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**HUMAN NEEDS OR HUMAN WANTS?
THE IMPACT OF CRISES AND CATASTROPHES
ON HUMAN RIGHTS**

Abstract

Philosophers, lawyers, and political scientists have for a long time attempted to solve issues related to human rights, crises, and catastrophes. This article aims at bringing these debates together, to show that human rights and crises are mutually interdependent. More precisely, I will illustrate that the instincts and emotions triggered by the materialization of certain crises and catastrophes might devalue the implementation of human rights law as it influences our conception of the grounding of human rights *qua* moral rights. For this reason, a call for a “theory of want” as a justification for the grounding and the implementation of human rights in times of crisis is needed.

Keywords: Human Rights, Crisis, Catastrophe, Moral Rights, Legal Rights.

Necessidades humanas ou vontades humanas? O impacte das crises e catástrofes nos direitos humanos

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Resumo

Filósofos, juristas e cientistas políticos têm desde há muito tempo abordado e tentado resolver questões relacionadas com direitos humanos, crises e catástrofes. Este artigo tem como objectivo fazer o ponto da situação de tais debates e mostrar que os direitos humanos e as crises são mutuamente interdependentes. Mais precisamente, ilustra-se como os instintos e as emoções desencadeados pela materialização de certas crises e catástrofes podem desvalorizar a implementação de legislação em matéria de direitos humanos, uma vez que influenciam a nossa concepção da fundamentação dos direitos humanos *enquanto* direitos morais. Por esta razão, torna-se necessário apelar a uma “teoria da vontade” como justificação para a fundamentação e implementação de direitos humanos em tempos de crise.

Palavras-chave: Direitos Humanos, Crise, Catástrofe, Direitos Morais, Direitos Legais.

Introduction

Human spirit is the ability to face the uncertainty of the future
with curiosity and optimism. It is the belief that problems can be solved;
differences resolved. It is a type of confidence. And it is fragile.
It can be blackened by fear and superstition.

B. Beckett

Philosophers, lawyers, and political scientists have for a long time attempted to solve issues related to crises and catastrophes. The special edition of this journal is not an exception. Catastrophes and crises are on the agenda. Both man-made and natural crises/catastrophes raise different questions in terms of moral responsibility, liability, the role of political power, scientific experts, emotions in risk perception, and so forth. At the same time, philosophers, lawyers, and political scientists have for a long time attempted to solve issues related to human rights. According to Rowan Cruft, Matthew Liao, and Massimo Renzo: «Human rights are the distinctive legal, moral, and political concept of the last sixty years»². Interestingly, the term human rights became frequently used in the English language only in the 1970s³ and it has grown in institutional and rhetorical importance during the last two decades⁴. Hence, the concept of human rights is currently being used 100 times more often

² R. Cruft – S. M. Liao – M. Renzo (eds.), *Philosophical foundations of human rights*, Oxford University Press, Oxford 2015, p. 1.

³ S. Moyn, *The Last Utopia: Human Rights in History*, Harvard University Press, Cambridge Massachusetts 2010, p. 231.

⁴ Cruft – Liao – Renzo, *Philosophical foundations of human rights*, op.cit., p. 2.

than expressions such as constitutional rights or natural rights⁵. Thus, today human rights are an extremely influential concept from which several theoretical reflections arise. For instance, according to Andrew Clapham: «Different people see human rights in different ways. For some, invoking human rights is a heartfelt, morally justified demand to rectify all sorts of injustice; for others, it is no more than a slogan to be treated with suspicion or even hostility»⁶. As we will see, the debate around the concept of human rights points in different directions.

In this article, I aim to bring together the human rights and crises/catastrophes literature to show that these concepts are mutually interdependent. More precisely, I shall provide a comprehensive analysis of the relationship between crises – or catastrophes – and human rights, understood as both legal and moral rights. I will argue that we cannot disregard the understanding of international human rights law to understand the normative dimension of human rights⁷. Therefore, with this work, I intend to participate in and bring together two established debates in philosophy and international law. I acknowledge the importance of the existent international legal scholarship, yet I suggest that we should ask ourselves: Do crises and catastrophes affect the moral foundations of human rights? If so, how? As I will illustrate, catastrophes and crises might devalue or strengthen human rights law. With this article, I will add an extra clarification, i.e., the emotions triggered by the materialization of certain crises and catastrophes might devalue or foster the implementation of human rights law as it influences our conception of the grounding of human rights *qua* moral rights. This happens, I shall claim, because human rights are a matter of “wants”. To show my reasoning, I will proceed as follows. Firstly, I shall briefly illustrate the concept of crisis and catastrophe, while spelling out their differences and similarities. Secondly, starting from a legal perspective, I shall briefly show that human rights law is both produced and dependent on crises and catastrophes. Thirdly, I shall attempt to develop a criticism of how the connection of human rights to the unfolding brought by crises and catastrophes clashes with a concept of human rights independent of positive international human rights law. I shall argue that this is shaped by our emotional representation of the world in times of crisis. For this reason, I shall present a “theory of want”⁸ in human rights literature. Human rights, by definition, are human’s moral entitlements and/or legal rights.

