Also by Jack Donnelly
The Concept of Human Rights (1985)
International Human Rights (2d ed., 1998)
Realism and International Relations (2000)

Universal Human Rights in Theory and Practice

2d Edition

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CORNELL UNIVERSITY PRESS
ITHACA AND LONDON

PART II

Cultural Relativism and International Human Rights

4/ Markets, States, and "The West"

The idea of an overlapping consensus explains how agreement might be possible on a list of human rights despite extensive cultural and moral diversity. Functional, causal, or historical accounts would explain why there has been convergence on the particulars of the Universal Declaration model. I will argue that human rights are centrally linked to "modernity" and have been (and remain) specially connected to the political rise and practices of "the West."

1. The Evolution of Lists of Human Rights

In the most general terms, a list of rights reflects a society's understanding of the principal "standard threats" (Shue 1980: 29–34) to human dignity. A human right to excrete,[1] for example, seems silly because there is no serious threat. But if preventing excretion became a diabolical new tool of torture or repressive social control, recognizing a human right to excrete might make sense.

Consider, by contrast, the internationally recognized right to "rest, leisure and reasonable limitation of working hours and periodic holidays with pay." Here we face not the fantasy of a perverse imagination but a common assault on the dignity of workers, from nineteenth-century factories in Manchester, to twentieth-century sweatshops in New York, to textile and electronics factories across Southeast Asia today.

Not every kind of systematic suffering leads to a recognized right. Politics largely determines whether any particular indignity/threat/right is recognized. Nonetheless, our list of human rights has evolved, and will continue to change, in response to social and technological changes, the emergence of new techniques of repression, changing ideas of human dignity, the rise of new political forces, and even past human rights successes (which allow attention and re-

1. This right actually was advanced by Johan Galtung in a paper circulated in the mid-1970s, although I am no longer able to find the reference.

sources to be shifted to threats that previously were inadequately recognized or insufficiently addressed).

Consider economic and social human rights. Although John Locke's short list of life, liberty, and estates in Thomas Jefferson's hands was expanded to life, liberty, and the pursuit of happiness, economic and social rights began to make substantial headway only with the nineteenth-century rise of the working class as an effective political force. The resulting political struggles led to new understandings of the meaning of and conditions necessary for a life of dignity, rooted in significant measure in the experience of the social and economic devastation of early industrialization. Over the course of more than a century, the right to property gradually was supplemented by, and ultimately largely subordinated to, an extensive set of economic, social, and cultural rights.

Our list of civil and political rights has also changed dramatically. Today in the West we take the right to a free press largely for granted. Two hundred years ago, however, Tom Paine was prosecuted for sedition because of his pamphleteering, and President Adams used the notorious restrictions of the Alien and Sedition Acts against his political adversaries, including Thomas Jefferson. The right to freedom of association has been extended to associations of workers for scarcely more than a century. Genocide was recognized as an international crime only in the aftermath of the Holocaust. "Disappearances" have more recently reshaped our understandings of the rights to life and protection against arbitrary arrest and detention.

Lists of human rights are based only loosely on abstract philosophical reasoning and *a priori* moral principles. They emerge instead from the concrete experiences, especially the sufferings, of real human beings and their political struggles to defend or realize their dignity. Internationally recognized human rights reflect a politically driven process of social learning.[2]

2. Markets, States, and Political Equality

Turning toward a more structural and historical, causal account, in this and the following sections I argue that the idea and practice of human rights arose from two interrelated pairs of changes associated with "modernity": the rise of modern markets and modern states and the rise of political claims of equality and toleration. As a result, a hierarchical world of rulers and subjects was transformed into a more egalitarian world of office holders and citizens.

To reduce half a millennium to a few paragraphs, ever more powerful (capitalist) markets and (sovereign, bureaucratic) states gradually penetrated first Europe and then the globe. In the process, "traditional" communities, and

2. Wellman (1997) offers a thoughtful and balanced look, considering both moral and political issues, at the growth of rights and rights claims in recent years.

their systems of mutual support and obligation, were disrupted, destroyed, or radically transformed, typically with traumatic consequences. These changes created the problems that human rights were "designed" to solve: vast numbers of (relatively) separate families and individuals left to face a growing range of increasingly unbuffered economic and political threats to their interests and dignity.

The absolutist state—increasingly freed from the constraints of cross-cutting feudal obligations, independent religious authorities, and tradition—offered one solution: a society organized around a monarchist hierarchy justified by a state religion. But the newly emergent bourgeoisie, the other principal beneficiary of early modern markets and states, envisioned a society in which the claims of property balanced those of birth. By the late seventeenth century, such claims increasingly were formulated in terms of natural rights.

More or less contemporaneously, the Reformation disrupted the unity of Christendom, with consequences that were often even more violent. By the middle of the seventeenth century, however, states gradually began to stop fighting over religion. (The Westphalia settlement of 1648 is conventionally presented as the start of "modern" international relations.) Although full religious equality was far distant—just as bourgeois calls for "equal" treatment initially fell far short of full political equality even for themselves, let alone for all—religious toleration (at least for many Christians sects) gradually became the European norm.[3]

Add to this the growing possibilities for physical and social mobility and we have the crucible out of which contemporary human rights ideas and practices were formed. Privileged ruling groups faced a growing barrage of demands—first for relief from legal and political disabilities, then for full inclusion on the basis of equality—from an ever widening range of dispossessed groups. Such demands took many forms, including appeals to scripture, church, morality, tradition, justice, natural law, order, social utility, and national strength. But claims of equal and inalienable natural or human rights increasingly came to be preferred.

Modern societies, especially in the twentieth century, have increasingly come to be organized around states guaranteeing to their citizens (rather than subjects), as matters of entitlement, an extensive array of civil, political, economic, social, and cultural goods, services, and opportunities.[4] As we saw in

3. The special place of markets and states is only contingently Western; the structural economic and political logic of transformation was first experienced in the West but has spread, in very similar forms, throughout the globe. The role of religious differences, however, is more essentially a Western story.

4. In recent decades, the hegemony of rights claims has become so pronounced that critics increasingly refer to the "tyranny" or "imperialism" of rights. See, for example, Glendon (1991). Compare Gordon (1998: 698–699, 789).

Chapter 2, there has also been a parallel move toward human rights as a preferred basis for advancing claims of justice in international society.

3. Expanding the Subjects and Substance of Human Rights

Locke's classic formulation strikes most readers today as far too narrow, in both its substance and its subjects.[5] Life, liberty, and estates, even in expansive readings of these terms, fall far short of the substance of the Universal Declaration. And despite the apparent universalism of the language of natural rights, Locke clearly envisioned a political world of propertied Christian men. Women, along with "savages," servants, and wage laborers, were never imagined to be holders of natural rights.

Human rights struggles in the subsequent three centuries have gradually expanded the recognized subjects of human rights, pushing us significantly closer to the ideal of full and equal inclusion of all members of the species *Homo sapiens*. Racist, bourgeois, Christian patriarchs have found the same arguments they used against aristocratic privilege turned against them by members of new social groups seeking full participation in public and private life as autonomous subjects and agents.

Many of the great political struggles of the past two centuries have revolved around expanding the recognized subjects of human rights. The rights of working men led to often violent political conflict in nineteenth- and early twentieth-century Europe and North America. The rights of colonized peoples were a major global political issue during the 1950s, 1960s, and 1970s. Struggles to eliminate discrimination based on race and gender have been prominent in many countries over the past thirty years.

In each case, the essential claim was that however different ("other") we—religious dissenters, the poor, women, nonwhites, ethnic minorities—may be, we are, no less than you, human beings, and as such are entitled to the same basic rights. Members of each disadvantaged or despised group have used the rights they did enjoy to press for legal recognition of rights being denied them. For example, workers used their votes, along with what freedom of the press and freedom of association they were allowed, to press to eliminate legal discrimination based on wealth or property.

The substance of human rights thus expanded in tandem with their subjects. For example, the political left argued that unlimited private property rights were incompatible with true liberty, equality, and security for working men (and, later, women). Intense and often violent political struggles led to the rise of social insurance schemes, regulations on working conditions, and an extended range of recognized economic, social, and cultural rights, culminating in the welfare state societies of late twentieth-century Europe.

5. The issues examined in this section are also considered in §13.2.

The International Human Rights Covenants both expanded the subjects of human rights to all human beings everywhere on the globe and codified an evolved, shared understanding of the principal systematic public threats to human dignity in the contemporary world (and the rights-based practices necessary to counter them). To oversimplify only slightly, they set out as a hegemonic political model something very much like the liberal democratic welfare state of Western Europe, in which all adult nationals are incorporated as full legal and political equals entitled to an extensive array of social welfare services, social and economic opportunities, and civil and political liberties (compare §2.3, 11.8).

Contemporary liberals may be tempted to see in this history a gradual unfolding of the inherent logic of natural rights, but we must be wary of Whiggish self-satisfaction and comfortable teleological views of moral progress. A list of rights reflects a contingent response to historically specific conditions. For example, Article 11 of the International Covenant on Civil and Political Rights—"No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation"—responds to the (historically very unusual) practice of debtor prisons. An authoritative list of human rights emerges out of an ongoing series of political struggles that have changed our understanding of human dignity, the major threats (both old and new) to that dignity, and the institutions, practices, and values necessary to protect it.

The historical contingency of international human rights norms, however, in no way diminishes their status or importance. Although conventional, internationally recognized human rights certainly are not arbitrary. And they cannot be changed merely through acts of the will. They are deeply rooted social constructions that shape our lives. Human rights have become a central, perhaps even defining, feature of our social and political reality. The vision of human dignity they reflect and seek to implement is accepted by almost all states as authoritative, whatever their deviations from these norms in practice.

4. Linking "The West" and Human Rights

So far I have shown that human rights, rather than a timeless system of essential moral principles, are a set of social practices that regulate relations between, and help to constitute, citizens and states in "modern" societies. The remainder of this chapter further contextualizes contemporary human rights norms by exploring the special linkage of internationally recognized human rights to "the West" where, as a matter of historical fact, these ideas and practices first emerged.

This historical priority, of course, reflects no special Western virtue or merit. The characteristic indignities and injustices of modern markets and modern states simply happen to have been experienced first in the West. Nonetheless both history and the high degree of development of Western human rights practices[6] have given a special "Western" twist to internationally recognized human rights. The remainder of this chapter seeks to establish this historical fact and to sketch in greater institutional detail the currently "hegemonic" vision of the Universal Declaration model. The remaining chapters of Part II deal with "relativistic" arguments against the Universal Declaration model arising from this special Western role.

