

# Speaking Rights to Populism? Using Emotion as the Language of Values

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## Abstract

Since 2016 a series of unexpected developments such as Brexit and the shock election of Donald Trump have drawn attention to the rise of populism as one of the most significant phenomena in today's political world. This populist 'explosion' is widely regarded as a significant threat to democracy and human rights, particularly the rights of minorities. So how should the human rights movement best respond? Speaking to the special issue theme on the meaning of and challenges to human rights, this article advances an argument for human rights claims-makers to learn the 'lessons from populism' in terms of its emotional appeal. Part 1 reviews the scholarly literature on human rights and the phenomenon of radical right populism to date, including the co-option of rights language by the far right. Part 2 builds on this literature to identify weaknesses in the legalistic way that (political) rights claims are advanced and argues that constructivist perspectives on rights may help 'speak rights to' populism. The final part argues that further research into emotions as the 'language of values' may help put empirical and conceptual flesh on the bones of a more 'constructivist' view of human rights.

**Keywords:** affect; constructivism; emotions; populism

## 1. Introduction

'We believe in the equality of all Irish citizens before the law, oppose racism and sexism and the dominance of public policy by vested interests'. These words are not, as one might suspect, the utterances of an Irish human rights NGO, but part of the political programme of the far-right Irish Freedom Party (IFP). The party, whose primary objective is to re-establish the national independence and sovereignty of Ireland by leaving the European Union, is moreover *explicitly* pro-rights in its stated aim of 'taking back control ... of human rights under the Irish Supreme Court'. While clearly a selective and nativist vision of human rights, the absorption of human rights language by radical right populist parties such as the IFP nevertheless illustrates the complex positioning of rights within populist discourse, at a time when the far right appears to be on the rise globally (Dudai 2017a).

Taking this complexity as read, how should the human rights movement best respond to the challenge of radical right populism? To paraphrase Marx, the populist spectre currently 'haunting' Europe, as with other parts of the world, is regarded by many as a menace to democracy and a serious threat to human rights. The different forms assumed by this spectre in various national contexts have led to populism being regarded as a 'thin ideology' to be combined with other political ideas and which 'considers society to be ultimately

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separated into two homogenous and antagonistic groups, “the pure people” versus “the corrupt elite” (Mudde 2004: 543). Despite the range of ‘populisms’ (Demertzis 2019), a common feature can be observed in most forms of populism: they are all involved in interpretative processes or ways of meaning-making that lead to intense emotions, spawning a burgeoning literature on the affective dynamics of populism (ibid; Salmela and von Scheve 2017; Yilmaz and Morieson 2021). Drawing on this literature, and interdisciplinary literature on the wider ‘emotional turn’ in the study of politics, this article addresses the special issue themes by advancing an argument for human rights claims-makers to learn the ‘lessons from populism’ in terms of its emotional appeal. It falls in three parts. Part 1 reviews the scholarly literature on human rights and the phenomenon of radical right populism to date, including the co-option of rights language by the far right, and cautions against what has been described as a ‘pathologizing’ approach to populism. In this context, Part 2 explores the limits of legalism and how constructivist perspectives on rights may help ‘speak rights to’ populism. Building on these perspectives, the final part argues for a return to emotions as the ‘language of values’ (Neuman 2020: xiv), as well as further consideration of how these affective factors may inform human rights claims-making.

