

Resisting Rights

Canada and the International Bill of Rights, 1947–76

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Introduction: Resisting Rights

A survey commissioned by the Trudeau Foundation in 2010 found that, for many Canadians, support for human rights is an important element of national identity.¹ This extends beyond the domestic realm to include pride in what is perceived to be Canada's strong history of promoting human rights in global affairs and playing an active role in developing human rights norms at the United Nations. The adoption by the UN of the *Universal Declaration of Human Rights* (UDHR) in 1948, and Canada's part in it, is commemorated by Canadians annually on Human Rights Day, and memorialized throughout the year in school curricula, on honorary stamps, on currency, and in various public awareness campaigns, including a Heritage Minute video clip. Accordingly, when the UN's Human Rights Council openly criticized Canada in 2013 for refusing to ratify a number of international human rights instruments, domestic rights activists claimed that then-prime minister Stephen Harper's Conservative government was eroding Canada's "traditional reputation as a human rights leader."²

Under Harper, the federal government had opposed the UN *Declaration on the Rights of Indigenous Peoples* (UNDRIP), rejected a General Assembly resolution on the Human Right to Water and Sanitation, and refused to co-sponsor UN General Assembly resolutions calling for a global moratorium on executions.³ The Conservative government made no secret of its disdain for the UN human rights system, and responded to the Human Rights Council's criticisms by rejecting more than half of the sixty-eight recommendations made, arguing that within Canada's federal structure

these issues fell under multiple jurisdictions, making it difficult to institute national programs. Several human rights groups then accused Ottawa of using this federal argument to avoid meeting its international obligations. Taking aim at the Harper government, Amnesty International wrote:

Partially because of the complexities of federalism, partially because of a lack of political will, and partially because of a failure of leadership, concern about the growing gap between Canada's commitment to international norms on the one hand, and action to implement and live up to those norms on the other hand, has mounted considerably over the past decade.⁴

Since Justin Trudeau's Liberals took power in 2015, Ottawa has gone to great lengths to promote its re-engagement with the UN, and with human rights more broadly. Speaking to the UN General Assembly in 2017, Trudeau acknowledged Canada's poor record of support for the UNDRIP, and the Canadian government's own history of denying and undermining the rights of Indigenous peoples.⁵ Trudeau pledged that, moving forward, Canada would work to better meet its international obligations. At home, the Liberal government formally apologized to, and offered compensation to, members of Canada's LGBTQ community for the "tragic act of discrimination" that saw hundreds of civil servants becoming the target of a decades-long "witch hunt" because of their sexual orientation; survivors of the "Sixties Scoop," in which thousands of Indigenous children were forcibly taken from their homes and placed in non-Indigenous care; and former students of residential schools in Newfoundland and Labrador for the "discrimination, mistreatment, abuse, and neglect" they experienced.⁶

These public acknowledgments of historical injustices in Canada have done little to call into question Canada's record regarding international human rights. There remains a sense that the Harper government's unwillingness to engage with the UN's human rights system from 2006 to 2015 was a departure from Canada's longer history of support and leadership in this area. On its website, the federal government continues to promote Canada as "a consistently strong voice" for the protection of human rights at the UN, beginning with a "central role" in the development of the UDHR

in 1948.⁷ This idea has been reinforced in what Canadians are taught at school, and in reports by media and non-governmental organizations. By invoking Canada's "strong record of accepting international obligations" in its 2013 criticism of Harper, Amnesty International relied on the deeply ingrained belief in Canada's historical leadership in the field of international human rights to try to shame Ottawa into changing its policy.⁸ What this rhetoric ignores, however, is the extent to which Canadian policy makers have historically opposed efforts at the UN to introduce and implement international treaties relating to human rights, often relying on arguments of federal jurisdiction to justify their position. Situating recent policies in their proper historical context reveals that Canada's reluctance to be bound by international human rights law is not a recent trend. In fact, Canada resisted the development and implementation of the UN's first human rights initiative, the International Bill of Rights.⁹

At the conclusion of the Second World War, governments around the globe created the United Nations to help foster peace and prevent future global conflict. The UN Charter included a commitment to protect individual rights, calling on member states to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."¹⁰ To fulfill this obligation, the UN established a Commission on Human Rights. A major objective of this commission was to create an international bill of rights, a set of documents that would outline the rights and freedoms to be enjoyed by all humans. In 1947, the commission released the first component of this bill, and over the next two decades, member states debated the bill's form and content, adopting the *Universal Declaration of Human Rights* in 1948 and the two International Covenants on Human Rights and an optional protocol in 1966.