It is difficult, perhaps ultimately impossible, to talk intelligently about something as vast and varied as "the West." Politically, "the West" has been classically embodied in Sparta, Athens, and Rome (both the Republic and the Empire); the France of Louis IX, Francis I, Louis XIV, Robespierre, Napoleon, Louis Napoleon, the Third Republic, the Popular Front, Petain, and de Gaulle; the Germany of Emperor Frederick III, the Great Elector Frederick William, Frederick the Great, Kaiser Wilhelm II, Adolf Hitler, Willy Brandt, and Helmut Kohl; the England of Henry VIII, Elizabeth I, Oliver Cromwell, George III, Gladstone, Disraeli, Lloyd George, Chamberlain, Churchill, Thatcher, and Lady/Princess Diana; and the United States of Washington, Jefferson, Jackson, Lincoln, Grant, Wilson, two Roosevelts, two Johnsons, several Kennedys, and various Bushes—not to mention Nixon, Carter, Reagan, and Clinton. And the cultural variation—Strauss and the Sex Pistols, the Arc de Triomphe and the Golden Arches, Don Quixote and Donald Duck—is, if anything, even greater.

Nonetheless, talk of "the West" and its special link to human rights is common, inside and outside the West, among critics and defenders alike. I think that we should take such talk seriously. The West is also historically associated with the Atlantic slave trade, often savage colonialism, religious persecution, virulent racism, absolute monarchy, predatory capitalism, global warfare of almost unthinkable destructiveness, fascism, communist totalitarianism, and a host of other evils and social ills. Many countries, groups, and individuals, both Western and non-Western, have suffered, and continue to suffer, under burdens directly or indirectly created by Western policies and practices. Nonetheless, the association of the West with internationally recognized human rights seems to me, as a matter of historical fact, fundamentally correct.

The West is the only region of the world in which political practice over the past half century has been largely consonant with, and in significant measure

6. This is not to deny the existence of many and often severe human rights violations in Western countries or the role of Western states, especially the United States, in supporting, even creating, human rights violations elsewhere. *All* states everywhere fall short of international human rights standards. Nonetheless, the fact remains that, as a group, Western states, especially the states of the European Union, fall somewhat less short than other regional groups.

guided by, the full set of rights in the Universal Declaration.[7] Additionally, the "Western" vision of political legitimacy has come to largely dominate international discussions—because of the collapse of the leading alternatives; because of Western military, political, and economic power; but also because of the normative power of the Western practice of human rights.

The Western implementation of internationally recognized human rights has emphasized popular sovereignty operating within the rule of law, welfare state provision of economic and social rights, and liberal democratic political legitimacy. The next three sections consider these features of contemporary Western practice at the national level. The following sections briefly examine the Western treatment of human rights in international relations. The chapter concludes with a brief methodological discussion of some of the implications of this historically unique Western role.

To avoid misunderstanding, I want to emphasize that I am presenting an ideal type model at a very high level of abstraction. Although neither "complete" nor "neutral," it is widely used, both internally and externally, for purposes of exposition, defense, and criticism. What follows is an attempt to describe the dominant contemporary institutionalization of the rights of the Universal Declaration model. For better or worse, it began, and is still usefully characterized, as "Western."

My argument is descriptive, dealing with historical genesis and contemporary practice. It is not about "ownership." I do not argue that "human rights are the exclusive heritage of the Western liberal political tradition" (Messer 1997: 310). Although human rights are indeed an important part of the Western heritage, my focus on universality and overlapping consensus clearly indicates that they have also become part of the heritage of every culture, religion, or civilization. I am not claiming that "all human rights imagination [i]s the estate of the West" (Baxi 1999: 134). Over the past several decades it has become the possession of all peoples.

I very clearly am *not* arguing, despite claims to the contrary, that human rights is "the monopoly or the sole prerogative of any one culture or people" (Mutua 1995: 345). The theory and practice of human rights, as a matter of fact, began in the West and have become a central, in many ways politically defining, part of contemporary Western societies. But this says nothing about the broader relevance of these ideas and practices (compare §5.6). Like other things or practices invented or developed in one place, human rights may be adopted or adapted by others elsewhere. My argument is that internationally recognized human rights have been (or are at least are being) and ought to be

7. The United States is a partial exception, although it is easy to exaggerate American reticence toward economic and social rights. For all its failings, the American welfare state is not merely alive but thriving.

adopted, with modest adaptations, by peoples cultures and peoples across the world.[8]

5. States, Citizens, and the Legal Order

Modern politics in the West has been organized around the state. As dynastic regimes and multiethnic empires gave way to parliamentary and popular governments, nineteenth- and twentieth-century Western states increasingly came to be (re)organized in nationalist terms. Although the aspiration for "nation-states" (terminal political entities in which peoples and political boundaries coincide) has always been problematic, it has been a powerful ideal for much of the past two centuries. Consider, for example, understandings of France as the state of the French or Italy as the state of the Italians.

In recent decades, however, citizens in Western countries have increasingly come to be seen in juridical rather than national/ethnic/cultural terms. "The people" are coming to be seen more as those who share a common political life under the jurisdiction of a state than those who share a culture, past, or blood. For example, Germany's new citizenship laws move in the direction of the territorial *jus soli*, in contrast to the traditional genealogical *jus sanguinis* doctrine.

In redefining the people, increasing emphasis has been placed on the rule of law or the related idea of a *Rechtstaat*. Impartial public law, rather than charisma, divine donation, custom, inheritance, power, virtue, or even the will of the people is increasingly seen as the source of legitimate authority. The state thus appears as a juridical entity in which the people are bound together, even defined, by common participation in and subordination to (democratic public) law.

This transition from nationalist to territorial and juridical conceptions of political community has been closely associated with an ideology of human rights. One's rights depend not on who one is (e.g., a well-born English Protestant male property owner) but simply on the fact that one is a human being. In a world of states, this has taken the form of an emphasis on equal rights for all citizens.

6. Economic and Social Rights and the Welfare State

A prominent myth in the human rights literature, especially during the Cold War, has been that the Western approach to human rights rests on a near exclusive commitment to civil and political rights, plus the right to private property.[9] "In Western capitalist states economic and social rights are perceived as not within the purview of state responsibility" (Pollis and Schwab 1980b: xiii; compare Espiell 1979). "Philosophically the Western doctrine of human rights excludes economic and social rights" (Pollis 1996: 318). "The dominant Western conception of human rights . . . emphasizes only civil and political rights" (Muzaffar 1999: 29). Such claims bear little connection to reality. Quite the contrary, during the Cold War the West was the only region that in practice took seriously the often-repeated assertion of the indivisibility of all internationally recognized human rights.

In the nineteenth century, private property was indeed the only economic right that received extensive state protection in the West. But it boggles the mind that anyone with even a passing acquaintance with the American welfare state, let alone post–World War II Western Europe, could claim that this has been true of the West over the past half century. No Western country seriously debates whether to implement economic and social rights. Discussion instead focuses on the means to achieve this unquestioned end, how massive the commitment of resources should be, and which particular rights should be recognized and given priority.

Robert Goodin and colleagues (1999) usefully identify what they call liberal, social democratic, and corporatist welfare regimes (represented by the United States, the Netherlands, and Germany). The human consequences of the different ways in which these regimes seek to reduce poverty while promoting efficiency, equity, integration, stability, and autonomy are illustrated by the thirty or forty million Americans who are largely excluded from access to most of the health care system. From a broad comparative perspective, however, the similarities between Western welfare regimes are much more striking than their differences.

7. Inside, Outside, and the Society of States

Human rights have an inherently universalizing logic rooted in the fact that all human beings have the same human rights. In their internal legal and political practice, Western states have vigorously endeavored, with some success, to give concrete expression to this moral universality. One might expect, therefore, that these internal human rights commitments would be linked to advocacy of cosmopolitan or solidarist international human rights politics. In fact, however, the state remains the central organizing principle in Western conceptions

8. If origin is irrelevant to applicability, one might ask why devote so much attention to the question. The superficial answer is that there is a lot of bad argument in scholarly, diplomatic, and popular discussions that simply gets the facts wrong. The deeper answer is that these errors concerning historical origins are closely connected with (mis)understandings of human rights (and culture) that are politically dangerous and have been regularly used by dictators to justify their depredations. Chapters 5–7 present the evidence for this claim.

9. A more subtle version of this argument, which still is often encountered, presents three "generations" of human rights—civil and political, economic and social, and collective—which are at least loosely associated with the West, socialism, and the Third World. See, for example, Marks (1981); Flinterman (1990); Vasak (1984); Vasak (1991). I develop an extended historical and theoretical critique of this conceptualization in Donnelly (1993b).

of international order and legitimacy. National provision of internationally recognized human rights is the preferred Western strategy in both national and international politics (compare §2.4.A).

This disjunction reflects accommodation to, even unthinking acceptance of, a world of sovereign states. It also helps to protect the privileged position of Western states and societies. And it is rooted in a social contract vision of political society that authorizes, perhaps even encourages, the "choice" of individuals to form political associations that are not global in extent.[10] The balance among these three explanations—the necessities of political order, narrow self-interest, and respect for national autonomy and communal integrity—will largely determine how one evaluates this disjunction.

In any case, the process of growing inclusiveness that I emphasized earlier is largely limited by state boundaries in contemporary Western theory and practice. Sovereignty remains the fundamental principle of international legitimacy (compare Chapter 14). As we will see in Chapter 8, global human rights institutions largely lack coercive power.

As Terry Nardin puts it (1983: chap. 1), borrowing from Michael Oakeshott, the contemporary society of states is more a practical than a purposive association. Its rules seek more to facilitate states' realization of their own purposes than to realize any particular shared substantive purposes. To use a distinction that has become popular within the "English School" of international studies (Bull 1977: 148–149, 156–158, 238–240), the underlying conception of international society is "pluralist" rather than "solidarist."

Martin Wight usefully distinguishes three traditions of international theory (1966; 1992). The "realist" ("Hobbesian") tradition sees the society of states as extraordinarily thin and not very far removed from the constant threat of war. Coexistence is the most that ordinarily can be expected in international society. The "revolutionary" ("Kantian") tradition envisions something much more like a cosmopolitan world society. Solidarity—between states, peoples, and individual human beings—is envisioned as a realistic option in international relations. The "internationalist" ("Grotian") tradition envisions and advocates a relatively thick but still essentially pluralist society of states (rather than a single world society). The contemporary Western approach is, in these terms, internationalist. To return to contractarian language, individuals form societies and states that then interact politically with one another.

