1. Introduction to *The Logic of Human Rights*

**OBJECTIVE AND CONTRIBUTION**

Human rights are often postulated as a means to achieve a just and peaceful existence for all in this world. Thus, the Universal Declaration of Human Rights proclaims in its first preambular paragraph that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”\(^1\) In this sense human rights aim to provide a normative direction for humanity. However, such a normative or programmatic vision (achieving a better world for all) is impossible without a prior conceptualization of what this world is: of how this world functions, what the nature of reality is, what human rights aim to improve, and similar. Mostly, international human rights law does not deal with these questions explicitly. It operates on the basis of a series of implicit presumptions, which are usually taken for granted, assumed to be “natural,” unchangeable, and thus not in need of any discussion. The situation is very different for philosophers. From the earliest known philosophical reflections, questions about the nature of reality, indeed the very reality of our reality, have preoccupied the minds of generations. Most philosophers would venture into formulating normative postulates about the ways to improve the life of humanity only after having adopted a clear stance on the nature and characteristics of the world within which this humanity exists. Mostly, current debates framed under the umbrella of “philosophy of human rights” in the contemporary literature evade the latter type of question.\(^2\) The first aim of this

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\(^1\) Universal Declaration of Human Rights, December 10, 1948, UN GA Res 217 III (A).

book is to make explicit foundational presumptions about the world around
us which international human rights law in its current form requires for its
continuing operation. By making these presumptions explicit, this book pro-
vides solid ground on which to formulate any possible suggestions for further
enhancement and renewal of human rights because it allows the establish-
ment of better connections to the world within which human rights operate. Many
uncertainties regarding what human rights law takes for granted or considers
“natural” are also revealed in this way, opening avenues for more direct and
thus hopefully more fruitful debates. In this book the specific term chosen to
designate the type of foundational questions traditionally evaded by interna-
tional human rights law is “logic.” Such a terminological choice might appear
surprising against the contemporary dominant meaning attributed to the term
“logic,” which is mostly associated with the formal logic and its foundational
principles that came to be part of wider everyday usage. However, returning
to the multiplicity of meanings of the word “logic” in ancient Greece and the
variety of uses of this term in philosophy, Chapter 2 will justify the choice of
this term and clarify its use in the present book.

Bringing to the surface international human rights law’s unstated presum-
tions about the world around us is in itself not an entirely novel enterprise.
Critical legal studies, feminism, and third world approaches to international
law are only some of the most prominent examples of currents of thought
within legal theory and philosophy which, to various degrees, are also preoc-
cupied with making some of the unstated presumptions of human rights law
explicit. In this regard this book distinguishes itself by focusing on a particular
approach and a particular set of perspectives so far addressed only rudimen-
tarily and in a patchwork fashion. This book’s focus on the nature of reality
from a metaphysical and epistemological perspective is quite unusual. It goes
beyond a simple explicit revelation of these presumptions to also offer an alter-
native. Such alternative is formulated on the basis of a philosophical system

3 Some examples of a more explicit focus on these types of question in contempo-
rary literature dealing with international human rights law are mentioned in Chapter 3.
developed by a non-Western philosopher. More specifically, the thought and work of Nishida Kitarō, a Japanese philosopher working in the early twentieth century (1870–1845), became the point of departure and inspiration for this book. As explained in detail in Chapter 4, one of Nishida’s aims was to develop a philosophical account of reality based on Eastern traditions. Thus, the system he developed remains unique but largely unknown to human rights scholars precisely because they are less interested in questions of reality as a foundation for human rights. Usually, human rights scholars expect from a philosopher at least some direct engagement with moral, ethical, or value-related issues. In Nishida these engagements are not absent but they remain inaccessible without at least some understanding of his overall philosophical system, which is complex and highly peculiar given the grounding of his philosophy in the Eastern tradition. Moreover, Nishida was living and writing at a time when the international system of human rights protection as we know it today was nonexistent. Thus, one cannot find an explicit discussion of human rights in his work. Therefore, this book represents the first effort to interpret Nishida’s ideas in a manner that might enable the start of a conversation about their human rights implications.

The choice of Nishida over any other non-Western thinker is determined by two factors: first, the affinity between his approach, which starts from the explanation of reality, and this book’s aim to ground human rights in reality; second, the high innovative potential of Nishida’s approach. As argued in Chapter 3, contemporary human rights law continues to enable objectification of individuals and the exclusion of some from the benefit of protection. In one of my earlier works, I argued that human rights law operates as an exclusion/inclusion mechanism. The present book goes a step further and provides a diagnosis (how this mechanism was created and what are its main principles)

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4 Nishida’s work and ideas are discussed in Chapter 4. His first book that positioned him as a philosopher, after which his writings proliferated, was published in 1911.