⁵ E. Posner. *The Twilight of Human Rights Law*. Oxford University Press, New York, 2014, p. 6.

⁶ A. Clapham, *Human rights: A very short introduction*, Oxford University Press, Oxford 2014, p. 1.

⁷ For a general discussion see: J. L. Coleman – S. Shapiro – K. E. Himma (eds.), *The Oxford handbook of jurisprudence and philosophy of law*, Oxford University Press, Oxford 2002, pp. 440-75.

⁸ Please note: The “Theory of Want” presented in this article is about wanting (or demanding) as wishing or willing. A “wanting” that is influenced by emotions. It is different from the economic “Theory of Wants”. Accordingly, the economic view of needs and wants suggests that a person’s needs may be satisfied but their wants never will be. See for instance: Witt, U. (2001). Learning to consume—A theory of wants and the growth of demand. *Journal of evolutionary economics*, 11(1), 23-36.

Therefore, to study human rights, we should consider humans. Humans' needs and wants.

1. Crisis & Catastrophe

Lately, a certain word has been making the round. If we take recent news footage from all around the world there is one leitmotiv: Crisis. But what exactly is a crisis? The meaning of such a word seems obvious, yet crisis is a much more complicated concept than it first appears to be. This section will help to understand the meaning of this complex concept while illustrating the differences and similarities between crises and catastrophes.

Etymologically, the notion of crisis comes from the Ancient Greek κρίσις, which has its roots in the Greek verb κρίνω: to “separate”, to “choose”, to “decide”⁹. Ancient Greek physicians used the term to refer to a precise moment in the development of an illness when a doctor must apply a particular treatment. In other words, defined as the decisive turning point in the course of a disease, a crisis was the moment after which a patient either recovered or died¹⁰. Yet, a crisis also meant a decision in the sense of reaching a verdict, i.e., “judgment”, “trial”, “legal decision”, and ultimately “court”¹¹. Therefore, a crisis was a moment of *decisio*, i.e., the decisive moment in the evolution of an uncertain process that firstly allows the diagnosis, and secondly the exit from the crisis¹². According to Koselleck, the legal, theological, and medical usage of «crisis» contains specific meanings. However, «at all times the concept is applied to life-deciding alternatives meant to answer questions about what is just or unjust, what contributes to salvation or damnation, what furthers health or brings death»¹³. While today there is a close connection between crisis and catastrophe, in Ancient Greek the name “catastrophe” was used in music and theatre to express an unravelling and return to context¹⁴. It was usually combined with the term *anakrousis*: «a sonorous explosion that was played at the beginning of a performance to clear the ears and so make space for a *cosmos* to be created»¹⁵. The purpose of the catastrophe was to prepare the audience to leave the theatre and return to everyday life. Even though the two terms are etymologically different, we can notice the first seed of similarities. Both “crises” and “catastrophes” were considered a moment of

⁹ R. Koselleck – M. W. Richter, «Crisis» *Journal of the History of Ideas*, 67 (2) (2006), p. 358.

¹⁰ R. Cooter, «Crisis», *The Lancet*, 373 (9667) (2009).

¹¹ Koselleck – Richter, «Crisis», art. cit., p. 358.

¹² M. Revault d'Allonnes, «Crise et Modernité», *HannahArendt. net*, 7(1).

¹³ Koselleck – Richter, «Crisis», art. cit., p. 361.

¹⁴ S. Connelly – T. Mulqueen – I.R. Wall. «Catastrophe: Introduction» *Law and Critique*, 30(3) (2019), p. 222.

¹⁵ Ibid.

rupture, which invited to reflect on the consequences of such a fracture.

Through the centuries, the terms “crisis” and “catastrophe” took different forms and meanings. On the one hand, the word crisis was adopted into national languages to indicate different situations. In France, the concept *la crise* appeared as a medical term in the fourteenth century. Yet, it entered the political sphere only in the seventeenth century to describe France’s economic difficulties¹⁶. Nonetheless, it is thanks to the thinkers of the Enlightenment in the 18th century, such as Rousseau, Diderot, and Montesquieu, that *la crise* has been gradually extended into other fields such as economics, morality, and culture¹⁷. Similarly, in Germany, the eighteenth century brought an expansion of the term *die Krise*. This expression, initially applied solely to external and military situations, entered into the realm of domestic constitutional life¹⁸. On the other hand, the landmark that encapsulates the meaning of catastrophe as it stands today is the publication of *A Voyage Round the World*, in the Years MDCCXL, I, II, III, in 1748, when the term “catastrophe” was first employed to describe a «sudden disaster»¹⁹. From this moment onwards, we leave behind the original theatrical connotation of catastrophe, which pointed out the turning point in a drama, to then refer to a sudden disaster.