Kant's three definitive articles of perpetual peace provide a classic expression of this vision.[11] States should be "republican," or roughly what I have

10. The most direct expression of this contractarian political logic is the principle of national self-determination. Compare §14.3.

11. Wight clearly misreads Kant in placing him in the revolutionary or solidarist camp. He is, instead, an archetypical "Grotian."

called liberal democratic. "International right" should be based on a federation for peace—close to what we would call today a collective security organization—rather than even a federal world government, leaving international relations largely the province of sovereign states (operating in a relatively thick society of states). And, Kant argues, "cosmopolitan right," the international legal and political expression of human moral solidarity, should be limited to freedom of movement and trade, again emphasizing the centrality of states (1983: 112–119).

Part III of this book offers considerable support for the empirical accuracy of this analysis.[12] For the moment the essential point is that although states are no longer (and perhaps never were) the sole important international actors,[13] they remain the central actors in contemporary international relations in general, and in the international politics of human rights in particular.

8. Global Markets

The currently hegemonic (Western) approach to the international dimensions of implementing economic and social human rights is built around global markets. The meager amounts of humanitarian and development aid currently offered amount not even to a down payment on an emaciated global welfare state. Although clearly a reflection of the self-interest of states that are both relatively well-positioned to compete in international markets and unwilling to fund massive international income transfers, self-interest is not the entire explanation of the Western preference for global markets.

Most states, both Western and non-Western, are profoundly disinterested in (if not violently opposed to) creating a central international political authority. States, large and small, in all regions of the world, tend to be extraordinarily sensitive to their sovereign rights and privileges. And sovereignty—at least one's own sovereignty—is widely endorsed by the citizens of most states in all regions.

Most non-Western states would, of course, like to see increased flows of resources from the West to their *states*, preferably without political, economic, or human rights conditions. As was the case during discussions of a New Interna-

12. Chapter 14 explores post–Cold War changes that suggest a more solidarist approach to questions of humanitarian intervention.

13. To select somewhat randomly from the recent literature, Keck and Skikkink (1998) provide an insightful discussion of the role of transnational advocacy networks; Risse, Ropp, and Sikkink (1999) examine the processes by which international human rights norms diffuse into national societies; and Brysk (2000) offers an interesting study of the global dimensions of the struggles for indigenous rights in the Americas. Falk (2000) is the most recent effort of the leading American scholarly advocate of a global approach to human rights issues. More broadly, Lipschutz (1996) provides a provocative (although to me unpersuasive) account of the emergence of a global civil society.

tional Economic Order in the 1970s, however, their approach to welfare remains at least as statist as that of the West. They show no interest in allowing their citizens to establish the links with foreign states and international organizations implied by a cosmopolitan approach to welfare.

Having more or less by consensus (or at least default) rejected a cosmopolitan welfare state in favor of a world of sovereign territorial states, markets—whether relatively "free" or more heavily and directly managed—are an "obvious" choice.[14] In an international society of sovereign states, in which power and authority are radically decentralized, we can expect dominant international norms and institutions to reflect the preferences of leading powers. The result today is often called the neoliberal "Washington consensus."[15]

But contemporary international support for global markets reflects more than raw power. Although the details of "structural adjustment"—greater openness to market forces and their logic of economic efficiency—often are largely imposed, the need for adjustment is increasingly, if reluctantly, acknowledged by a growing number and range of non-Western states. Perhaps the most dramatic illustration is the recent decision of the Chinese Communist party to accept capitalist entrepreneurs—heretofore "exploiters," or worse—as members.

During the Cold War, most non-Western countries argued not only that development could be achieved by relying on state direction but also that this was the best and most efficient route to realizing economic and social rights (see §11.5). Such projects, however, proved unsustainable, when they were not failures from the outset. And the leading dirigiste development successes (excluding the special case of oil-exporting countries) were states, such as Taiwan and Korea, that relied heavily on the economic discipline of international markets.

Today there is a growing (if justifiably grudging) recognition that realizing economic and social rights requires a complex combination of (market-based) efficiency in production and (state-mediated) equity in distribution. Substantial reliance on national and international markets is becoming closer to a hegemonic, rather than simply an imposed, principle. Although little enthusiasm for neoliberal international economic regimes is evident even in the West (outside of the United States), there is no serious challenger, at least at the level of elite interstate debate.

In §11.7 we will return to the (huge) human rights deficiencies of markets. For now I simply want to emphasize that a commitment to international markets (with some rather crude, self-interested interventions to protect national

14. Although not the only choice, the leading historical alternatives at the international level—autarky, mercantilism, and state trading systems—hold few attractions for those interested in economic and social rights. And command economies have consistently proved to have disastrous national welfare consequences in the medium or long run.

15. See, for example, Gore (2000); Naim (2000); Steger (2001: chaps. 1, 2); and Williamson (1993).

labor and firms) is clearly the dominant Western vision of the appropriate international path for realizing economic and social rights—and, not coincidentally, the reigning approach in the contemporary society of states.

9. Historical Analysis and the Genetic Fallacy

In the preceding sections I have tried to present an accurate and fair (although basically sympathetic) account of the central role of Western national and international practice in the social construction of dominant international human rights ideas and practices. Chapter 5 examines challenges to the empirical accuracy of this account. Chapter 6 tries to grapple, in general theoretical terms, with the problems of cultural relativism. Chapter 7 explores the most prominent challenge to universalism in the 1990s, namely, "Asian values," and cultural regionalism more broadly. But before moving on to these inquiries, I want to draw attention to the danger of what logicians call the genetic fallacy.

Let us grant, at least for the sake of argument, that contemporary national and international human rights values and institutions were in significant measure developed in and shaped by the West. This tells us absolutely nothing about the "applicability," "relevance," "appropriateness," or "value" of these ideas, values, and practices—either inside or outside the West. From a causal or historical account analysis of the genesis of a social practice, we cannot conclude anything about its appropriate range of applicability.

Gunpowder was invented in China. Arabic numerals, and much of the mathematics with which they were associated, were developed in the Muslim Near East. Jews in Palestine created Christianity. Yoga is an ancient Indian philosophy, science, or discipline. Submarines, tanks, and fighter jets were invented in the West. Human beings themselves first emerged in Africa. From none of these facts do we conclude that the things or practices in question are of merely local application or validity. Nor should we make such an error in the case of human rights.

This is particularly true if my argument about the standard threats of modern markets and states is correct. We rightly speak of "capitalist," "international," or "global"— not Western—markets (even though global markets are dominated by Western firms and capital). We rightly speak of modern states, an organizational form that has penetrated all areas of the globe. Although Westerners played the decisive role in spreading these institutions across the globe, states have been enthusiastically adopted in all regions of the globe and markets have reshaped all but the most isolated local communities.

It is well worth taking seriously arguments that Western hegemony prevents recognizing certain standard threats.[16] We should also seriously consider argu-

16. Perhaps the most serious such challenge concerns group rights, a subject to which we return in Chapter 12.

ments that particular Western human rights institutions have defensible functional analogs elsewhere. Even the claim that a particular society or culture has a defensible conception of human dignity that is not associated with an idea of equal and inalienable rights deserves careful consideration. But the suggestion that internationally recognized human rights are appropriately rejected outside of the Western world because Westerners played the central role in developing those ideas and practices should be met with derision.

Historical or "genealogical" analysis is important in understanding how contemporary ideas and practices have come to be constructed. It may provide important insights into the limits of dominant practices and highlight needed changes. But human rights are too important to be rejected—or accepted—on the basis of their origins.

Asmarom Legesse argues that "any system of ideas that claims to be universal must contain critical elements in its fabric that are avowedly of African, Latin American or Asian derivation" (1980: 123). But we certainly would not accept something as correct or useful simply because it is Western. Likewise, we must not assume that because something is non-Western that it is valuable, or that because it is distinctively Western in its origins or contemporary dispersion it is somehow defective.

There is an instrumental reason for trying to root human rights ideas in local cultural traditions—just as in the modern West proponents of natural rights used existing cultural resources, especially the Bible and appeals to natural law, on behalf of these new ideas and practices. There certainly is some truth to Daniel Bell's claim that "if the ultimate aim of human rights diplomacy is to persuade others of the value of human rights, it is more likely that the struggle to promote human rights can be won if it is fought in ways that build on, rather than challenge, local cultural traditions" (1996: 652). But not just any cultural traditions will do.

Some local traditions—both Western and non-Western—are antithetical to human rights and must be approached as such. Furthermore, we must be very clear that we are drawing on cultural resources for the purposes of human rights advocacy, not defining human rights by culture. And, as we will see in some detail in Chapter 5, working ideas and practices of universal human rights into local cultures with different histories, traditions, and foundations involves progressive cultural change, just as it did in the West.

In accepting or rejecting human rights we must demand substantive, not historical, arguments. Part I offered such an argument on behalf of the Universal Declaration model. The remaining chapters of Part II look at a variety of relativist challenges to the contemporary universality of that model.

5/ Non-Western Conceptions of Human Rights

In sharp contrast to Chapter 4, which argues that human rights first emerged in the West in response to the social changes produced by modern markets and states, one regularly encounters claims that "human rights are not a western discovery" (Mangalpus 1978). For example, Adamantia Pollis and Peter Schwab argue that "all societies have human rights notions" (1980b: xiv). Yogindra Khushalani even offers the (patently absurd) claim that "the concept of human rights can be traced to the origin of the human race itself" (1983: 404).

It simply is not true that "all societies cross-culturally and historically manifest conceptions of human rights" (Pollis and Schwab 1980a: 15). Human rights, as we saw in Part I, envision equal citizens endowed with inalienable rights that entitle them to equal concern and respect from the state. Human rights are not just a set of abstract values or objectives (e.g., welfare, liberty, political participation) but, even more important, a distinctive set of social practices (see §1.1–2) tied to particular notions of human dignity (see §1.3, 3.4). In this chapter I argue that non-Western cultural and political traditions, *like the premodern West*, lacked not only the practice of human rights but also the very concept.

"Traditional" societies—Western and non-Western alike—typically have had elaborate systems of duties. Many of those duties even correspond to values and obligations that we associate with human rights today. But such societies had conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity, flourishing, or well-being entirely independent of human rights. These institutions and practices are alternatives to, rather than different formulations of, human rights.