This book is a history of Canada's policy approach towards the development and implementation of these instruments. As such, it has two main objectives. The first is to challenge the image of Canada as a historical champion of international human rights. While scholars such as William Schabas and Michael Behiels have examined Canada's opposition to specific UN documents, this book is the first major historical study of the forces that influenced Ottawa's policy towards the International Bill of Rights from the prewar period through to Canada's ratification of the international

covenants in 1976.¹¹ It argues that, rather than acting as a leader in the push for international standards for the protection of rights and freedoms, Ottawa was very reluctant to support human rights developments at the UN in the postwar period. Canadian policy makers struggled with the expansive definition of universal human rights articulated in UN documents and viewed human rights instruments as a threat to national policy. Unwilling to openly oppose these instruments lest Canada be accused of opposing human rights principles more broadly, Canadian policy makers worked to remain on the periphery of UN efforts to develop an international bill of rights until the mid-1960s. This policy approach runs contrary to the conventional narratives of Canada's contributions to the postwar international order.

Traditional studies of Canadian diplomacy in the postwar period present Canada as a "bold internationalist," a humanitarian state that promoted cooperation and understanding between nations through multilateral organizations like the UN. Within this narrative, the decades after the Second World War are considered a high point in Canada's international engagement. This period has been dubbed the "golden age" of Canadian diplomacy, a time in which Canada was able to "punch above its weight" and play the role of a middle power in global affairs.¹² More recent scholarship disputes this interpretation, with historians such as Greg Donaghy characterizing Canada's postwar diplomacy as "cautious, modest, and pragmatic, echoing long-standing domestic imperatives."¹³ These histories emphasize how Ottawa was "mindful of its place" within the Western alliance in the Cold War, more often acting out of national interest or the interests of its allies rather than working to foster constructive solutions or promoting justice in the international community.¹⁴ A number of scholars have begun to challenge Canada's history as a humanitarian state, arguing instead that powerful factors such as economic development, national security, connection to empire, and racialized worldviews continued to inform Canadian foreign policy through the second half of the twentieth century.¹⁵ This book supports this re-evaluation of Canada's postwar diplomacy by detailing Ottawa's reluctance to play a role in the UN Commission on Human Rights, its unwillingness to work with the international community to develop a common set of standards for the protection of human rights, and its resistance to submitting Canada to

these standards. It uses Canada's opposition to the development of international human rights in the first decades after the Second World War to question the "self-congratulatory" tone of the historiography on Canada's postwar diplomacy, and to dispel the myth that Canada was leader in the push to include human rights principles as a component of the postwar order.¹⁶

The second objective of this book is to analyze *why* Canada transformed from a nation initially resistant to the notion of international human rights to one that eventually began to advocate for them. On one level, it will highlight the way in which global developments, and in particular the dynamics of the Cold War and the process of decolonization, impacted the way in which individual states engaged with human rights instruments at the UN. As Roger Normand and Sarah Zaidi point out in their study of the political history of human rights at the UN, discussions over rights were politically and ideologically divisive in the decades after the Second World War.¹⁷ The federal government's efforts to position Canada in a newly aligned world shaped its participation in discussions over an international bill of rights. Early on, Canada's allies pressured Ottawa to support the quick adoption of human rights instruments that would reflect a Western vision of rights; later, the growing power of newly independent states within the General Assembly led to criticism of Canada for its failure to support strong human rights standards. Both forces affected the decisions of federal policy makers.