Since the turn of the nineteenth century, we have entered the «age of crisis»²⁰ – which has produced an enormous quantitative expansion in the variety of meanings attached to the concept of crisis²¹. Similarly, catastrophe acquired the meaning of a «sudden disaster, widespread, very fatal, or signal»²². This new broad definition can, therefore, explain the tendency of nineteenth-century writers to use catastrophe almost without discretion²³. Interestingly, we can notice that – over time – the terms crisis and catastrophe are getting closer. If at the beginning of the XX century the term “crisis” was used mainly to describe wars, today crises not only include conflicts, also but also environmental disasters, epidemics, economic swings, and human rights violations²⁴. The same categories can be easily applied to the term catastrophe. For this reason, most of the time crises and catastrophes are used synonymously.

Nowadays, according to Koselleck, the concept of crisis has been transformed

¹⁶ Koselleck – Richter, «Crisis», art. cit., pp. 361-362.

¹⁷ W. Tangjia, «A Philosophical Analysis of the Concept of Crisis» *Frontiers of philosophy in China*, 9(2) (2014), p. 257.

¹⁸ Koselleck – Richter, «Crisis», art. cit., p. 368.

¹⁹ See: J. Von Arb, «The Changing Nature of Catastrophe: A History of Semantic Shift» *Honors Program Projects*, 84 (2016).

²⁰ Koselleck – Richter, «Crisis», art. cit., p. 381.

²¹ *Ibid.*, p. 397.

²² Von Arb, «The Changing Nature of Catastrophe: A History of Semantic Shift», art. cit., p. 22.

²³ *Ibid.*

²⁴ S. Ariello, *Global Crises and International Legal Change*, The Graduate Institute of International and Development Study, Dissertation 2018, p. 9.

to fit the uncertainties of whatever might be favoured at a given moment²⁵. Today, in fact, we live in a constant crisis, i.e., crises are not considered as a longer period or a short term: they are permanent²⁶. A similar concern has been raised regarding the term catastrophe. As pointed out by Stephen Connelly *et alii*: «If everything is a catastrophe, it loses the force of its meaning»²⁷. However, if today a crisis does not seem to enlighten us anymore about the direction of a change, a catastrophe might point in a different direction. A crisis has become a source of indecisions, disorders, and uncertainties as to its causes and its effects, its diagnosis, and remedies²⁸, whereas a catastrophe could suggest an opening to something beyond²⁹. A catastrophe can «create new spaces for resistance and solidarity, while potentially strengthening old ones»³⁰. Nonetheless, some other scholars such as Colin Hay believe that unless prefixed with the adjective “permanent”, crises are generally temporary moments or phases and unless prefixed with the adjective “terminal”, crises are usually capable of resolution³¹. For this reason, crises still present some fundamental features of the traditional definition of κρίσις and they can resemble catastrophes or better *euca catastrophe*, understood as the positive resolution of a seemingly impossible situation³². According to Hay, a crisis – and I would add a catastrophe – remains a moment in which a decisive intervention is made – as opposed, merely, to a condition characterised by an accumulation of contradictions³³.

In light of this view, I shall try to illustrate the broad conceptualization of crisis and catastrophe as they stand today. For instance, Arjen Boin *et alii* describe a crisis as an «undesirable and unexpected» situation in which «a social system – a community, an organisation, a policy sector, a country, or an entire region – experiences an urgent threat to its basic structures and fundamental values, which harbours many ‘unknowns’ and appears to require a far-reaching response»³⁴. Furthermore, Sylvia Walby defines a crisis as «an event that has the potential to cause a large detrimental change to the social system and in which there is a lack of proportionality between

²⁵ Koselleck – M. W. Richter, «Crisis», art. cit., p. 381.

²⁶ J. M., Sauvé «Reflections» in G. Ulrich – I. Ziemele (eds.), *How International Law Works in Times of Crisis*. Oxford University Press, Oxford 2019, p. 291.

²⁷ Connelly – Mulqueen – Wall. «Catastrophe: Introduction», art. cit., p. 222.

²⁸ Sauvé «Reflections», art. cit., p. 292.

²⁹ Connelly – Mulqueen – Wall. «Catastrophe: Introduction», art. cit., p. 222.

³⁰ *Ibid.*, p. 221-222.

³¹ C. Hay «Crisis and the structural transformation of the state: interrogating the process of change», *The British journal of politics & international relations*, 1(3) (1999), p. 318.

³² Connelly – Mulqueen – Wall. «Catastrophe: Introduction», art. cit., p. 222.

³³ Hay «Crisis and the structural transformation of the state: interrogating the process of change», art. cit., p. 323.

³⁴ A. Boin – E. Stern – B. Sundelius. *The politics of crisis management: Public leadership under pressure*. Cambridge University Press, Cambridge 2016, p. 5.

cause and consequence»³⁵. As far as a catastrophe is concerned, Richard A. Posner defines it as «an event that is believed to have a very low probability of materializing but that if it does materialize will produce a harm so great and sudden as to seem discontinuous with the flow of events that precede it»³⁶.