This chapter examines claims that traditional Islamic, African, Chinese, and Indian societies had well-established indigenous conceptions of human rights. To emphasize the fact that my argument is structural and not cultural, I also briefly examine the premodern West, in the form of medieval Europe.

At the outset let me note that the understanding of "culture" in the follow-

ing sections is highly problematic. The arguments that I address frequently rest on dubious caricatures, a point addressed in the final section of this chapter. Nonetheless, such arguments have been and remain a regular part of academic, elite, and popular discussions of international human rights. This chapter takes such standard claims about distinctive traditional cultural conceptions of human rights at face value and shows them to be historically mistaken and analytically muddled.

1. Islam and Human Rights

"In almost all contemporary Arab literature on this subject [human rights], we find a listing of the basic rights established by modern conventions and declarations, and then a serious attempt to trace them back to Koranic texts" (Zakaria 1986: 228). Many authors (e.g., Tabandeh 1970: 1, 85) even argue that contemporary human rights doctrines merely replicate 1400-year-old Islamic ideas. The standard argument in this now extensive literature is that "Islam has laid down some universal fundamental rights for humanity as a whole, which are to be observed and respected under all circumstances . . . fundamental rights for every man by virtue of his status as a human being" (Mawdudi 1976: 10). "The basic concepts and principles of human rights [have] from the very beginning been embodied in Islamic law."[1] Such claims, however, are almost entirely baseless.

Khalid M. Ishaque argues that "Muslims are enjoined constantly to seek ways and means to assure to each other what in modern parlance we call 'human rights'" (1974: 32). While he admits that "human rights" cannot be translated into the language of the Islamic holy works, he nevertheless claims that they lie at the core of Islamic doctrine.[2] The fourteen "human rights" that Ishaque claims are recognized and established by Islam (1974: 32–38), however, prove to be only duties of rulers and individuals, not rights held by anyone.[3]

The scriptural passages cited as establishing a "right to protection of life" are in fact divine injunctions not to kill and to consider life inviolable. The "right to justice" proves to be instead a duty of rulers to establish justice. The "right to freedom" is a duty not to enslave unjustly (not even a general duty not to enslave). "Economic rights" turn out to be duties to help to provide for the needy. And the purported "right to freedom of expression" is actually an obligation to speak the truth—that is, not even an obligation of others but an obligation of the alleged right-holder.

1. Mr. Makki, representative of Oman to the Third Committee of the U.N. General Assembly, speech of October 25, 1979. UN document A/C.3/34/SR.27.

2. Unless our concepts are independent of language—a highly implausible notion, especially for a social practice such as rights in which language is so central to its functioning—it is hard to see how this claim could even in principle be true. At most these texts enjoin functional analogues or different practices to produce similar ends—and my argument in the rest of this section suggests that even that is not true.

3. On the conceptual distinctions between rights and duties, and the practical differences this makes, see §1.1 above and §2 below.

Similarly, Abdul Aziz Said claims "to identify precepts that establish human rights in the Islamic tradition" (1979: 64) and argues that in Islam "human beings have certain God granted rights" (1980: 92). But not only does he present no evidence in direct support of this claim, but the discussion he does offer demonstrates once more the absence of the concept of human rights in Islam. All of the nine basic regulating precepts of an Islamic political system that Said lists (1979: 65–68) involve either a rights-less duty or are rights held because one has a certain legal or spiritual status, not simply because one is a human being.[4]

Muslims are indeed regularly and forcefully called upon—by scripture, tradition, religious leaders, and ordinary believers—to treat others with respect and dignity. They are enjoined, in the strongest possible terms, to pursue both personal well-being and social justice. These injunctions clearly call to mind the *values* of the Universal Declaration of Human Rights, but they appeal to divine commands that establish duties, not (human) rights. The *practices* traditionally established to realize these values simply did not include equal and inalienable rights held by all human beings.

Consider Majid Khadduri's claim that "human rights in Islam are the privilege of Allah (God), because authority ultimately belongs to Him" (1946: 78). This is, quite literally, incoherent: "human rights" that are not rights of human beings but privileges of God. But this is not an idiosyncratic conception. Mahmood Monshipouri also argues that "in Islamic tradtions human rights are entirely owned by God" (1998: 72).

"Human rights in Islam, as prescribed by the divine law, are the privilege only of persons of full legal status. A person with full legal capacity is a living human being of mature age, free, and of Moslem faith" (Khadduri 1946: 79). This makes "human rights" the privileges of (only) free adult Muslims. Infidels receive only guarantees of life, property, and freedom of religion; slaves only a right to life.[5] And women enjoy still another set of rights and duties.

> The essential characteristic of human rights in Islam is that they constitute obligations connected with the Divine and derive their force from

4. In a similar fashion, Majid Khadduri (1946: 77–78) lists five rights held by men according to Islam—rights to personal safety, respect of personal reputation, equality, brotherhood, and justice—but his supporting evidence in fact shows that Islam treated these subjects entirely in terms of duties that are not correlative to rights. Likewise, Ahmad Moussalli identifies human rights with the "five necessities" (*al-darruyiyyat al-khams*), the duties to preserve religion, self, reason, the family, and money (2001: 126). See also Mawdudi (1976: 17–24); Tabandeh (1970).

5. Similarly, Monshipouri claims that individuals can enjoy human rights only "in their relationship with God" (1998: 72). Those without the religiously specified relationship to God thus would not have human rights—an obviously untenable conception of human rights, unless we are to say infidels are not human (which poses its own, equally serious, problems).

> this connection. . . . Individuals possess certain obligations towards God, fellow humans and nature, all of which are defined by Shariah. When individuals meet these obligations they acquire certain rights and freedoms which are again prescribed by the Shariah. (Said 1979: 63,73–74)

In Islam, in the realm of "human rights" (read "human dignity"), what matters is duty rather than rights, and the rights that one does hold are a consequence of one's status or actions, not the moral fact of being human. If the rights we are discussing are indeed "duty based and interdependent on duties one owes to God and the community" (Ali 2000: 25), they are not human rights.

Sultanhussein Tabendeh even claims that the preferential treatment of Muslims in certain criminal cases is "quite free of difficulty" from a human rights perspective, because "people who have not put their reliance in conviction and faith, nor had that basic abiding-place nor believed in the one Invisible God, are reckoned as outside the pale of humanity" (1970: 17). "Human rights" thus are supposed to be based on a conception that sees the majority of the population of the world as "outside of the pale of humanity."[6]

The Holy Qur'an certainly does not require Muslims to accept such legal ideas and their associated practices. Many contemporary Muslims (entirely justifiably) reject such views. Nonetheless, this accurately represents the historically dominant practice of most Muslim societies—much as most Christian societies throughout most of their histories treated non-Christians as inferior, despite the apparently universalistic egalitarianism of the New Testament.

The issue at the moment is not how Muslim (or any other) holy texts might or ought to be read, today or in the past, but rather how those texts were in fact read and acted on by "traditional" Muslim societies. As in most other "traditional" societies, rights and duties were largely dependent on community membership. The "universe of obligation," to use Helen Fein's apt term (1979: 33), was largely that of all believers[7]—Dar al Islam—not humanity.

6. Somewhat less starkly, but with a similar implication, Norani Othman describes the rights recognized in Islam as "open to all faithful believers" (1999: 72), which would seem to exclude the unfaithful and unbelievers from the enjoyment of human rights. Consider also Ahmad Moussalli's claim that "human rights in Islam are creedal rights" (2001: 126). Whatever these may be, precisely because they rest on adherence to a particular religious creed, they are not human rights in the ordinary sense of that term.

7. This is both too broad—within the *umma*, the community of believers, there were slaves—and too narrow—Christians and Jews living in Muslim communities often enjoyed both freedom of religion and limited rights of self-government, despite being treated as legally, politically, socially, and morally inferior to Muslims.

Islam does teach that "it is the state's duty to enhance human dignity and alleviate conditions that hinder individuals in their efforts to achieve happiness" (Said 1980: 87). It may be true that "there is no aspect of human need but Islam, in its ethical, social and liturgical precepts, has made provision for it" (Tabandeh 1970: 10). The social and political precepts of Islam do reflect a strong concern for human good and human dignity, which may even be a prerequisite for human rights. Central to Muslim traditions is "a profound affirmation of human freedom, dignity, and autonomy" (Othman 1999: 189). But none of this is equivalent to a concern for, or a recognition of, human rights.

The substantive similarities, at the level of basic values, between classical Islam and the Universal Declaration model—for example, "the *Qur'anic* notion of a common human ontology (*fitna*) and . . . an Islamic idiom of moral universalism" (Othman 1999: 173)—explain why devout Muslims might choose to participate in the contemporary overlapping international consensus on human rights (see §3.2, §3.6). Traditional Muslim societies, however, simply did not pursue human dignity or flourishing through the practice of equal and inalienable rights held by all human beings. Such differences in fundamental legal and political institutions and practices made these societies very different from (modern) human rights–based societies of *any* culture, religion, or civilization.

To avoid misunderstanding, let me state clearly and emphatically that none of this suggests that Islam is in any way inherently hostile to or fundamentally incompatible with human rights. I readily agree that "the notions of democracy, pluralism, and human rights are . . . in harmony with Islamic thought" (Moussalli 2001: 2)—if by that we mean that Islam (like Christianity) can, and even ought to be, read in this way. My point is that traditionally, as with Christianity throughout most of its history, it has not been read in that way.

Shaheen Sardar Ali seriously understates the analytical and historical problem when she notes, almost in passing, that "the extent and application of human rights in Islam, *equally, and to all human beings,* poses a number of problems." But she is clearly correct when she later claims that support for human rights today can be found in the canonical Islamic "sources and accompanying juristic techniques, namely the *Qur'an, Haddith, Ijma, Qiyas Itjihad*" (2000: 16, 19). And relying on these resources in advocating respect for internationally recognized human rights makes immense practical sense.

Rooting contemporary human rights ideas and practice in such sources and resources will, for many Muslims, give them a depth, meaning, and impact they could not otherwise attain—just as rooting the rights of the Universal Declaration in the Bible gives them a special meaning and force to many Christians. My point, however, is that none of this tells us anything about how life was organized in Baghdad in the fourth century after the Hijra, in the Ottoman Em-

pire six hundred years later, or in Syria when Western colonial domination was imposed. And unless we appreciate these differences in social practices—that is, the sharp break with traditional ways implicit in the idea and practice of equal and inalienable rights held by all human beings—we delude ourselves about the past and obscure central elements of the meaning and importance of human rights today.

