains this focus by challenging an important myth concerning the relationship between democracy and human rights. An argument supportive of the state’s role in upholding human rights requires a determination of what kind of state is best suited to this end. The conventional response to this question identifies democracy as both necessary and sufficient to this end. However, democracy is a concept with many interpretations. One in particular has detrimentally affected the exercise of human rights, to the extent that it has been argued that democracy is based upon the enjoyment of civil and political rights and does not require any significant concern for their economic, social and cultural counterparts. I present an established argument against this particular myth which draws upon Henry Shue’s notion of rights holism.

Extending the notion of rights holism to another area of human rights concern, Chapter 6 proceeds to focus upon a significant misunderstanding concerning the relationship between rights and duties. I place this analysis in the context of a discussion of economic justice. Many have argued that human rights are insensitive to duties. Various explanations have been offered in support of this claim. For example, it is frequently argued that human rights are unduly influenced by moral egoism and the consolidation of self-interest. Something resembling this view is undeniably discernible in some accounts of human rights. However, I shall argue that these accounts are false to the extent that they fail adequately to conceptualise the necessary role of duty as a counterpart to the possession and effective exercise of any human right. If one takes seriously the view that rights are correlative with duties, one must draw a different conclusion from that which reduces the notion of duty to the status of a mere afterthought.
Chapter 7 concludes my discussion by bringing together all of the various strands and elements of the previous chapters. The purpose of this final chapter is to outline a positive and constructive vision and account of human rights in the contemporary age. This aims to transcend the more overtly negative purpose of demonstrating the errors and weaknesses of other approaches to specific aspects of human rights. My ambition is not thereby to end all subsequent discussion of the subject at this level, but rather to present an account which suffers less from those myths and misunderstandings which affect both our understanding of human rights and, more importantly, the prospects for their realisation. I leave it to individual readers to decide how successful I have been in this regard.