For the sake of this article, I shall suggest identifying a *fil-rouge* – a common dominator – for the definition of crisis and catastrophe. Despite their etymological – and somehow still conceptual – differences, we can identify three elements, which are prevailing in almost all current definitions of crises and catastrophes. These are: the perception of the existence of a (present or future) threat; a sense of urgency to promptly take action when the threat materializes; and a general feeling of uncertainty as to the cause and the result. Accordingly, I will use the term “crisis” and “catastrophe” interchangeably to indicate events with the above-mentioned characteristics. In light of this preliminary view, in the following section, I will illustrate the impact of crises and catastrophes on human rights.

2. Crises & Catastrophes: Decoys or Catalysts for Human Rights?

As previously pointed out, it seems that we live in a constant crisis, made of different, bigger or smaller, crises. Similarly, it seems that our planet is increasingly experiencing potential and actual catastrophes such as environmental degradation, overpopulation, the threat of nuclear war, etc. Considering that these events might be a sort of watershed for humanity, it is important to raise the following question: what is the impact of crises and catastrophes on human rights³⁷?

Before getting to the heart of the debate, I must clarify an essential point, i.e., I will briefly illustrate the key terms of a fundamental debate that has torn legal philosophers for centuries: the difference between natural (or moral) and artificial (or legal) human rights. In a nutshell, when we legally refer to human rights, we usually refer to the legal catalogue of human rights developed through international texts. A key text is the Universal Declaration of Human Rights (UDHR) – adopted by the UN General Assembly in 1948³⁸. If we claim that human rights are legal rights, we imply that they are given by a legislator, i.e., legal rights presuppose a lawgiver, which – in broad terms – can be considered the UDHR. We can see that, on the one hand, legal theorists of human rights believe that international law determines the existence

³⁵ S. Walby, *Crisis*. John Wiley & Sons, Hoboken 2015, p. 14.

³⁶ R. A. Posner, *Catastrophe: risk and response*, Oxford University Press, New York 2004, p. 6.

³⁷ Herder wonders whether, in the aftermaths of a crisis, the human race will improve itself morally and become happier, or whether everything will become worse. See: Koselleck – Richter, «Crisis», art. cit., p. 377.

³⁸ See: A. Clapham, *Human rights: A very short introduction*, op. cit., p. 27.

of human rights³⁹. In other words, the representatives of human rights *qua* legal rights would claim that human rights are something that all human beings possess because they are encapsulated in the UDHR, which states that «all human beings are born free and equal in dignity and rights»⁴⁰. On the other hand, moral theorists conceive human rights as moral entitlements that all human beings possess by virtue of our shared humanity. Put differently, what constitutes a human right is not determined by any legal instrument, i.e., human rights are prior and independent of positive international human rights law⁴¹. An intuitive way of defining human rights *qua* moral rights is to turn to the notion of natural rights, whose main formulation can be found in the writings of Grotius, Pufendorf, and Locke⁴². To put it shortly, natural rights are supposed to follow our human nature, and therefore, they do not originate in human conventions. In this case, the concept of natural rights (i.e., inherit rights) is opposed to the concept of artificial rights (i.e., given by a legislator). In other words, human rights *qua* moral rights are those rights that all human beings possess simply in virtue of their humanity, and which can be identified simply by the use of ordinary moral reasoning, as opposed to the sort of conventional reasons created within particular social or institutional contexts⁴³. Thus, we can wonder whether moral and legal human rights are compatible and if so, under which circumstances. As Cruft, Liao and Renzo pointed out: «Allen Buchanan has argued that many human rights are morally justified legal rights rather than pre-legal moral rights, whereas Samantha Besson is developing the idea that human rights must be at once moral and legal»⁴⁴. I here endorse Samantha Besson's argument: not only human rights law and natural human rights are two sides of the same coin, but also I claim that the implementation of international legal human rights is tied to the moral grounding of human rights. With this clarification in mind, I shall now illustrate the idea that human rights and crisis are mutually interdependent. In Section A, I will approach this issue through the lenses of International Law, i.e., I will analyze if, and if so why, a crisis – or a catastrophe – can be considered a catalyst or a decoy for human rights law. In Section B, I will provide a philosophical analysis of this issue by investigating the impact of crises and catastrophes on the moral foundations of human rights.

³⁹ P. Macklem, «What are human rights? », *Oxford University Press Blog*, 2015. Available at: <https://blog.oup.com/2015/12/what-are-human-rights-moral-political-legal-theory/>

⁴⁰ Cruft – Liao – Renzo, *Philosophical foundations of human rights*, op.cit., p. 5.

⁴¹ P. Macklem, «What are human rights? », art. cit.

⁴² See: Cruft – Liao – Renzo, *Philosophical foundations of human rights*, op.cit., p. 4.

⁴³ Ibid.

⁴⁴ Ibid, p. 6.