2. The Premodern West

Despite my protestations in the three previous paragraphs, many readers will see the preceding discussion as reflecting cultural arrogance, or worse. My argument, however, is structural not cultural. And it is analytical rather than normative. To underscore this point, I want to turn immediately to the premodern West, where it is equally clear that the idea and practice of human rights were utterly foreign.[8]

One searches in vain for human rights in (Western) classical or medieval political theory or practice. For example, the Greeks distinguished between Hellenes and barbarians (non-Greeks), whom they considered congenitally inferior. The Romans recognized rights based on birth, citizenship, and achievement, not on mere humanity. In the millennium following the fall of Rome, Christian theorists and rulers allotted dramatically different political treatment to believers and nonbelievers. And within Christendom, the spiritual equality of all believers most definitely did not extend to political equality.

In the premodern West, the duty of rulers to further the common good arose from divine commandment, natural law, tradition, or contingent political arrangements rather than rights (entitlements) of all human beings to be ruled justly. Although the people were expected to benefit from the political obligations of their rulers, they had no (natural or human) rights that could be exercised against unjust rulers. The reigning idea was natural right (in the sense of rectitude), not natural rights (entitlement).

Consider Thomas Aquinas, whose political theory is widely considered to be representative the high medieval period. Right (*ius*) for Aquinas is the good at which justice aims and law (*lex*) is the written expression of right or justice. Right and law are thus two ways of stating a duty under which one is placed by right in the sense of "what is right." Right (*ius*) does not necessarily include the

8. It happens that I first developed my general argument, and the conceptual distinctions on which it is based, while grappling with the differences between medieval and modern Western conceptions of "natural right." See Donnelly (1980), which provides detailed support for the (exceedingly brief) discussion of Aquinas in this section.

English notion of right in the sense entitlement.[9] And Thomist natural law does not give rise to natural rights; rather, it states what is right.[10]

The practical differences this makes can be illustrated by Aquinas's treatment of tyranny. A tyrant is, like every human being, obliged to obey the natural law. In ruling tyrannically, he violates the substance of the natural law as well as his special obligation to rule justly. These obligations, however, are owed to God, not the people. Although the tyrant is guilty of great crimes against the people, it is against God and God's law that he has sinned, and only God is entitled to demand redress.

Lacking explicit authority to change their rulers—which was *not* something that people were thought to have naturally—the people might legitimately point out to the tyrant the error of his ways, call on him to conform to the natural law, or pray for divine assistance. But the natural law gave them no right to change their rulers. They were not entitled to demand redress.

Medieval writers thus regularly appealed to Paul's claim that all power is from God and that resistance to rulers will bring damnation (Romans 13:1–2). The Augustinian notion of misrule as a punishment for evil was widely accepted: "It is by divine permission that wicked men receive power as a punishment for sin. . . . Sin must therefore be done away with in order that the scourge of tyrants may cease."[11]

The demands of natural law may be considerable, but the position of a people in a political system based on natural law without natural rights is quite different from that of modern citizens endowed with human rights. Natural law and human rights both serve as standards of political legitimacy. But unlike Aquinas's natural law, human rights also provide citizens with grounds for political action—in extreme cases, even revolution—against tyrants.

9. The tendency to read modern rights notions back into a premodern past is not restricted to non-Western contexts. My favorite example involves Aquinas's treatment of "private property." In the well-known D'Entreves anthology (D'Entreves 1959) several passages are grouped under the heading of "The Right to Private Property." But this heading is to be found nowhere in Aquinas's text. Most of the passages instead come from a discussion of "the vices opposed to justice" (*Summa Theologicae* 2a.2ae.63–79) and under the particular heading *de furto et rapina* (of theft and rapine). And the particular questions Aquinas actually investigates are *utrum naturalis sit homini posessio exteriorum rerum* (whether it is natural for man to possess external things ["property"]) and *utrum liceat alicui rem aliquam quasi propriam possidere* (whether it is lawful or legitimate to possess anything as one's own). The issue, clearly, is not one of rights (entitlement) but rectitude and legality. In the medieval world, people certainly did have possessions. But if there was anything like what we would understand as a system of "property rights," it was very limited. For example, land, the central productive resource of these societies, rarely was held as private property, even by princes. And possessions regularly were not fully alienable, in sharp contrast to modern private property.

10. My point is not that (neo-)Thomist theory cannot find a place for human rights. See, for example, Maritain (1943) and especially Finnis (1980). During the medieval era, however, no such space was made. The issue in this chapter, to repeat, is how actual (in this case Western) societies treated issues that we now treat as matters of human rights.

11. *De Regimine Principum* I.vi.52.

My argument, in both this and especially in Chapter 4, thus is about Western culture only accidentally and in so far as it has been shaped by modern markets and states (and the associated ideas and practices of human rights). Social structure, not "culture," does the explanatory work. When the West was filled with "traditional societies," it had social and political ideas and practices strikingly similar to those of traditional Asia, Africa, and the Near East. Conversely, as those regions and civilizations have been similarly penetrated by modern markets and states, the social conditions that demand human rights have been created. This is the foundation of the overlapping consensus on and the contemporary moral universality of human rights.

The historical connection of human rights with the West is more accident or effect than cause. Westerners had no special cultural proclivity that led them to human rights. Rather, the West had the (good or bad) fortune to suffer the indignities of modern markets and states before other regions. By necessity rather than superior virtue they got a jump on the rest of the world in developing the response of human rights.

3. Traditional Africa

"The African conception of human rights was an essential aspect of African humanism" (Asante 1969: 75). "It is not often remembered that traditional African societies supported and practiced human rights" (Wai 1980: 116). Such assertions, much as in the case of Islam (and the premodern West), prove to be not only unsupported but actually undercut by the evidence presented on their behalf.

Dunstan Wai, author of the second quoted passage, continues: "Traditional African attitudes, beliefs, institutions, and experiences sustained the 'view that certain rights should be upheld against alleged necessities of state'" (1980: 116). This confuses human rights with limited government.[12] There are many other bases on which a government might be limited, including divine commandment, legal rights, and extralegal checks such as a balance of power or the threat of popular revolt. Even having a right to limited government does not mean that one recognizes or has human rights.

"There is no point in belaboring the concern for rights, democratic institutions, and rule of law in traditional African politics" (Wai 1980: 117). To this we can add only that it is particularly pointless in a discussion of human rights, given the form such concerns took. Even where Africans had personal rights

12. "This chapter will argue that authoritarianism in modern Africa is not at all in accord with the spirit and practice of traditional political systems" (Wai 1980: 115). Compare Legesse (1980: 125–127) and Busia (1994: 231). For non-African examples of a similar confusion, see Said (1979: 65); Magalpus (1978); and Pollis and Schwab (1980b: xiv).

against their government,[13] those rights were based not on one's humanity but on such criteria as age, sex, lineage, achievement, or community membership.

Asmarom Legesse argues along similar lines that "many studies . . . suggest that distributive justice, in the economic and political spheres, is the cardinal ethical principle that is shared by most Africans" (1980: 127; compare Fernyhough 1993: 61). This is quite true, but once again irrelevant. Distributive justice and human rights are different concepts. Plato, Burke, and Bentham all had theories of distributive justice, but no one would ever think to suggest that they advocated human rights. Although giving to each his own—distributive justice—typically involves respecting the rights of others, unless "one's own" is defined in terms of that to which one is entitled simply as a human being, the rights in question will not be human rights. In African societies, rights typically were assigned on the basis of social roles and status within the community.

In a similar vein, Timothy Fernyhough argues that "many precolonial societies were distinguished by their respect for judicial and political procedure" (1993: 61). This is even more obviously irrelevant. The question, of course, is the nature of the procedures, in particular whether they were based on universal rights. They were not.

We again see an attempt to establish that the differences with the modern ("Western") practices are merely a matter of verbal labels. "Different societies formulate their conception of human rights in diverse cultural idioms" (Legesse 1980: 124). In fact the differences are matters of concept and practice. African societies had concepts and practices of human dignity that simply did not involve human rights. "Many African traditional societies did respect many of the basic values that underlie human rights" (Penna and Campbell 1998: 21). The ways in which they were valued, however, and the practices established to implement them were quite different. Recognition of human rights simply was not the way of traditional Africa, with obvious and important consequences for political practice (compare Howard 1986: chap. 2).

4. Traditional Confucian China

"The protection of human rights is an integral part" of the traditions of Asian societies (Anwar 1994: 2). "All the countries of the region would agree that 'human rights' as a concept existed in their tradition" (Coomaraswamy 1980: 224). "The idea of human rights developed very early in China" (Lo 1949: 186), "as early as 2,000 years ago" (Han 1996: 93). In arguing against such claims, I will focus on traditional (Confucian) China.

Consider the following representative argument:

13. Fernyhough (1993: 55ff.) offers several examples of personal rights enjoyed in precolonial African societies. See also Mutua (1995: 348–351).

> Human rights under the traditional Chinese political culture were conceived to be part of a larger body of morally prescribed norms of collective human conduct. . . . The Confucian code of ethics recognized each individual's right to personal dignity and worth, but this right was "not considered innate within each human soul as in the West, but had to be acquired" by his living up to the code. (Tai 1985: 88; quoting Fairbank 1972: 119)

Such a right clearly is not a *human* right. It had to be earned. It could be lost. The ground of the right was not the fact that one was a human being. The dignity and worth in question were not seen to be inalienable and inherent in the person.

"In a broad sense, the concept of human rights concerns the relationship between the individual and the state; it involves the status, claims, and duties of the former in the jurisdiction of the latter. As such, it is a subject as old as politics, and every nation has to grapple with it" (Tai 1985: 79). But not all institutionalized relationships between individuals and the state are governed by, related to, or even consistent with, human rights.

What the state owes to those it rules is indeed a perennial question of politics. Human rights, however, provide but one answer. Divine right monarchy is another. The dictatorship of the proletariat, the principle of utility, aristocracy, theocracy, democracy, and plutocracy are still different answers.

The traditional Chinese theory of the Mandate of Heaven viewed political power as a heavenly grant to ensure order, harmony, justice, and prosperity. This required the Emperor to discharge properly the duties of his office. If he systematically failed to do so, Confucian civil servants, as the authorized representatives of society, were obliged to remonstrate the ruler. If he proved recalcitrant and unusually vicious, popular resistance was authorized. In fact, widespread resistance was evidence that the ruler had lost his mandate.