5 A question might be raised by some regarding the legitimacy of the language of “human rights” being inserted into epochs and contexts where it did not exist. This concerns not only Nishida’s work but also all philosophical ideas developed prior to the emergence of the contemporary human rights movement. This book uses the expression “human rights” in a broad sense, as designating any conceptual construction aiming at ensuring better life for human beings with the purpose to investigate what visions underpinned such constructions. When reference is made to the current system of human rights protection, more specific terminology is utilized, such as international human rights law, human rights law, or human rights system.

6 Ekaterina Yahyaoui Krivenko, Rethinking Human Rights and Global Constitutionalism: from Inclusion to Belonging (Cambridge University Press, 2016), chapter 2 in particular.
and a potential solution to the continuing objectification and exclusion. It identifies the subject/object dichotomy as the root cause of these deficiencies of human rights law. From this perspective, Nishida’s philosophical system, which overcomes the subject/object dichotomy, represents a natural source of inspiration for proposing the possibility of human rights’ renewal beyond the subject/object dichotomy.

While the major portion of this book is dedicated to the development of the theoretical proposal, it does not stop at theory. Some elements of discussion in Chapters 4 and 5, but especially Chapter 6, contain concrete practice-oriented considerations which will, it is hoped, enable purposeful action.

OBSERVATIONS ON APPROACH

Nishida’s work was produced entirely in Japanese. Moreover, as will be explained in Chapter 4, it uses very complex language, which is difficult to access even for a Japanese native speaker. In particular, Nishida created his own terminology and imbued some common terms with a specific technical sense. Thus, for a non-native speaker or a person only rudimentarily familiar with the Japanese language, accessing Nishida’s work in Japanese is a major undertaking. On the other hand, nowadays, many translations of Nishida’s work are available in English and French, and to a lesser extent in other European languages. The dilemma then arising concerns whether it is possible to correctly understand and interpret Nishida’s works through translation, or if it is instead necessary to spend years or even decades acquiring the necessary depth of proficiency in Nishida’s Japanese language. The reflection in the present book is based largely on translations, with some excurses into Japanese terminology when this is required by the flow of the argument. Such an approach was selected for expediency, but also because a very lucid and precise introduction to Nishida’s thought is enabled by Jacynthe Tremblay’s French translations and discussions of Nishida’s work. Contrary to other authors who have translated a few of Nishida’s works with a focus on a particular aspect of his philosophy which is of interest to them, Tremblay offers a weighty set of translations and discussions of Nishida’s works covering different periods of his life and constituting a systematic representative selection enabling a comprehensive understanding of Nishida’s philosophy. Tremblay’s contribution is particularly valuable given her care and attention to Nishida’s language. Moreover, since all these translations are a product of the same author, the terminology is maintained throughout the various pieces. When one is faced with translations by different authors who each make perhaps equally legitimate but different choices, one can be faced with, in addition to the complexity of Nishida’s thought, a multiplicity of unfamiliar terms which in fact all denote the same idea. Tremblay’s translations and interpretations of Nishida enabled
the adoption of an approach based on translations. Thus, the present book does not lay a claim to be the ultimate and only correct interpretation of Nishida. Rather, it proposes an interpretation or a sort of “mining” of ideas on territory unfamiliar to human rights lawyers. To some extent this is also justified by Nishida’s own procedure in his writing, which permits, according to Dalissier, quite a liberal approach to interpretation: “L’auteur déclare écrire en pensant et en écrivant penser, et apparaît comme une sorte de ‘mineur’ du sens. Dans cette perspective, il s’agit de prendre le texte ‘brut’ plutôt comme un matériau offert de manière assez décousue et libre à la ‘spéulation’ philosophique.”

Nishida’s thought was developed in conversation with many Western philosophers and thinkers in other areas of study, including psychology, mathematics, physics, sociology, and anthropology, to name just a few. All these areas of knowledge continued to develop and grow in the West after Nishida’s death. Naturally, many present-day ideas and findings did not exist during Nishida’s lifetime. When reading Nishida, one is not only faced with his reworking of Western philosophy as it existed during his lifetime, but also discovers many ideas that were novel for his time and which resonate with Western post-modern philosophy. This raises questions about similarities and differences between Nishida’s ideas and those of the Western post-modern philosophers and, as a consequence, the degree to which Nishida’s ideas conserve their originality today. The existing literature, although limited to punctual comparison of specific concepts or circumscribed ideas of Nishida and Western post-modern philosophers, provides initial evidence of the continuing relevance and originality of Nishida’s work. However, a conscious decision was made to exclude such a systematic discussion here. First of all, any analysis that might do justice to the work of Nishida, as well as other philosophers,

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7 Michel Dalissier, “Présentation” (2009) 103 Philosophie 51–5, 55 (references omitted): The author [Nishida] declares to write while thinking and think while writing and appears as a sort of a “miner” of the sense. From that perspective, it is more about taking the “raw” text as a sort of a martial offered in quite a loose manner open to philosophical “speculation.”