A. The Impact of Crises and Catastrophes on International Human Rights Law

It is important to understand that crises and catastrophes have become an integral part of the way rights are envisaged. International legal scholars constantly stress the importance of the tragic events of the Second World War for fundamental legal developments such as the origins of the Charter of the United Nations or the adoption of the 1951 Convention Relating to the Status of Refugees⁴⁵. Furthermore, the foundations of international human rights law itself were a reaction to a crisis, a catastrophe⁴⁶. Hence, in the aftermath of World War II, the UN Charter encouraged the fifty-one original member states to respect human rights and obligates them to cooperate with the UN for the promotion of universal respect for, and observance of, human rights⁴⁷. Accordingly, the UDHR announces itself as a reaction to evil, with crisis as its history and context⁴⁸. Therefore, a crisis can act as a catalyst for the development of human rights law⁴⁹. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Declaration on the Rights of Indigenous Peoples are two examples where crises are seen to provide the impetus for substantive change⁵⁰.

However, it seems that a crisis (here understood as a synonym of emergency) mostly justifies derogation from human rights principles. The implementation of human rights seems, in fact, particularly problematic in certain circumstances such as crises, emergencies, and catastrophes. For instance, when a state of emergency is declared, States may consider it necessary to limit the enjoyment of individual rights and freedoms, and possibly even to suspend their enjoyment altogether⁵¹. In broader terms, crises, emergencies, and catastrophes might legitimize the undermining of human rights. Accordingly, not only international law allows for the limitation and/or suspension of human rights in certain situations, but also «a glossing of the legalised violation of rights as exceptional, a rhetorical turn that masks that the capacity for the derogation is entrenched in law itself»⁵². Therefore, the exceptionality of a crisis, an emergency, or a catastrophe, offers to States the possibility to derogate from a number of obligations arising from human rights law⁵³. For example, according to

⁴⁵ Ariello, «Global Crises and International Legal Change», op. cit., p. 4.

⁴⁶ Authers – Charlesworth, «The crisis and the quotidian in international human rights law», art. cit., p. 20.

⁴⁷ Clapham, *Human rights: A very short introduction*, op. cit., p. 48

⁴⁸ Authers – Charlesworth, «The crisis and the quotidian in international human rights law», art. cit., p. 25.

⁴⁹ Ibid., p. 28.

⁵⁰ Ibid., p. 27-28.

⁵¹ Office of the High Commissioner for Human Rights. «The Administration of Justice During States of Emergency», *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, New York and Geneva: United Nations, 2003, p. 813.

⁵² Authers – Charlesworth, «The crisis and the quotidian in international human rights law», art. cit., p. 30.

⁵³ Ariello, «Global Crises and International Legal Change», op. cit., p. 11.

Benjamin Authers and Hilary Charlesworth: «The post-11 September 2001 period has been rife with concerns that the privileging of ‘security’ by many states has led to an erosion of the protections offered by domestic rights laws, with a concomitant devaluing of human rights norms internationally»⁵⁴.

Lately, there has been a growing interest in how the migration crisis is challenging human rights⁵⁵. There is also a recent flourishing literature on the threat of environmental catastrophes and human rights⁵⁶. The latter is, in fact, a growing challenge for the international community. For this reason, I will hereafter present some reflections on the impact of environmental catastrophes and the human rights of climate refugees. The introduction of the UN Special Rapporteur on human rights and the environment claims: «All human beings depend on the environment in which we live. [...] Without a healthy environment, we are unable to fulfill our aspirations or even live at a level commensurate with minimum standards of human dignity»⁵⁷.

More specifically, the United Nations Environment Programme illustrated different ways in which climate change and environmental catastrophes are impeding the fulfilment of our rights. For example, it is reported that the «right to life is universally recognized as a fundamental human right, yet, every year, 150000 premature deaths are being linked to the climate crisis—a number set to increase with rising temperatures»⁵⁸. Even though the topic of environment and human rights has been highly debated and some signs of progress have been made⁵⁹, the solidity of these principles seems to fade away when the international community face specific and concrete environmental problems. For instance, despite the alarming situation – around 22,5 million people move each year within and across borders

⁵⁴ Authers – Charlesworth, «The crisis and the quotidian in international human rights law», art. cit., p. 30.

⁵⁵ See for instance: R. Delgado Wise – H. Márquez Covarrubias – R. Puentes, «Reframing the debate on migration, development and human rights», *Population, space and place*, 19(4) (2013); J. Bhabha, *Can we solve the migration crisis?*. John Wiley & Sons, Hoboken 2018.

⁵⁶ See for instance: M. Oksanen, «On tackling the environmental crisis through human rights» *Rivista di estetica*, (75) (2020); A. Grear – E. Grant, «Introduction: Thought, law, rights and action in an age of environmental crisis—In search of better future histories.» In *Thought, Law, Rights and Action in the Age of Environmental Crisis*. Edward Elgar Publishing, Cheltenham 2015.

⁵⁷ See: J. H. Knox, «Statement – The Sixth Meeting of the Parties to the Aarhus Convention», 14th September 2017. Available at: https://www.unece.org/fileadmin/DAM/env/pp/mop6/Statements_and_Comments/HLS_4_Thematic_OHCHR_SR_Knox_statement.pdf.

⁵⁸ See: United Nations Environment «Programme Human rights are at threat from climate change, but can also provide solutions», 4th October 2019. Available at: <https://www.unep.org/news-and-stories/story/human-rights-are-threat-climate-change-can-also-provide-solutions>.