## 2. The Populist challenge and the human rights response

The human rights idiom is under pressure. Not only has the ‘backlash politics’ described above led to many of the old certainties with regards to rights being increasingly questioned, particularly the role of regional and international human rights institutions (Neuman 2020), but the movement has also found itself under attack from a cast of critical scholars who view the narrow legalism of human rights as ‘not enough’ (Moyn 2018; see also Moyn 2010; Hopgood 2013; Hopgood et al 2018; Posner 2009; 2014). As Braaten (2021: 14) argues, however, alongside the rise of China as a new power in the world system, the rise of radical right populism as a form of ‘backlash politics’ probably represents the dominant political challenge, one that cannot be avoided if the human rights movement is to avoid becoming ‘a sideshow’ (Hopgood et al. 2018). Indeed, for Alston (2017: 2), the rise of the far right and the emergence of what he terms a transnational ‘coalition of the willing’ presents a challenge that is ‘fundamentally different from much of what has gone before’. This leads on to discussion of what we mean by the term ‘populism’. Famously difficult to define and described as ‘essentially contested’ (Mudde and Kaltwasser 2017: 2), in line with much of the recent research we follow the ‘ideational approach’ for the denotative clarity it offers in capturing the essence of a populist approach and in distinguishing populist from non-populist actors (Rooduijn and Pauwels 2011). We therefore adopt the definition of populism advanced by Mudde (2004: 543) as: ‘a thin-centred ideology that considers society to be ultimately separated into two homogeneous and antagonistic groups, “the pure people” versus “the corrupt elite”, and which argues that politics should be an expression of the *volonté générale* (general will) of the people’. Reflecting the concern with the more mainstream, ‘exclusionary populism’ (Mudde and Kaltwasser 2017) and its impact on human rights, the focus here is solely on far-right populism as espoused by populist radical-right parties (PRRPs)<sup>1</sup> in Europe (Beauzamy 2013).

Human rights reaction to this challenge can be very crudely grouped into two, far from antithetical, but nevertheless distinct, categories termed here ‘resistance to populism’ and ‘critical self-reflection’. The first, and most influential, school of thought is perhaps best represented in Neuman’s (2020) excellent edited collection on *Human Rights and Populism*. With a strong focus on the distinctive challenges that populism poses to international human rights law institutions, the collection offers up several case studies of populism

1 I follow Mudde (2007: 26) in defining PRRPs as denoting ‘political parties with a core ideology that is a combination of nativism, authoritarianism, and populism’.

in the Global North and South, as well as various meditations on how best to respond to these dilemmas. As [Mégret \(2022: 240\)](#) points out, however (with the notable exception of the chapter by [Johnson \(2020\)](#) discussed below), ‘it hardly ever departs from [the] script of resistance against demagogues’. [Fagan \(2021: 418\)](#) similarly opines, ‘the overwhelming perspective upon populism developed within the volume is of populism as a thoroughly pathological phenomenon that human rights defenders must resolutely battle against’. Joining the chorus, [Koskenniemi \(2021: 57\)](#) bemoans the fact that human rights advocates ‘have interpreted the “backlash” less as a political challenge than a social pathology, to be healed by economic reforms’, an approach that he finds not only problematic but paternalistic.

In a way, of course, none of this should surprize us. Academics, as creatures of the Enlightenment committed to the ideals of reason and reasonable discourse, may be wary of legitimizing such groups (and the politics of exclusion) through mainstream concepts and theories. As I have written elsewhere, the ‘populism as pathology’ school of thought has a long history within the academy, traced by [Mudde \(2010\)](#) to [Scheuch and Klingemann’s \(1967\)](#) influential theory of right-wing radicalism in post-war Europe, and which takes the view that ‘the radical right constitutes a pathology in (post-war) western society and its success can only be explained by crisis’ (*ibid.*: 2; [Hamilton 2022](#)). The dominance of the pathology thesis in the literature is nonetheless problematic for a number of reasons. First, by conceptualizing populism as a cancer on an otherwise healthy democratic system, it forecloses a view of populism as a ‘normal’ dimension of democratic politics. As [Mudde \(2010\)](#) has shown from his analysis of Eurobarometer surveys, several of the values programmatically associated with the populist radical right—nativism, authoritarianism, and so on—are far from alien to mainstream western ideologies. Connected to this is the danger of forming largely ‘caricatured’ accounts of the supporters of these parties (‘the stereotype of mostly angry and fearful “left behind” citizens’ ([Müller 2017: 15–16](#)), when emerging research speaks to the range of positive, as well as aversive, feelings driving the populist wave (such as solidarity, nationalistic pride, and hope; see further [Bonansinga 2021](#); [Busher et al. 2018](#); [Pilkington 2016](#)). Gaining a better understanding of these emotional dynamics might help not only to explain contemporary developments but also to think about how the response of rights activists to such politics might help ‘make rights make sense’ to these constituencies ([Brysk 2009](#)). The final point is about the causes of political populism, which equally defy simple explanation ([Hamilton 2022](#)). As [Koskenniemi \(2021: 58\)](#) points out, ‘the politics of the backlash have not been about economic deprivation’ but about ‘cultural transformation’ and ‘revenge against a political and cultural elite that uses the grandiloquent rhetoric about human rights to distribute material values to its friends—aliens, minorities, and “unaccountable international bureaucrats”’ (see also [Mudde and Kaltwasser, 2018](#)). This view—which is supported by empirical research ([Inglehart and Norris 2016](#); [Margalit 2019](#); [Norris and Inglehart 2019](#))—is important given the strong association of human rights legalism with a beleaguered cosmopolitan elite, a point to which we now turn.