In addition to examining how external factors transformed Canadian foreign policy, this book places Canada's approach to human rights developments at the UN in the context of its domestic postwar rights culture. It is based on the premise that Canada experienced a fundamental shift in the twentieth century in how its citizens understood issues of rights and freedoms, in their expectations for governments regarding protection of human rights, and in the growth of laws and enforcement apparatus, which eventually formed what Dominique Clément has termed the "human rights state."¹⁸ While government has had a significant role to play in the development and provision of human rights in Canada, primarily through the enactment of protective legislation, the state has not been the primary driver of this "revolution." Scholars such as Clément, James Walker, Ruth Frager and Carmela Patrias, and Ross Lambertson demonstrate that the

on-the-ground campaigning of activists, rights organizations, ethnic and racial minorities, church groups, women's associations, and other voluntary organizations has been key to the profound changes in Canada's rights tradition.¹⁹ This book examines the linkages between these activists, customary understandings of civil liberties, and Canada's policies towards the UN's human rights instruments. It therefore provides a unique contribution to a literature on Canadian human rights history that has largely focused inward, on the campaigns to expand rights protections in Canadian federal and provincial laws.

While the work of scholars such as Christopher MacLennan and Stephanie Bangarth has illustrated the ways in which the international discourse of universal human rights influenced rights activism and policy in mid-twentieth-century Canada, this book is most intimately concerned with how domestic discourses of rights, and the growth of Canada's human rights movement, influenced foreign policy and diplomacy.²⁰ Most studies of Canadian foreign policy largely ignore human rights. A handful of recent historical studies analyze the role of human rights principles in Canada's relations with specific nations, or under certain governments, but there is a need for more comprehensive study.²¹ Even in studies of Canada's policy towards the UN's human rights activities, too often scholars have neglected the role of cultural attitudes, rights advocacy, or non-state actors more generally in shaping Canadian diplomacy. Andrew Thompson's recent book *On the Side of the Angels*, a study of Canada's participation in the UN Commission on Human Rights, examines more than sixty years of Canadian diplomacy, effectively situating Canada in the broader study of the development of global human rights.²² In highlighting Canada's mixed record in its engagement with the commission, Thompson offers a critique not only of Canadian policy but of the UN human rights system itself. Yet it is a fairly conventional diplomatic history, privileging the role of state actors and national interests in shaping Canadian policy. The same could be said for Andrew Lui's *Why Canada Cares*, which seeks to explain why Canada has "underperformed" in the area of international human rights since 1945.²³ Lui, a political scientist, provides a theoretically grounded analysis of the role of human rights in international relations to show that Canada has rarely been willing to sacrifice economic benefit to promote international human rights. He explains changes in Canada's foreign policy

by arguing that human rights became a tool that successive federal governments could use to enhance internal national unity and assert federal authority by “externally projecting a particular self-image of Canada as a just-society that was undivided despite its diversity.”²⁴ Although he studies domestic pressures on Canadian foreign policy, Lui continues to give agency to the state. This is a common trend in Canadian foreign policy studies, a field that is preoccupied with Canada’s relative status in the world community, particularly after 1945, and the state actors and national interests that have historically guided foreign relations.²⁵ Yet efforts to define rights were not limited to debates among politicians or diplomats at the UN. More often, they were fought at the level of civil society, involving non-state actors struggling against their personal experiences with inequity and discrimination. There has been a push in recent years for scholars to “rethink” traditional political and diplomatic histories, to broaden definitions of the political and include a wider range of actors, and to explore how cultural practices and understandings affected Canada’s worldview.²⁶ To respond to this challenge, a central objective of this book is to examine how cultural attitudes and civil society actors historically shaped Canadian diplomacy at the UN, in this case Ottawa’s participation in debates over the International Bill of Rights.