8 An extensive but by no means complete overview of Nishida’s engagement with Western philosophy is provided by Robert Wilkinson, Nishida and Western Philosophy (Routledge, 2009).


10 One brief comparison between Nishida’s ideas and those of a contemporary thinker (Niklas Luhmann) is exceptionally included in Chapter 5, for reasons explained in that chapter.
would need to go well beyond the scope of a single book. Second, it is rather
doubtful that such analysis would significantly change the argument of this
book, which focuses on the renewal of human rights from the perspective of
dissolution of the subject/object dichotomy. Despite many new developments
in Western post-modern philosophy, Nishida’s thought remains unique in its
systematic and complete approach to the topic. Moreover, being grounded
in a non-Western worldview, a proposal developed based on Nishida’s work
contributes to the important task of decolonizing human rights.11

STRUCTURE OF THE BOOK

Chapter 2 demonstrates the centrality of the subject/object dichotomy to the
Western philosophical tradition. This is effectuated by tracing the emergence
of this dichotomy in Western philosophy, thus also demonstrating its artifici-
ality. In particular, it is argued that the dominance of reason in early modern
philosophy contributed significantly to the emergence of dualistic thinking,
especially by separating mind and body. The dominance of reason is also linked
to the crystallization of logic as a discipline dedicated to good reasoning, thus
further strengthening the subject/object dichotomy. The artificial installation
of the subject/object dichotomy at the center of Western civilization is further
highlighted by discussion, in the penultimate section of the chapter, of the
permutations and transitions of meanings of the terms “subject” and “object.”

Having demonstrated the centrality of the subject/object dichotomy in
Western philosophy and thinking in general, in Chapter 3 the book shows how
this dichotomy informs the contemporary international human rights system.
The analysis first demonstrates that contemporary human rights scholarship
recognizes dynamics of objectification mainly through discussion of hierar-
chies of subjecthood present in human rights law, and attempts to wrestle with
this harmful tendency of human rights law. However, the chapter goes a step
further and brings to the surface the less visible counterpart of the human rights
subject, namely, the object of human rights. It does so by discussing the ways
in which objectification tendencies can be recognized in human rights law, as
well as the historical roots of objectification in the development of the idea of
rights, including natural rights. Through this discussion the chapter reveals the
mechanism inscribed in the Western idea of rights constituted by a peculiar
vision of and combination between the concepts of freedom, property, and
right that enables objectification of human beings in general and of oneself
in particular. The operation of this objectification mechanism through the

11 On the importance of this idea see Abdullahi A An-Naim, Decolonizing Human
history of Western rights theories is discussed using the example of slavery in Aristotle, Grotius, and Kant. The operation of the same mechanism in contemporary human rights law is illustrated using the example of migrants and refugees.

After this discussion of the subject/object dichotomy and its dominance in both Western philosophy and human rights law, Chapter 4 moves to the presentation of Nishida’s alternative view of reality, which is able to dispense with the subject/object dichotomy. A brief overview of Nishida’s philosophical system or topo-logic, which is also his view of reality, is presented, followed by a more focused discussion of the place of human beings in topo-logic to enable a better transition to the discussion of issues more closely connected to human rights in subsequent chapters.

Chapters 5 and 6 delve into the core of the proposal, namely the possibility of an idea of human rights beyond the subject/object dichotomy. Chapter 5 discusses Nishida’s philosophical ideas as they relate to the three core elements of the current objectification mechanism in human rights law: freedom, property, and right. The chapter reveals that while these same three elements are also joined together in Nishida’s discussion of right, by imbuing them with a very different meaning emerging from his view of reality that dissolves the subject/object dichotomy, Nishida’s philosophy offers a basis, an alternative vision of reality (his topo-logic), on which to theorize and develop a vision of human rights beyond the subject/object dichotomy. Chapter 6 then develops the idea of human rights beyond the subject/object dichotomy and formulates suggestions for their practical implementation. To achieve this objective the chapter provides a holistic picture of how topo-logic’s view of reality enables a focus on human beings as individuals while overcoming the subject/object dichotomy. It also provides a discussion of the topo-logical view of states and morality, before finally proceeding to the practical example of Native American property arrangements as an illustration of concrete functioning of Nishida’s ideas of right, property, and freedom. The chapter also offers an insight into three contemporary developments—social movements, decolonization of human rights, and substantive equality—which demonstrate how a topo-logical view of human rights can be operationalized. In its conclusions, the book summarizes its main findings and indicates directions for future research.