The second reaction to populism has been more self-critical, explicitly linking recent populist success to existing cracks in the human rights infrastructure. Writing in this journal, [Philip Alston \(2017: 11\)](#), for example, has called for new, creative and innovative ways to communicate the human rights message, arguing that ‘we need to acknowledge the need to devote more time and effort to being persuasive and convincing, rather than simply announcing our principles as though they were self-evidently correct and applicable’. [Dudai \(2017b\)](#), responding to Alston’s talk, agrees. His astute observation that ‘a vision of a society compatible with the articles of the international covenants on human rights is in and of itself nobody’s rallying cry’ (*ibid.*: 17), neatly encapsulates longstanding concerns over the overly-legalistic approach to human rights claims-making that have been brought into sharper focus with the populist resurgence ([Braaten 2021](#)). [Tasioulas’s \(2019\)](#) recent

contribution to the debate has gone further and expressly linked internal deviations within human rights law, such as departures from the underlying morality of human rights, to some of the external resistance or backlash it has encountered. Similarly, [Mégret \(2022: 246\)](#) sees the adoption of human rights language by populist groups—human rights populism—as ‘radicaliz[ing] unresolved tensions that have always existed in the movement’s midst’. For him, this form of populism, ‘calls the bluff’ of legalization and technocratic governance as markers of the human rights project’s authority by exploiting glaring tensions and ambiguities that have been growing within the project, not least ‘its propensity to say one thing and its opposite at once’ (*ibid.*). Such tensions fuel the ‘populist charge that human rights are the playthings of “elites”, who deploy them as trump cards in order to short-circuit the democratic process whenever it suits their interests to do so’ ([Tasioulas 2019: 1205](#)). Thus, for example, human rights today are used as much as a ‘sword’ than as a ‘shield’ ([Hamilton 2018](#)) with populists seizing upon pro-security discourses with ‘a specifically human rights genealogy’ ([Mégret 2022: 246](#)) to justify repressive policies.<sup>2</sup> In sympathy with, and responding to such work, the next section moves from diagnosis to prescription to consider how these limitations can best be addressed. As will be discussed further below, the argument is made that ‘speaking rights to populism’ is best advanced within the constructivist approach to rights, as part of its purported ‘reboot’ ([Brysk 2018](#)) of the human rights debate.