Universal Human Rights and the United Nations’ Rights Regime

Before proceeding, it is useful to discuss some of the conceptual issues within the book. The meaning of the terms “universal human rights” and “fundamental freedoms” was constantly shifting in the period under study. Not everyone conceives of rights in the same way. Conflict over how to define rights and how principles of equality and justice should be enshrined in the provisions of the International Bill of Rights generated intense discussions at the UN, and at home in Canada, in the postwar era. For this reason, I have used the terms as the participants did themselves. Any attempt to define separate categories of rights is a difficult task, yet diplomats, policy makers, and activists frequently relied on classifications to debate which types of rights should be included in the UN’s human rights instruments. For example, the desirability of separating civil and political rights from economic, social, and cultural rights became an important topic for discussion in 1949, after the introduction of the first draft covenant

on human rights. Traditionally, civil and political rights are understood to relate to individual liberties, such as property rights, basic legal rights, the right to vote and take part in political life, the right to peaceful assembly and association, and the freedoms of worship, movement, thought, and expression.²⁷ Social and economic rights, on the other hand, are those that enable people to meet basic human subsistence and socio-economic needs, including the right to an adequate standard of health, the right to work and earn an adequate wage in favourable working conditions, support for families, and the right to education.²⁸ Member states of the UN disagreed over the extent to which economic and social rights could, or should, be implemented in the same manner as civil and political rights. States also came into conflict over the importance of enshrining individual versus collective rights in UN human rights instruments.

These same debates influenced the evolution of a domestic rights discourse in Canada. Throughout the first half of the twentieth century, most Canadians used the term “civil liberties” to refer to a narrow set of individual civil and political rights that were attached to citizenship. When diplomats and politicians communicated about the UN instruments, however, they spoke of “human rights.” The UN defined “human rights” as universal, inalienable rights to which everyone was entitled, without distinction of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²⁹ The disconnect between these two terms caused significant difficulties as federal policy makers worked to understand how a declaration or covenant on “human rights” might affect Canadian law. By the 1960s, there was a push for a more egalitarian definition of rights in Canada, including the right to live free from discrimination on a series of prohibited grounds. Minority and group rights also became an important component of debates over rights in the late 1960s and early 1970s, as issues such as language rights and Indigenous rights became more prominent. The first chapter of this book outlines the historical roots of Canadian understandings of rights and freedoms leading to the end of the Second World War, to provide context for Canada’s resistance to the *Universal Declaration of Human Rights*. Further chapters explore how the language and understanding of rights changed and how these changes influenced Canada’s policy towards the International Covenants on Human Rights. A

significant argument of this book is that, while there were clear differences in the language and understanding of rights in Canada as compared with the UN in the 1940s, by the 1970s these two discourses of rights had become more aligned.

Within the historiography of international human rights, much debate has focused on this question of timing: When did the concept of human rights take hold and emerge as a global movement? The conventional wisdom has focused on the post–Second World War period and the drafting of the UDHR as the key moment in which a set of universal human rights were first articulated in international law. Other scholars have explored the roots of human rights further back in history, such as in ancient philosophical and religious traditions, in the Age of Enlightenment, or during the anti-slavery movement, culminating in the universalism of the postwar era.³⁰ Historian Samuel Moyn challenges this long history of human rights, identifying a much more recent origin.³¹ Moyn asserts that although the concept of rights stretches back centuries, and the term “human rights” came into usage after the Second World War, the UN’s human rights system failed to develop into a broad-based movement in the 1940s because it was rooted in the primacy of nation-states rather than being truly universal. Only in the 1970s, after the collapse of other universalist schemes, did human rights emerge as the “last utopia” for people around the world.³² This book argues that the support for human rights principles that emerged in the 1970s was the result of a much longer history of grassroots activism at the domestic level. Using Canada as an example, it illustrates the role that domestic movements and civil society actors have played in the development of international human rights.