⁵⁹ With 161 votes in favour, and eight abstentions, the UN General Assembly adopted a historic resolution on July 2022, declaring access to a clean, healthy and sustainable environment, a universal human right. Available at: <https://news.un.org/en/story/2022/07/1123482>.

because of climate and weather-related disasters⁶⁰ – environmental refugees are still not considered a distinctive legal category. Hence, people whose displacement is caused by the given climate-induced events are not properly defined “refugees”, i.e., to them the treatment is due to what the 1951 Convention on the Status of Refugees dictates⁶¹. In conclusion, we can argue that environmental catastrophes have played a significant role in considering both the limits and the possibilities of international environmental law, human rights law, and refugee law. Nonetheless, the current environmental crisis and climate change did not work as a catalyst for human rights of climate refugees.

To sum up, embracing the current literature, I have illustrated that international human rights law is both produced by and dependent upon crises, emergencies, and catastrophes. In the following, I will turn my attention to the impact of crises and catastrophes on the moral foundations of human rights.

B. The Impact of Crises and Catastrophes on the Moral Foundations of Human Rights

In this section, I shall attempt to develop a criticism on how the connection of human rights to the unfolding brought by crisis and catastrophe clashes with a concept of human rights as prior and independent of positive international human rights law. To do so, the purpose of this part is double-folded. Firstly, I shall briefly illustrate the debate on the “Ground of Human Rights” question. Secondly, I shall ask the following question: if human beings *qua* human beings are entitled to moral human rights, in which way can crises and catastrophes affect the moral foundation of human rights? I will conclude by arguing that the moral validity of human rights is shaped by our mental and emotional representation of the world in times of crisis. The *fil-rouge* that links how different scholars have addressed the “Ground of Human Rights” question is by identifying human rights as being useful or essential means to realize or further valued features of human lives⁶². Firstly, some philosophers, such as James Griffin, appeal to the notion of agency, as it is considered by many as the distinguishing feature of human beings⁶³. Secondly, other philosophers, such as John Finnis, James Nickel, Matthew Liao and John Tasioulas, appeal to the notion

⁶⁰ See: Office of the High Commissioner for Human Rights, «Key Messages on Human Rights, Climate Change and Migration». https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Key_Messages_HR_CC_Migration.pdf.

⁶¹ See: G. Pellegrino, Climate Refugees: A Case for Protection» in M. Di Paola – G. Pellegrino, *Canned Heat: Ethics and Politics of Global Climate Change*, Routledge India, 2019.

⁶² Cruft – Liao – Renzo, *Philosophical foundations of human rights*, op.cit., p. 11.

⁶³ Griffin, J. *On human rights*. Oxford University Press, Oxford 2009.

of “good life”. In a nutshell, human rights are considered grounded in a plurality of goods that are required to have a good life, where agency is simply one of these goods⁶⁴. Thirdly, other philosophers claim that we can justify human rights by appealing to a particular class of human needs⁶⁵. Put shortly, the “Ground of Human Rights” approach embraces the idea that human rights should protect the conditions for a minimally decent life, by assuring that the basic needs (like food, water, and air, but also a minimum degree of social interaction and a minimum level of recognition) are met⁶⁶. These and similar philosophical approaches give content to a substantive account of human rights. Nonetheless, to my knowledge, not many scholars have ventured to ask whether we *want* human rights. This might sound like an absurd question, yet I hope to underline an important issue in human rights theory: by asking whether we *do* want human rights, I aim at strengthening the necessity of human rights through what I call the “theory of want.” In a nutshell, I shall argue that the implementation of human rights is dependent on how we conceive, desire, and want human rights.

As of today, the effective implementation of international human rights instruments is one of the biggest challenges we are called to deal with. The implementation may take different forms, ranging from top-down monitoring by human rights treaty bodies and adjudication by international courts and tribunals, to capacity building in civil society organizations and human rights education at the grass-roots level⁶⁷. In this regard, I believe that a “theory of want” should be put forward as we (individuals, scholars, international lawyers, and activists) have a moral responsibility to demand human rights. This is the reason why a call for a “theory of want” as a justification for the moral foundations and consequently for the implementation of human rights is needed. Especially in times of crisis and catastrophes, when – as we have seen – there is a real danger that crises and catastrophes might work as a decoy for human rights law. I have illustrated that, in medical terms, crisis represented the moment after which a patient either recovered or died. Today, human rights seem to have the same fate *vis-à-vis* crises and catastrophes: either they recover or die. Therefore, I argue that human rights not only should be considered grounded in a plurality of goods that are required to have a good life, but also that we have a moral responsibility to not devalue human rights. In simple terms, we must

⁶⁴ Cruft – Liao – Renzo, *Philosophical foundations of human rights*, op.cit., p. 13.

⁶⁵ See for instance: R. Floyd, «Why We Need Needs-Based Justification of Human Rights», *Journal of International Political Theory*, 7 (1) (2011).; H. J., McCloskey, «Human Needs, Rights and Political Values», *American Philosophical Quarterly*, 13 (1) (1976).; D, Miller, «Grounding Human Rights», *Critical Review of International Social and Political Philosophy*, 15 (4), (2012).; J. Waldron, «The Role of Rights in Practical Reasoning: “Rights” versus “Needs”», *The Journal of Ethics*, 4 (1/2) (2000). Authers – Charlesworth, «The crisis and the quotidian in international human rights law», art. cit., p. 30.