### 3. The limits of legalism and the constructivist approach to rights

There is of course little doubt that a human rights-based approach grounded in law affords many advantages, such as important clarification of the limits of rights within the machinery of legal decision-making. Even more importantly, the binding of human rights to legal remedies connects rights to the rigour, force and compulsion of law, and thus to its enforceability, as well as ostensibly placing it ‘above politics’ ([Gearty 2006: 72](#)). Yet, as averred above, contemporary, or perhaps more accurately, post 9/11, literature on human rights has not been kind to what may be termed the ‘legal model’ of the human rights project, defined by [Shklar \(1986: 10\)](#) as ‘the preference for case-by-case treatment of all social issues, the structuring of all possible human relations into the form of claims and counter-claims under established rules, and the belief that the rules are “there”’. Among the problems identified are: state-centricity, the significant gap between human rights law and practice, and relatedly, a myopia that fails to acknowledge the limits of the law in the face of hard political realities ([Fraser 2019](#); [Gearty 2006](#); [Posner 2009; 2014](#); [Snyder and Vinjamuri 2003](#)). To these existing criticisms, we now add another charge: that of a certain sophistry around rights, that is intimately connected with the legalization and judicialization of rights and which has been exposed by populists as a kind of ‘social magic trick, with shaky foundations’ ([Dancy and Farris 2018: 79](#)).

One response to the ‘clear distaste for legalism’ ([Dancy and Farris 2017: 5](#)) arising from this body of writing has been the constructivist/constitutive school of thought, favoured by scholars such as Alison Brysk, Geoff Dancy and Christopher Farris, among others ([Risse et al. 2013](#)), and seeking to chart a path between the strictures of the legal model and the scepticism of the political realist position favoured by international relations scholars (*ibid.*). Far from formalism, on this view, human rights are seen as an ‘evolving political construction’ that is ‘sound in theory, but skewed in practice’, and ‘with the *capacity* for counter-hegemony in a liberal world order’ ([Brysk 2018: 7, 8](#)). In order to confront emerging challenges such as populism, therefore, human rights need a ‘reboot’ as an emancipatory agency ‘beyond doctrine’ ([Brysk 2021: 52](#)). Likewise, [Dancy and Farris’s \(2017: 12\)](#) ‘constitutive

2. Thus, we see the French *Rassemblement National* (National Rally) arguing strongly for a ‘right to security’, with the Polish Law and Justice Party going so far as to elide ‘the opposition between security and freedom, which is often found both in the history of ideas and in politics’ (*Prawo i Sprawiedliwość [PiS], nd*).

model' holds that 'human rights law is forged through, and reinforcing political struggles between the weak and the powerful', drawing from social-theoretic and anthropological approaches to law. By conceiving of rights as a contestable, modifiable and flexible political construction whereby rights are *built*, rather than *asserted* it acknowledges, as per a key populist trope, the need to forge rather than assume political trust (Hopgood et al. 2018: 7). Moreover, as Braaten (2021: 1169) has argued, by acknowledging human rights as a 'primarily political phenomenon' this approach affords human rights more dynamism, parrying criticisms of 'rule naïveté' (Posner 2014: 144).

Within this school of thought, it is perhaps the *means* by which rights claims are constructed that requires further elaboration. This is not a criticism specific to the constructivist views of rights outlined above. Indeed, in their overview of the nascent sociology of rights some years ago, Somers and Bush (2008: 414) acknowledged the need to clear some 'conceptual underbrush', including 'the mechanisms by which rights are constituted and have their effects'. For her part, Brysk (2018: 9) argues for a range of communicative measures in the mobilization of rights such as 'information campaigns, representation and discourse', including legal measures such as treaties and laws. Foremost among these measures, however, is the crafting of what she terms 'persuasive pathways of empathy' (ibid), or 'resonant messages, articulated by charismatic or evocative speakers, framed by established rubrics of moral judgment, projected in accessible public or virtual space, and targeted to cognate audiences (Brysk 2013)' (ibid: 13). This is where emotion as the 'language of values' comes into play and which we now turn to discuss.