The terminology surrounding the different United Nations instruments must also be clarified. The International Bill of Rights consisted of a declaration of human rights, two covenants on human rights, and an optional protocol. According to the UN, the term “declaration” is often purposefully selected to indicate that the parties involved want to declare certain principles or aspirations, rather than set binding obligations on states.³³ When the UN Commission on Human Rights drafted the UDHR in 1948, it was presented to member states as a statement of principle or a moral guide. Over time, the UDHR has gained considerable authority and has become more powerful than states originally expected, with international human

rights lawyers long maintaining that it is now part of international customary law.³⁴ In the period under consideration, however, UN member states envisaged the UDHR as having a less direct influence than a covenant.

The terms “covenant” and “convention” are used interchangeably by the UN to refer to specific forms of treaties, either bilateral or multilateral, which are first adopted by the General Assembly and then opened for signature and ratification by member states.³⁵ A covenant includes provisions that, once the instrument is ratified, are binding on a state. An “optional protocol” to a treaty or covenant is an instrument that provides for additional rights or obligations to which not all states agree. A member state could ratify the covenant but not the optional protocol, meaning that state would be bound only by the provisions in the covenant. The extent to which a covenant is truly binding depends upon the measures of implementation provided in the document. For example, the *International Covenant on Civil and Political Rights* (ICCPR) provides for both a system of reporting designed to exert moral suasion on member states and the establishment of a committee of experts responsible for accepting, considering, and responding to petitions from states and individuals regarding rights violations. At the time of its adoption in 1966, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) provided only for a system of reporting.³⁶

The measures of implementation were the last articles of the covenants to be debated, and so member states were unsure until the mid-1960s as to how these instruments would be enforced. This was significant as governments based their approach on how they believed the covenants would impact both their own domestic policies and those of other member states. In his text on human rights in international relations, David Forsythe defines human rights as “soft law,” meaning they are “legal rules that are not the subject of court decisions, but which nevertheless influence extra-judicial policy making.”³⁷ One of the goals of many international human rights advocates is to transform soft law into hard law, creating specific rules that would have concrete protections that could be regularly tested in national and international courts.³⁸ Particularly in the 1940s and 1950s, Canadian policy makers worried that the binding nature of a covenant would have a significant impact on Canadian policy, but understandings

of the legal force of a covenant evolved over the period of study. This evolution is an important component of the story of Canada's approach to the International Bill of Rights.

Methodology and Organization

The study of Canadian foreign policy is multidisciplinary, consisting of works that construct theories and explanatory frameworks to help determine the underlying factors that shaped specific policy outcomes, as well as archival studies that detail the experiences of, and influences on, policy makers in a specific setting. This book falls into the latter category; it is a case study based on extensive archival research that examines Canada's changing foreign policy towards the UN's International Bill of Rights by taking an empirically based approach to the questions of how, why, through what mechanisms, and to what extent Canadian policy changed from the 1940s to the 1970s.

The Canadian federal government had the sole authority to negotiate treaties at the UN. Although the implementation of human rights instruments fell within the power of provincial governments and concerns over jurisdiction influenced policy decisions, officials in Ottawa set Canada's policy towards the International Bill of Rights. The Department of External Affairs took the lead. Robert Bothwell, Greg Donaghy, and Jack Granatstein have written extensively on the unusual political latitude of the department's ministers and public servants in setting Canada's foreign policy in the postwar era.³⁹ This was certainly the case in relation to Canada's approach to the International Bill of Rights throughout the 1940s and 1950s. While the views of department officials were not homogeneous in this period, a close examination of DEA communications reveals a collective lack of enthusiasm for international human rights. In his study of how ideas of "race" influenced the Department of External Affairs' policy approach to Africa in the same period, Kevin Spooner argues that while there were differences in opinion over policy, all department members were influenced by the common racialized norms and values of the time.⁴⁰ Similarly, this book outlines the cultural forces and legal traditions that shaped how federal policy makers understood rights and freedoms in 1940s Canada, and the impact this had on how they collectively approached the UN's first human rights instruments.