Limited government, however, should not be confused with government limited by the human rights of its citizens. Irregular political participation in cases of extreme tyranny should not be confused with a (human) right to political participation.

Individuals may have held rights as members of families, villages, and other groups. But the purpose of political rights "was not to protect the individual against the state but to enable the individual to function more effectively to strengthen the state" (Nathan 1986: 148). Whatever the value or importance of such rights, they are not human rights as that term is ordinarily used.

Many commentators seem uncomfortable with this fact. For example, Lo Chung-Sho notes that "there was no open declaration of human rights in China, either by individual thinkers or by political constitutions, until this concept was introduced from the West. In fact, the early translators of Western political thought found it difficult to arrive at a Chinese equivalent for the term 'rights'" (1949: 186). But, Lo continues, "this of course does not mean that the Chinese never claimed human rights or enjoyed the basic rights of man" (1949: 186).

I cannot imagine how the Chinese managed to claim human rights without the language to make such claims, and Lo presents no evidence that they actually asserted or otherwise exercised such rights. Quite the contrary, his examples show only a divinely imposed duty of the ruler to govern for the common good, not rights of the people.

This is not a "different approach to human rights" (Lo 1949: 188). It is an approach to human dignity, well-being, or flourishing that does not rely on human rights. Lo fails to draw the crucial conceptual distinction between having a right and enjoying a benefit. As a result, he confuses making claims of (in)justice with claiming a (human) right. Simply because acts that we would say involved violations of human rights were considered impermissible does not mean that people were seen as having, let alone that they could claim or enjoy, human rights.

"Different civilizations or societies have different conceptions of human well-being. Hence, they have a different attitude toward human rights issues" (Lee 1985: 131). Even this is significantly misleading. Other societies may have (similar or different) attitudes toward issues that *we* consider in terms of human rights, but unless they possess a concept of human rights they are unlikely to have *any* attitude toward human rights. To fail to respect this important conceptual distinction is not to show cultural sensitivity, respect, or tolerance but rather to misunderstand the social and ethical foundations and functioning of a society as a result of anachronistically imposing an alien analytical framework.

5. Caste and Human Rights

India is a partial exception to the tendency to argue that all major civilizations or cultures have traditional conceptions of human rights. Even during the Cold War many authors recognized that human rights did not exist in traditional Hindu India.[14] Nonetheless, a surprising number of authors do argue that human rights ideas are present in traditional Indian (Hindu) ideas and practice. Yougindra Khushalani claims that "Hindu civilization had a well-developed system which guaranteed both civil and political as well as the economic, social and cultural rights of the human being" (Khushalani 1983: 408; compare Saksena 1967: 360–361). Ralph Buultjens speaks of caste as India's "traditional, multidimensional views of human rights" (1980: 113). Max Stackhouse devotes

14. See, for example, Thapar (1966) and Mitra (1982). More recently see Elder (1996: 70, 81).

two chapters of *Creeds, Society, and Human Rights* (1984) to Hinduism, taking it for granted that there is a Hindu concept of human rights.[15]

In fact, though, "Indians . . . base their social structure on duties and obligations rather than on rights."[16] Whatever rights one had rested on the discharge of status-based duties. In traditional Indian (Hindu) society, "people's duties and rights are specified not in terms of their humanity but in terms of specific caste, age and sex" (Mitra 1982: 79). And the caste system made the ascriptive hierarchy so rigid that for all intents and purposes one's duties and rights were defined by birth.

> The caste system divides the whole society into a large number of hereditary groups, distinguished from one another and connected by three characteristics: *separation* in matters of marriage and contact, whether direct or indirect (food); *division* of labor, each group having, in theory or by tradition, a profession from which their members can depart only within certain limits; and finally *hierarchy*, which ranks the groups as relatively superior or inferior to one another. (Dumont 1980: 21; compare Beteille 1965: 46)

All societies have social hierarchies, with a tendency for different groups to separate from one another. Hereditary occupational specialization is common. But the combination of separation, division, and hierarchy in the intensity characteristic of India makes the caste system largely unique to South Asia.

Ancient formulas recognize four castes (*varnas*), Brahman, Kshatriya, Vaishya, and Shudra, which roughly correspond to priests, warriors/rulers, the landed and mercantile classes, and the servile classes. Below these were Chandalas, "untouchables." By the third or fourth century A.D., however, a much more complex system of caste segmentation existed, based on the *jati*, a smaller descent group. Today "there are so many [castes] that it is virtually impossible to determine their exact number."[17]

The boundaries between castes are maintained by detailed rules of ritual purity: contact with, in some instances even sight of, lower castes is viewed as polluting; intimate contact, especially in marriage or at meals, is especially defiling. These rules of purity are embedded in a kin-based social system of "rigid

15. Perhaps the oddest argument is the claim that "the ancient Indian concept of human rights . . . was based on wars and regulated humanitarian laws to be adopted before, during and after war" (Raj 2000: 2). The suggestion that human rights has to do with relations between political communities, rather than within them, is bizarre.

16. Saksena (1967: 372). Compare Pandeya (1986: 271); Mitra (1982: 78–79); and Thapar (1966: 35).

17. Beteille (1965: 230). Hutton gives a rough estimate of more than three thousand (1963: 67). Sharma found 16 separate castes in a village of only 144 households (1985: 68 and table 7).

boundaries and collective or corporate rank" (Bayly 1999: 10). "In the world of caste, virtually every aspect of behavior is regulated by kin—not only major decisions such as marriage, occupation, and place of residence, but everyday activities such as what one eats and who with, or the forms of address one employs for different categories of people" (Quigley 1993: 87).

Birth, according to the Hindu theory of reincarnation, is a reflection of moral justice and order. "One is born where one belongs by reason of his acts over many incarnations" (Organ 1974: 194). "The body or family in which a person is born, the society in which he lives, and the position or station in life which he occupies, are all determined by his past conduct and behaviour" (Chatterjee 1950: 78). Caste hierarchy thus "is the expression of a secret justice" (Bougle 1971 [1908]: 76). Social status was seen as not accidental or even conventional but as part of the natural fabric of the universe.

Caste and human rights are clearly radically incompatible. Human rights "derive from the inherent dignity of the human person," to quote the International Human Rights Covenants once again. Each person has an inherent dignity and worth that arises simply from being human. Thus each person has the *same* basic dignity, and human rights are held equally by all. Furthermore, human beings, in their worth and dignity, are radically distinguished from the rest of creation.

The caste system, by contrast, denies the equal worth of all human beings. The "secret justice" of caste, the intimate link between and mutual reinforcement of the type of life one leads and one's natural worth, gives social inequality a special moral significance. Equal and inalienable human rights held by all members of the species *Homo sapiens*, far from being a "foundational" moral assumption, would be a moral outrage, an affront to and attack on natural order and justice. "The principal criterion on which the caste system is based is the principal of *natural superiority*" (Gupta 1992: 2).

"Human nature"—if we can even use that term without gross anachronism—differs in traditional India from person to person, or, rather, from group to group. "The essential feature of caste was the assumption that there are fundamental and unchangeable differences in the status and nature of human beings" (Buultjens 1980: 112). "In Indian thought, the caste is a *species* of mankind" (Kolenda 1978: 150).

Traditional Indian thought does not draw a qualitative distinction between human beings and other creatures. The human soul is only a somewhat more evolved (self-aware) incarnation of the soul of other animals and even plants. In fact, in many ways the distance between high castes and low castes is greater than that between lower castes and animals. For example, the *Law of Manu* prescribes the same penance whether a Brahman kills a cat, a mongoose, a blue jay, a frog, dog, iguana, owl, crow, or Shudra (11.132). "Dying, without the expectation of a reward, for the sake of Brahmans and of cows" will secure beati-

tude for Chandalas (untouchables) (10.62; 11.80) To take a modern example, Beteille reports that Brahmans in the village he studied did not even include people of other castes in their count of the village's population and that members of non-Brahman castes likewise did not count untouchables (1965: 25).

Whatever one may think of my arguments about Asia, Africa, and Islam, the Indian case makes it painfully clear that it simply is not true, to quote Pollis and Schwab again, that "all societies cross-culturally and historically manifest conceptions of human rights" (1980a: 15). It is not true that there is a "notion, common to all societies, that human beings are special and worthy of protection that distinguishes humans from animals" (Mutua 1995: 358). And it certainly is not the case that people in every region and culture "share certain beliefs with all humanity by virtue of their humanity" (Penna and Campbell 1998: 21).

6. The Relevance of Human Rights

A very different culturalist argument uses the Western origin of human rights to argue that the Universal Declaration model is inappropriate or irrelevant to contemporary Third World problems and needs. For example, Pollis and Schwab contend that because in most countries "human rights as defined by the West are rejected or, more accurately, are meaningless," the Western concept is "inapplicable," "of limited validity," and "irrelevant" (1980a: 13, 8, 9). These are strong claims that do not necessarily rest on the genetic fallacy (see §4.9). For the most part, however, they are unjustified.

There are no objective standards of relevance or applicability. Even demonstrating that most people in a country have been and continue to be unaware of the concept, or that they have adopted alternative mechanisms to realize human dignity, will not establish that human rights are objectively irrelevant (compare Barnhart 2001). And subjective senses of "irrelevant" raise a variety of difficult issues.

Our problems arise, it seems to me, because we face competing intuitions. We want to recognize the importance of traditional values and institutions[18] as well as the rights of modern nations, states, communities, and individuals to choose their own destiny. At the same time, though, we feel a need to reject an

18. Michael Barnhart notes that in earlier work I have not explicitly argued why we should respect cultural variety (2001: 53). I had assumed that it was sufficiently obvious that it need not be stated—an assumption that any good philosopher will rightly challenge. Cultural diversity deserves our respect (within a human rights framework) not because it is different, or because it is characteristic, but to the extent that it reflects the autonomous choices of the rights-holding individuals who participate in the practices in question (compare §12.6). Although by no means a nontrivial assumption, it seems to me pretty unproblematic once we have accepted the existence of universal human rights.

"anything goes" attitude. This dilemma is the central concern of Chapter 6. A few brief comments, however, are in order here.