#### 4. The affective construction of rights: 'redeeming' human rights through emotion?

If the rights camp, or more specifically, the constructionist school of thought, are to move beyond legalism to meet the challenges posed by populism, then we need to consider how to 'construct' rights affectively. The first step, I argue, is to reconceive of the rights movement, *per* Koskenemmi (2021: 59), as an 'opposition party' rather than part of the 'establishment'. As such, it must approach its audiences,<sup>3</sup> including those who are not supportive of human rights, with an open mind, with 'curiosity, not condescension' (EU Fundamental Rights Agency 2017: 6). One of the best ways of doing this is perhaps to take a leaf from the PRRPs' own playbook and use 'emotion [rather than law] as the language of values' (Neuman 2020: xiv). This is not to suggest that we engage in 'emotional vampirism' or exploitation as one populist politician described his party's mobilizational strategy in Turkey (Yilmaz 2021), but rather to acknowledge and embrace the critical role played by the emotions in triggering rights as values. It seems almost unnecessary to state that emotional engagement with the plight of others, specifically generated by compassion and empathy, is a necessary precondition for any motivation to respect a person's rights as a human being (von Harbou 2013). As the substantial literature on emotions in social movement studies attests (for example Goodwin et al. 2000; Jasper 1998; 2011), emotions are important for rights issues because they shape our values and moral beliefs while also serving as a motivating force for action (Abrams 2011; Marcus 2002). This is supported by 'a rich and long tradition of scholarly work that points to a strong link between emotion, moral decision-making, and issues of social justice' (Luongo 2021: 232), such as work by philosopher David Hume (1751), and more recent writing by political theorists on the

3 On the audiences for rights claims, the traditional approach adopted by legal formalists is to address their appeals to the state and its various representatives as the primary duty-bearers in this regard. Yet, as Fraser (2019) has argued, the exclusion of non-state actors creates a legitimacy problem for rights. If rights are truly to have affective resonance at state level then rights arguments need to be addressed not only to the state, but also social institutions such as religious institutions, and those who EUFRA (2017) terms 'the persuadables' (those not holding pre-existing firm views on rights issues).

political necessity of affects (Mouffe 2000; Nussbaum 2013). Further corroboration comes from historical analyses highlighting the important role that emotion has played in the historical development of human rights. Hunt (2007), for example, traces the roots of human rights to the rise of the modern novel in the eighteenth century by arguing that empathy with ‘ordinary’ people of both sexes, brought about through the novel, was vital to cultivating the humanitarian feeling that she argues is necessary for human rights (see also Burke 2017). Finally, it derives support from a growing body of psychological research, suggesting that emotions are key in ‘bringing to consciousness the deepest of our beliefs’ (Lakoff 2014: xiii). A recent report by the European Union Agency for Fundamental Rights (EUFRA) (2017: 9), which examines how better to communicate rights and values, puts this plainly:

the biggest lesson of contemporary psychology and cognitive science is that we are all on automatic pilot far more than we know, driven by subconscious, emotional and/or instinctive forces some 98% of the time. The question then becomes one of how we shift or evoke values by ‘moving’ people emotionally.

If the success of human rights appeals is highly conditioned by their ability to invoke certain emotions, in turn triggering rights-based values, then the second step is to develop a new frame for the construction of rights claims in the political sphere beyond the ‘hopeless legalism’ (Dancy and Farris 2017: 1) of the rights camp (as we currently know it). It should be emphasized that this is not just a matter of strategy or diversifying the communication tools of human rights campaigns (Rodríguez-Garavito and Gomez 2021). As Müller (2018: 202) has stressed, responding to populism requires more than a ‘PR challenge’. Moreover, such a suggestion would not be new. As Sanchez Saldago’s (2018; 2021) work has shown, human rights and humanitarian Civil Society Organizations (CSOs) have for many years utilized emotion-based strategies such as boosting and appeals to compassion to reach their audiences, despite ‘a widespread impression [they] could be doing a far much better [sic] job in terms of communication with ... public opinion’. Rather, ‘an effective response must go beyond the traditional rights rhetoric of legal claims and individual entitlements to reframe social relations with empathy and connection’ (Brysk 2021: 60). The argument advanced here is that this requires a more significant break away from legalism, or ‘paradigm shift’ (Dudai 2017b: 17) in the way that human rights claims are constructed, beyond ‘naming and shaming’ and towards ‘framing and claiming’ (Brysk 2018: 6, emphasis added).