By the 1970s, rights activism, growing public awareness of rights issues, the extension of human rights into other government departments, provincial developments, and changing directions in foreign policy resulted in increased oversight of Canada's policy towards human rights at the United Nations. Canada became more engaged with the UN's human rights program at this time not because federal policy makers had come to embrace international human rights but in response to what they perceived as a growing support for human rights principles among the Canadian public. The purpose of this book is therefore to challenge the conventional wisdom that the Canadian government has historically been a driving force in promoting international human rights in order to provide much-needed context for contemporary debates. To do so, it historicizes the decisions of Canadian federal policy makers, taking into consideration both international *and* domestic developments, in order to emphasize the way in which shifting understandings of rights in Canada influenced Canadian policy, and to underline the key role of Canadian rights activists in the process.

[Chapter 1](#) situates the new international concepts of human rights and fundamental freedoms that were coming out of the UN in 1945 in the context of Canadian domestic understandings of civil liberties. By exploring the relationship between rights and the law in early Canada, this chapter demonstrates that Ottawa's opposition to the UDHR was connected to both a narrow view of civil liberties and a strong desire to keep the international community from interfering in its domestic affairs. The chapter argues that the Canadian public and Canadian rights activists were largely disengaged from the international discourse of rights embodied in the UN's human rights instruments, and so the federal government was free to resist their adoption without fear of backlash at home. Only in the face of international pressure did Canada change its vote to support the UDHR in 1948.

[Chapter 2](#) examines Canadian participation in the debates at the UN over the first draft covenant on human rights in the late 1940s and early 1950s in light of the growth of rights activism in Canada. It argues that it is with this covenant, and not the UDHR, that we begin to see a real divergence between the emerging rights movement in Canada and federal policy. At the UN, Canada refused to accept an expansive definition of human

rights, and federal officials resisted the idea of submitting Canadian policy to international human rights standards. Although human rights had begun to seep into Canadian popular discourse, domestic rights activism was not powerful enough to influence Canada's policy towards the first draft covenant on human rights. The chapter traces the growing fissure between activists and policy makers to show how it set the stage for the shift in policy that would come in the 1960s.

Chapter 3 examines Canada's participation in the article-by-article debates on the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* from 1954 to 1966. By the early 1960s, a changing balance of power at the UN effectively ensured that the covenants would be adopted in some form. This chapter explores how Canadian policy makers responded to this new reality, especially in light of growing public support for human rights at home. While federal policy makers continued to oppose the expansive definition of universal human rights articulated in the covenants and fear their impact on Canadian policy, the government was persuaded, by what it understood to be international and Canadian public opinion, that it was in Canada's best interest to support the documents in 1966.

Chapter 4 examines the process by which Canada acceded to the International Covenants on Human Rights, arguing that it took a surge in human rights activism in the late 1960s to cause the federal government to push for ratification. An examination of Canada's celebrations of the International Year for Human Rights (IYHR) in 1968 reveals the extent to which cultural attitudes towards rights had changed in Canada, forging a new relationship between domestic and international human rights. The chapter outlines how these changes led to new pressures on the Canadian government to ratify the covenants, and the process through which Ottawa negotiated with the provinces to achieve ratification. Finally, this book concludes by considering why it has been important for the federal government to rewrite the history of Canada's relationship to the UN's early human rights initiatives, and what this means for our understanding of rights and the law in contemporary Canada.

While this book is structured as a chronological narrative of Canada's changing foreign policy towards human rights instruments at the UN, it does not assume that human rights history has evolved in a linear or

inherently progressive manner. As international human rights scholar Micheline R. Ishay has effectively argued, all human rights projects generate contradictions and inconsistencies in how rights are understood and applied.⁴¹ Achievements in one direction are often accompanied by counterbalancing pressures, and Canada is no exception to this. Nor does this book suggest that the government's ultimate support for the *Universal Declaration of Human Rights* or the International Covenants on Human Rights was the inevitable conclusion of the story of Canada's response to the UN's attempts to develop an international standard for the protection of human rights. Instead, its purpose is to reveal that Canada's resistance to the International Bill of Rights was the consequence of competing visions over what "human rights" were intended to protect, the proper role of governments in this protection, and the relationship between domestic and international law.

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