Certainly Louis XVI found the revolutionary rights of man to be inappropriate, and today's historians seem to be not altogether certain that the majority of his subjects, especially those outside of Paris, disagreed. In the 1970s and 1980s, Idi Amin and "Emperor" Bokassa found human rights concerns to be irrelevant, while both Pol Pot and his Vietnamese-backed successors determined that human rights were inappropriate to Cambodia's needs and interests. In the 1990s, Saddam Hussein and the *genocidaires* in Rwanda also saw human rights as irrelevant (or worse) and did their best to render them meaningless in local political practice. There is widespread agreement that these men were (morally) wrong. Elucidating the bases for such a conclusion and then applying the resulting principles to less extreme cases, however, raises serious difficulties.

Human rights are, among other things, means to realize human dignity. To the extent that they have instrumental value we can (in principle at least) assess their merits empirically. I contend that for most of the goals of non-Western countries, as defined by these countries themselves, human rights are as effective as, or more effective than, either traditional approaches or modern strategies not based on human rights.

If our concern is with the realization of human dignity, one could argue (along the lines suggested in §4.2-3) that the conditions created by modernization render the individual too vulnerable in the absence of human rights. If the concern is with development and social justice, a strong case might be made that recognizing and protecting human rights would increase participation (and therefore popular support and productivity), open up lines of communication between people and government (thus providing greater efficiency and important checks against corruption and mismanagement), spur the provision of basic services through the recognition of economic and social rights, and provide dispossessed groups with regular and important channels for demanding redress. If one is concerned with stability, an argument might be advanced that a regime that systematically violates human rights engenders destabilizing opposition. It is essential that we move beyond simply demonstrating differences in values (which is the level of most current discussions) to assessing the relative merits of competing approaches.

James C. Hsiung, like many other culturalists, advocates an effort "to develop a definition of human rights that is compatible with a country's cultural legacy" (1985: 26). To a certain extent this is both morally appropriate and instrumentally prudent, but there must be limits.

Some cultural legacies are incompatible with any plausible idea of human rights. For example, racism, sexism, and anti-Semitism were for many cen-

turies—many would argue still are—deeply entrenched elements of the cultural and political legacy of the West. One of its principal political achievements has been precisely to challenge, in theory and in practice, this legacy, and, through the mechanism of human rights, help to create another. Human rights are not, and should not be, neutral with respect to political forms or cultural traditions.

Whether the political vision of the Universal Declaration model is in all its details best for every contemporary society is a matter of legitimate debate, to which we return in the next two chapters. But unless the distinctive nature of the human rights approach is recognized, that debate will be, at best, vacuous or misguided.

It may be desirable to reduce or minimize the place of human rights in political doctrine and practice, or even to replace human rights entirely. But such arguments rarely are made today. Instead, "human rights" is too often used as roughly equivalent to "our approach to human dignity"—or, even worse, whatever oppressive rulers say it is. Such ways of thinking and speaking insidiously erode the distinctive and distinctly valuable aspects of a human rights approach.

7. Culture and Human Rights

Ann-Belinda Preis, in what I consider the most important article on culture and human rights published in the 1990s, shows that anthropology has largely abandoned the understanding of culture as "a homogenous, integral, and coherent unity" that underlies most of the literature on non-Western conceptions of human rights (1996: 288–289)—my own contributions included. In this literature, Preis continues, "'culture' is implicitly or explicitly conceptualized as a static, homogenous, and bounded entity, defined by its specific 'traits.'" (1996: 289) In fact, however, cultures are complex, variable, multivocal, and above all contested. Rather than static things, "cultures" are fluid complexes of intersubjective meanings and practices.[19]

Preis is certainly correct to criticize the resulting "fallacious reductionism" (1996: 296). "Culture" is used in much of the human rights literature in ways that too often lead to spurious explanation based on false essentialism and excessive aggregation.

In partial self-defense, however, I would reply that my work is a response to an argument that has been widespread for over half a century[20] and that still dominates the literature. The ultimate solution is the one Preis proposes,

19. Andrew Nathan (2001), in what I think is the best piece on the topic of the current decade (so far at least), develops a similar argument.

20. For the classic statements within anthropology, see Preis (1996: 285–286).

namely, for anthropologists and others who seriously study culture to demonstrate the flawed nature of the underlying conception of culture in this literature. But there is also a place, I believe, for my kind of argument, which accepts, *arguendo*, the understanding of culture advanced in this literature but shows that the conclusions typically drawn from it simply do not follow.[21]

I am all in favor of a cross-cultural dialogue that "will allow the incorporation of non-Western symbolism into the international human rights discourse, and make support for human rights more powerful in non-Western societies" (Penna and Campbell 1998: 9). But that dialogue must be based on an clear and accurate understanding of the nature of internationally recognized human rights and a reading of the historical record that can bear empirical scrutiny. The literature I have critiqued here is theoretically muddled or historically inaccurate (and often both).

Nothing is gained by confusing human rights with justice, fairness, limited government, or any other values or practices. Quite the contrary, human rights will be threatened if we do not see that the human rights approach to, say, fairness is very different from other approaches. Even the Indian caste system reflects conceptions of justice and fairness, of giving each his own. Thus I continue to insist that the claims that I address in this chapter merit the most vigorous rebuttal.

It simply is not true that all peoples at all times have had human rights ideas and practices, if by "human rights" we mean equal and inalienable paramount moral rights held by all members of the species. Most traditional legal and political practices are not just human rights practices dressed up in different clothing. And those who insist that they are, whatever their intention may be, make an argument that not only can be but regularly has been used by repressive regimes to support denying their citizens internationally recognized human rights (compare §6.6). In a world in which dictators regularly try to hide behind the cloak of indigenous "culture," even the limited sort of unmasking that my work represents may be of some value.

In any case, it is the only contribution I have to make. My fields are political theory and international relations. My strength is conceptual analysis. And I think that the sort of conceptual clarity for which I strive in this chapter, and in this book more generally, is of both intellectual and political value. I would also point out that anthropologists, right through the Cold War, consistently failed to enter this debate with a more sophisticated critique. In fact, their work both

21. Preis is also correct that the resulting literature, including my own interventions in it, is excessively adversarial. This is particularly clear from our current historical vantage. In my view, the most promising and productive work in this field explores the indigenous "cultural" resources that may be used to support internationally recognized human rights. The work of Abdullahi An-Na'im is particularly important here. See, for example, 1987; 1990; 1992; 2001. For other work in this same general vein, see, for example, Bell (2000); Ali (2000); Lindholt (1997); Monshipour (1998).

directly and indirectly supported the kind of false essentialism that I have tried, however inadequately, to argue against for twenty years now.

I also think that it is important to resist the argument that internationally recognized human rights are a Western artifact that is irrelevant and meaningless in most of the rest of the world. Ideas and social practices move no less readily than, say, noodles and gunpowder. If human rights are irrelevant in a particular place, it is not because of where they were invented or when they were introduced into that place. Culture is *not* destiny.

Preis is probably correct that the ultimate remedy to this mistaken view lies in the sort of detailed, local analysis that she provides in her article (the empirical portions of which look at contemporary Botswana). But work at a high level of abstraction can have some value—especially when it directly addresses arguments that are prevalent in both academic and policy discussions.

Having said all of this, though, I readily admit that there are undeniable differences between, say, Tokyo, Tehran, and Texas and the "cultures" of which they are exemplars. How ought we to deal with these differences? That is the question of the next chapter.

6/ Human Rights and Cultural Relativism

Cultural relativity is an undeniable fact; moral rules and social institutions evidence astonishing cultural and historical variability. The doctrine of cultural relativism holds that some such variations cannot be legitimately criticized by outsiders. I argue, instead, for a fundamentally universalistic approach to internationally recognized human rights.

In most recent discussions of cultures or civilizations[1]—whether they are seen as clashing, converging, or conversing—the emphasis has been on differences, especially differences between the West and the rest. From a broad cross-cultural or intercivilizational perspective, however, the most striking fact about human rights in the contemporary world is the extensive overlapping consensus on the Universal Declaration of Human Rights (compare §3.2). Real conflicts do indeed exist over a few internationally recognized human rights. There are numerous variations in interpretations and modes of implementing internationally recognized human rights. Nonetheless, I argue that culture[2] poses only a modest challenge to the contemporary normative universality of human rights.

1. Defining Cultural Relativism

When internal and external judgments of a practice diverge, cultural relativists give priority to the internal judgments of a society. In its most extreme form, what we can call *radical cultural relativism* holds that culture is the sole source

1. Civilizations seems to be emerging as the term of choice in UN-based discussions. 2001 was designated the United Nations Year of Dialogue Among Civilizations. For a sampling of Unesco sources, see http://www.unesco.org/dialogue2001/en/culture1.htm. I use "culture" and "civilization" more or less interchangeably, although I think that a useful convention would be to treat civilizations as larger or broader: for example, French culture but Western civilization.

2. As in the preceding chapter, I begin by taking at face value the common understanding of culture as static, unitary, and integral. See, however, §5.7 and §6.

of the validity of a moral right or rule.[3] *Radical universalism,* by contrast, would hold that culture is irrelevant to the (universal) validity of moral rights and rules. The body of the continuum defined by these end points can be roughly divided into what we can call strong and weak cultural relativism.

Strong cultural relativism holds that culture is the principal source of the validity of a right or rule. At its furthest extreme, strong cultural relativism accepts a few basic rights with virtually universal application but allows such a wide range of variation that two entirely justifiable sets of rights might overlap only slightly.

Weak cultural relativism, which might also be called strong universalism, considers culture a secondary source of the validity of a right or rule. Universality is initially presumed, but the relativity of human nature, communities, and rules checks potential excesses of universalism. At its furthest extreme, weak cultural relativism recognizes a comprehensive set of prima facie universal human rights but allows limited local variations.

We can also distinguish a qualitative dimension to relativist claims. Legitimate cultural divergences from international human rights norms might be advocated concerning the *substance* of lists of human rights, the *interpretation* of particular rights, and the *form* in which those rights are implemented (see §4). I will defend a weak cultural relativist (strong universalist) position that permits deviations from international human rights norms primarily at the level of form or implementation.

2. Relativity and Universality: A Necessary Tension

Beyond the obvious dangers of moral imperialism, radical universalism requires a rigid hierarchical ordering of the multiple moral communities to which we belong. The radical universalist would give absolute priority to the demands of the cosmopolitan moral community over other ("lower") communities. Such a complete denial of national and subnational ethical autonomy, however, is rare and implausible. There is no compelling moral reason why peoples cannot accept, say, the nation-state, as a major locus of extrafamilial moral and political commitments. And at least certain choices of a variety of moral communities demand respect from outsiders—not uncritical acceptance, let alone emulation, but, in some cases at least, tolerance.