Johnson (2020) provides a practical example of the type of shift required in his reflections on his time as leader of an international campaign against the marketing of breast-milk substitutes in the developing world. When the pressure brought to bear by the campaign resulted in the development by the UN/UNICEF of the world’s first marketing code, the paradoxical result was that the movement, by engaging in technical debates over the legal text, lost the critical ‘emotional momentum’. The lesson, for him, was that ‘focusing on the legal text was boring and confusing for our constituency’, necessitating a return to emotion as ‘the language of values’ (ibid: 213). Rather than fear the use of emotion in political discourse, he argues, a key learning that the human rights movement can take from populism is ‘the importance and the power of human emotions’ (ibid). Another practical suggestion, concerning the emotional *style* as well as *content* of the appeal to rights, concerns the tendency to speak about rights in a ‘high’ rather than ‘low’ emotional register, described by Kurylo (2022: 137) as ‘good manners, dry scientific language, emotional neutrality, technical rationality, specialist training, discipline and the presentation of oneself in an official fashion’. A less sanitized appeal to rights beyond conventional technocratic language might discuss, for example, the stories or lived experience of various rights holders in a way that connects to the *authenticity* of populist discourse (Fieschi 2019). While of course this does not preclude appeals to interest or to reason in rights advocacy; as Karstedt and others (2011) have written in the cognate field of penal populism, ‘it is the *acknowledgement* of emotions [such as fear, etc.] that has to inform public debate and deliberation, not its

suppression'. Indeed, in this regard, research on the *functionality* of emotions or affects may be instructive, uncovering what Hochschild (2016) describes as the 'feeling rules' (socially accepted and tacitly understood emotional responses) of those who support far-right groupings on rights, including their cultural specificities (Leser and Spissinger 2020).

Of course, as with any paradigm shift, this is not without risk. Given the strong attachment to law as a marker of human rights authority, to detach from legalism and embrace more affective approaches is tantamount to admitting the Emperor is, in fact, wearing no clothes. To this point, Mégret (2022: 254) describes any move away from the human rights movement's 'default anti-politics' as potentially 'sawing off the branch on which it is sitting by conceding that it foregrounded a kind of middle-of-the road politics all along'. Yet, as we have already discussed, the position of the human rights movement is arguably too parlous *not* to undertake a radical reassessment of the way in which we advance human rights claims in the political sphere. The alternative may well be irrelevance.

## 5. Conclusion

With backlash politics likely to be with us for some time to come, there remain reasons for optimism when it comes to the populist challenge. Research by the Public Interest Centre (2014), for example, found that the average person tends to value rights-promoting self-transcendence values more highly than self-enhancement values such as 'authority' and 'ambition'. Moreover, as evidenced through the populist embrace of rights language cited at the start of this article, human rights discourse (if not the practice) remains hegemonic. In this context, a constructivist approach to human rights, shorn of condescension, and with the humility and curiosity of an 'opposition power', holds out real hope for the persuasive promotion of certain common values that provide the ethical underpinning to human rights. To this end, and in order to put empirical and conceptual flesh on the bones of a more 'constructivist' view of human rights, we need to know more about the affective politics of rights, including the recursive relationship between rights, culture and emotion at national and regional levels (Luongo 2021).<sup>4</sup> Further research into the affective underpinnings of political debate on rights, as in other areas of social life, may assist civil society and other social institutions to better navigate the existing values domain and trigger the rights-based values already held by citizens. Against a backdrop of the 'normalization' of far-right politics (Wodak 2021), this political sociology of rights, though nascent, perhaps provides the best avenue through which we may 'speak rights' to populism, or at least its potential patrons.

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<sup>4</sup> The political science literature has begun to examine how populism intersects with localism. See further Chou and others (2022).

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