⁶⁶ Cruft – Liao – Renzo, *Philosophical foundations of human rights*, op.cit., p. 14.

⁶⁷ G. Brown, *The Universal Declaration of Human Rights in the 21st Century*, Open Book Publishers, Cambridge 2016, p. 81.

want human rights.

Let me illustrate this point through the case of environmental catastrophes and human rights of climate refugees. According to Matthew Liao, for instance, «the fundamental conditions for pursuing a good life are various goods, capacities, and options that human beings qua human beings need, whatever else they (qua individuals) might need, to pursue the basic activities»⁶⁸. In light of this view, we can advance the claim that the right of living in a clean environment should be considered a natural human right as it is a fundamental condition for pursuing a good life⁶⁹. Hence, threats to the different forms of environmental degradation will surely undermine access to clean water, food, and other key resources that support human life. Consequently, having the right to live in a clean environment is a precondition for having another right (e.g., the right to food) as both physical and social consequences of environmental degradation are a limitation for pursuing basic activities. For instance, climate change will increase the exposure to health hazards, which will affect peoples' livelihoods – for example destroying their homes and properties⁷⁰. Thus, due to those climate-related hazards, people will suffer several constraints to act and choose freely (e.g.: they would not freely choose the location of their homes), and neither could they control the direction of their lives (e.g.: extreme weather events may destroy their crops yields). Therefore, if human beings need essential capacities to engage in the basic activities, such as autonomy – i.e., having control of the direction of one's life and liberty, i.e., choosing an act freely⁷¹, environmental catastrophes are a real dangerous threat.

Therefore, we should ask ourselves: how can we make a crisis or a catastrophe a catalyst for human rights? If the argument of basic needs (as moral foundations for human rights) is necessary but not sufficient for the implementation of human rights, how can we transform human rights from human needs to human wants? I shall claim that this can be done through a *revolution of the minds*. Inspired by Philip Allott, the father of Social Idealism⁷², I argue that crises and catastrophes are likely to work as a decoy for human rights as we live in a world made by and for states, in which states' ruling elites act based on their vested interests as they do not

⁶⁸ M. Liao, «Human Rights as Fundamental Conditions for a Good Life» in Cruft – Liao – Renzo, *Philosophical foundations of human rights*, op.cit., pp. 81-82.

⁶⁹ For the argument that the right to live in a clean environment is a genuine human right please refer to: M. Marastoni, «Climate Change and Human Rights», *Meta – Zwischen Menschen*, 5 (2019). Available at: https://www.fspilosophie.unibe.ch/unibe/portal/fak_historisch/dkk/philosophie/fachschaft_philosophie/content/e557932/e778728/e778737/e885354/e885356/Metaphi_N5_ger.pdf.

⁷⁰ United Nations Environment Programme & the Sabin Center for Climate Change Law at Columbia University «Climate Change and Human Rights», December 2015, p. 7. Available at: https://web.law.columbia.edu/sites/default/files/microsites/climate-change/climate_change_and_human_rights.pdf.

⁷¹ Liao, «Human Rights as Fundamental Conditions for a Good Life», op. cit., p. 82.

⁷² For a general discussion: A. Bianchi, «Social Idealism», in A. Bianchi, *International Law Theories*. Oxford University Press, Oxford 2016.

have individuals at heart⁷³. The result is a society where all worst human instincts manifest themselves, where people are increasingly unhappy and selfish. Thus, if it is true that we live in a selfish world, these instincts are likely to be exacerbated in times of crisis and catastrophes. Different studies in behavioral neuroscience have, in fact, suggested that unpredictable/unpredicted aversive events (such as crises and catastrophes) are more stressful than predictable ones – i.e., they cause a higher level of fear, anxiety, and feelings of unsafety⁷⁴. These emotions, I shall argue, are reflected in what we think of human rights, in the purpose of human rights, in their moral foundations and their implementation. As Andrea Bianchi points out:

If fear may cause in the single individual a sense of annihilation, paralysis and impotence, in the individual within a group it usually triggers an instinct of self-defence. The primordial instinct of self-preservation, which manifests itself in situations of extreme danger, tends to materialize in the adoption of self-help measures aimed at the preservation of the life of both the individual and the group to which he or she belongs.⁷⁵

In my view, the “self-preservation principle” that manifests itself in situations of catastrophes and crises resemble the ones described by Thomas Hobbes in the state of nature⁷⁶. In a nutshell, Hobbes defines the state of nature as a conflictual reality – a war of all against all. Life in the state of nature is nasty, brutish and short: it is a situation of constant warfare in which human life turns out to be miserable and in which fear is the primary emotion. In such a complex and unstable context, individuals possess – by nature – the right to everything they need to do to keep themselves alive. Therefore, individuals are led to fight against each other (*homo homini lupus*). To end this situation, Hobbes asserted that the people agreed to give up their natural rights to give absolute power to a sovereign who can guarantee peace and security. Fear has, therefore, worked as a decoy for natural rights to end the state of nature.

As of today, fear can still work as a decoy for human rights law. As an illustration, most of the normative instruments used to counter terrorism (e.g., the Patriot Act) were adopted in the aftermath of 9/11, at a time when the prevailing emotional state was fear⁷⁷. Furthermore, post-9/11 normative instruments represented a threat to the moral foundations of human rights as several “basic needs” such as the freedom from

⁷³ P. Allott, *The health of nations: society and law beyond the state*, Cambridge University Press, Cambridge 2002.

⁷⁴ C. Grillon – J. P. Baas – S. Lissek – K. Smith – J. Milstein, «Anxious responses to predictable and unpredictable aversive events», *Behavioral neuroscience* 118(5) (2004).

⁷⁵ A. Bianchi, «Fear’s legal dimension: counterterrorism and human rights», in *International Law and the Quest for its Implementation*. Brill Nijhoff, Leiden 2010, p. 176.

⁷⁶ Thomas Hobbes, *Leviathan*, Basil Blackwell, Oxford (1651/1960).

⁷⁷ A. Bianchi, «Fear’s legal dimension: counterterrorism and human rights», art. cit., p. 177.

torture and cruel, inhuman, or degrading treatment have been eroded and violated⁷⁸. Generally speaking, there is copious literature on how the fight against terrorism has devalued human rights⁷⁹.

Therefore, it is precisely in times of crisis and catastrophes that our mental and emotional conception of human rights is shaken, i.e., we believe it might be necessary to lay down our natural rights of equality and freedom for a greater good (security, health, and so forth). Yet, according to the “theory of want”, we should want, demand, and require human rights. How? Allott claims that the solution is a revolution in the minds, i.e., a self-willed change in human conscience⁸⁰. In a way, we can claim that Allott aims at reconstructing humanity through a mental process. He believes that human beings can shape and influence the course of events through their imagination, by envisioning a new human reality and by implementing it via their rationality⁸¹. This is the reason why, not only we need human rights, but we must want human rights and we must envision a new human reality. Hence, to achieve a new philosophy that helps humanity transcend itself and think about the ideal of the human future philosophers, lawyers, and international relations scholars should work together. They have a special burden, i.e., acting as agents of the self-perfecting human spirit⁸². «The power of the ideal stems from the fact that the idea of the better contains both the idea of the possible and the idea of the desirable» claims Philp Allott⁸³.

Social idealism is a wake-up call, a belief in the capacity of the human mind to transcend itself in thought. Similarly, this article is a wake-up call concerning human rights, i.e., human rights are not just a matter of needs, but also a matter of wants. We need to start a revolution in our minds if we finally aim at protecting human rights in times of crises.

⁷⁸ R. Gordon, *Mainstreaming torture: ethical approaches in the post-9/11 United States*. Oxford University Press, New York 2014.

⁷⁹ See for instance: V. Held, *How Terrorism Is Wrong*. Oxford University Press, New York 2004; M. Mutua «Terrorism and Human Rights: Power, Culture and Subordination», *Buffalo Human Rights Law Review*, 8 (2) (2002).

⁸⁰ P. Allott, *Eunomia. New Order for a New World*. Oxford University Press, Oxford, New York 1990.

⁸¹ Bianchi, A. «Social Idealism», op. cit., p. 249.

⁸² Ibid., p. 256.

⁸³ Allott, *The Health of Nations: Society and Law Beyond the State*, p. 83.

Conclusion

Crises and catastrophes have become an integral part of how human rights are envisaged. For this reason, the purpose of this paper was double-folded. Firstly, I aimed at providing a conceptual clarification concerning the differences and similarities between crises and catastrophes. Secondly, I aimed at analyzing the impact of crises and catastrophes on human rights. As I have explained, international legal scholars have already argued that crises can work as decoys or catalysts for human rights law. Yet, to my knowledge, no extensive research has been conducted in exploring the role of crises and catastrophes in the moral foundations of human rights. I have suggested that human rights should be understood not only as those rights that human beings possess by our shared humanity, but also by our shared beliefs – our wants – which are influenced by our emotions. Put differently, emotions are a cornerstone for the moral foundations and the implantation of human rights law. For this reason, I have illustrated that crises and catastrophes trigger an emotional state of fear and an instinct of self-defense, which shake (mental and emotional) worldviews. The result is the perception that we need to lay down human rights. Consequently, crises and catastrophes usually work as a decoy for human rights.

Arthur Schopenhauer wrote a masterpiece called *The World as Will and Representation*. Simply inspired by the title of his book, and without getting into the heart of the matter, I want to conclude by claiming that the human rights world is made of will and representation. Therefore, our responsibility is to «make a revolution, not in the streets, but in the mind»⁸⁴ to protect human rights.

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⁸⁴ P. Allott, *Eunomia. New Order for a New World*, op. cit., p. 404.

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