But if human rights are based in human nature, on the fact that one is a human being, how can human rights be relative in any fundamental way? The simple answer is that human nature is itself relative (see §1.3). There is a sense in which this is true even biologically. For example, if marriage partners are

3. I am concerned here only with cultural relativist views as they apply to human rights, although my argument probably has applicability to other relativist claims.

chosen on the basis of cultural preferences for certain physical attributes, the gene pool in a community may be altered. More important, culture can significantly influence the presence and expression of many aspects of human nature by encouraging or discouraging the development or perpetuation of certain personality traits and types. Whether we stress the "unalterable" core or the variability around it—and however we judge their relative size and importance—"human nature," the realized nature of real human beings, is as much a social project as a natural given.

But if human nature were infinitely variable, or if all moral values were determined solely by culture (as radical cultural relativism holds), there could be no human rights (rights that one has "simply as a human being") because the concept "human being" would have no specificity or moral significance. As we saw in the case of Hindu India (§5.5), some societies have not even recognized "human being" as a descriptive category. The very names of many cultures mean simply "the people" (e.g., Hopi, Arapahoe), and their origin myths define them as separate from outsiders, who are somehow "not-human."

Such views, however, are almost universally rejected in the contemporary world. For example, chattel slavery and caste-based legal and political systems, which implicitly deny the existence of a morally significant common humanity, are almost universally condemned, even in the most rigid class societies.

The radical relativist response that consensus is morally irrelevant is logically impeccable. But many people do believe that such consensus strengthens a rule, and most think that it increases the justifiability of certain sorts of international action. In effect, a moral analogue to customary international law seems to operate. If a practice is nearly universal and generally perceived as obligatory, it is required of all members of the community. Even a weak cosmopolitan moral community imposes substantive limitations on the range of permissible moral variation.

Notice, however, that I contend only that there are a few cross-culturally valid moral *values.* This still leaves open the possibility of a radical cultural relativist denial of human *rights.* Plausible arguments can be (and have been) advanced to justify alternative mechanisms to guarantee human dignity. But few states today attempt such an argument. In all regions of the world, a strong commitment to human *rights* is almost universally proclaimed. Even where practice throws that commitment into question, such a widespread rhetorical "fashion" must have some substantive basis.

That basis, as I argued in Chapter 4, lies in the hazards to human dignity posed by modern markets and states. The political power of traditional rulers usually was substantially limited by customs and laws that were entirely independent of human rights. The relative technological and administrative weakness of traditional political institutions further restrained abuses of power. In such a world, inalienable entitlements of individuals held against

state and society might plausibly be held to be superfluous (because dignity was guaranteed by alternative mechanisms), if not positively dangerous to important and well-established values and practices.

Such a world, however, exists today only in a relatively small number of isolated areas. The modern state, even in the Third World, not only has been freed from many of the moral constraints of custom but also has a far greater administrative and technological reach. It thus represents a serious threat to basic human dignity, whether that dignity is defined in "traditional" or "modern" terms. In such circumstances, human rights seem necessary rather than optional. Radical or unrestricted relativism thus is as inappropriate as radical universalism.[4] Some kind of intermediate position is required.

3. Internal Versus External Judgments

Respect for autonomous moral communities would seem to demand a certain deference to a society's internal evaluations of its practices, but to commit ourselves to acting on the basis of the moral judgments of others would abrogate our own moral responsibilities. The choice between internal and external evaluations is a moral one, and whatever choice we make will be problematic.

Where internal and external judgments conflict, assessing the relative importance attached to those judgments may be a reasonable place to start in seeking to resolve them. Figure 6.1 offers a simple typology.

Case 1—morally unimportant both externally and internally—is uninteresting. Whether or not one maintains one's initial external condemnation is of little intrinsic interest to anyone. Case 2—externally unimportant, internally very important—is probably best handled by refusing to press the negative external judgment. To press a negative external judgment that one feels is relatively unimportant when the issue is of great importance internally usually will be, at best, insensitive. By the same token, Case 3—externally very important, internally unimportant—presents the best occasion to press an external judgment (with some tact).

Case 4, in which the practice is of great moral importance to both sides, is the most difficult to handle, but even here we may have good reasons to press a negative external judgment. Consider, for example, slavery. Most people today would agree that no matter how ancient and well established the practice may be, to turn one's back on the enslavement of human beings in the name of cultural relativity would reflect moral obtuseness, not sensitivity. Human sacrifice, trial by ordeal, extrajudicial execution, and female infanticide are other cultural practices that are (in my view rightly) condemned by almost all external observers today.

4. We can also note that radical relativism is descriptively inaccurate. Few people anywhere believe that their moral beliefs rest on nothing more than tradition. The radical relativist insistence that they do offers an implausible (and unattractive) account of the nature and meaning of morality.

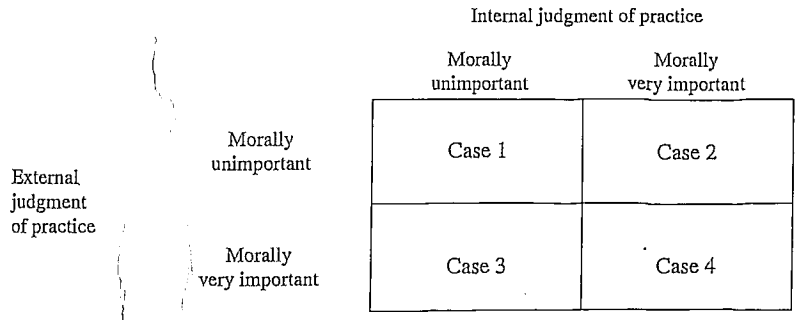

Figure 6.1 Type Conflicts over Culturally Relative Practices

Underlying such judgments is the inherent universality of basic moral precepts, at least as we understand morality in the West. We simply do not believe that our moral precepts are for us and us alone. This is most evident in Kant's deontological universalism. But it is no less true of the principle of utility. And, of course, human rights are also inherently universal.

In any case, our moral precepts are *our* moral precepts. As such, they demand our obedience. To abandon them simply because others reject them is to fail to give proper weight to our own moral beliefs (at least where they involve central moral precepts such as the equality of all human beings and the protection of innocents).

Finally, no matter how firmly someone else, or even a whole culture, believes differently, at some point—slavery and untouchability come to mind—we simply must say that those contrary beliefs are wrong. Negative external judgments may be problematic. In some cases, however, they are not merely permissible but demanded.

4. Concepts, Interpretations, Implementations

In evaluating arguments of cultural relativism, we must distinguish between variations in substance, interpretation, and form. Even very weak cultural relativists—that is, strong universalists—are likely to allow considerable variation in the form in which rights are implemented. For example, whether free legal assistance is required by the right to equal protection of the laws usually will best be viewed as largely beyond the legitimate reach of universal standards.

Important differences between strong and weak relativists are likely to arise, however, at the levels of interpretation and, especially, substance.

A. SUBSTANCE OR CONCEPT

The Universal Declaration generally formulates rights at the level of what I will call the *concept*, an abstract, general statement of an orienting value. "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment" (Art. 23). *Only* at this level do I claim that there is a consensus on the rights of the Universal Declaration, and at this level, most appeals to cultural relativism fail.

It is difficult to imagine arguments against recognizing the rights of Articles 3–12, which include life, liberty, and security of the person; the guarantee of legal personality, equality before the law, and privacy; and protections against slavery, arbitrary arrest, detention, or exile, and inhuman or degrading treatment. These are so clearly connected to basic requirements of human dignity, and are stated in sufficiently general terms, that virtually every morally defensible contemporary form of social organization must recognize them (although perhaps not necessarily as inalienable rights). I am even tempted to say that conceptions of human nature or society that are incompatible with such rights are almost by definition indefensible in contemporary international society.

Civil rights such as freedom of conscience, speech, and association may be a bit more relative. Because they assume the existence and positive evaluation of relatively autonomous individuals, they may be of questionable applicability in strong, thriving traditional communities. In such communities, however, they would rarely be at issue. If traditional practices truly are based on and protect culturally accepted conceptions of human dignity, then members of such a community will not have the desire or the need to claim such rights. In the more typical contemporary case, however, in which relatively autonomous individuals face modern states, it is hard for me to imagine a defensible conception of human dignity that does not include almost all of these rights. A similar argument can be made for the economic and social rights of the Universal Declaration.

In twenty years of working with issues of cultural relativism, I have developed a simple test that I pose to skeptical audiences. Which rights in the Universal Declaration, I ask, does your society or culture reject? Rarely has a single full right (other than the right to private property) been rejected. Never has it been suggested to me that as many as four should be eliminated.

Typical was the experience I had in Iran in early 2001, where I posed this question to three different audiences. In each case, discussion moved quickly to freedom of religion, and in particular atheism and apostasy by Muslims (which the Universal Declaration permits but Iran prohibits).[5] Given the continuing repression of Iranian Bahais—although, for the moment at least, the apparent end to executions—this was quite a sensitive issue. Even here, though, the challenge was not to the principle, or even the right, of freedom of religion (which almost all Muslims support) but to competing "Western" and "Muslim" conceptions of its limits. And we must remember that *every* society places some limits on religious liberty. In the United States, for example, recent court cases have dealt with forced medical treatment for the children of Christian Scientists, live animal sacrifice by practitioners of santaria, and the rights of Jehovah's Witnesses to evangelize at private residences.

We must be careful, however, not to read too much into this consensus at the level of the concept, which may obscure important disagreements concerning definitions and implicit limitations. Consider Article 5 of the Universal Declaration: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The real controversy comes over definitions of terms such as "cruel." Is the death penalty cruel, inhuman, or degrading? Most European states consider it to be. The United States does not. We must recognize and address such differences without overstating their importance or misrepresenting their character.

Implicit limits on rights may also pose challenges to universalist arguments. Most of the rights in the Universal Declaration are formulated in categorical terms. For example, Article 19 begins: "Everyone has the right to freedom of opinion and expression." To use the hackneyed American example, this does not mean that one can scream "Fire!" in a crowded theater. All rights have limits.[6] But if these limits differ widely and systematically across civilizations, the resulting differences in human rights practices might indeed be considerable.

Are there systematic differences in definitions of terms across civilizations? Do cultures differ systematically in the standard limits they put on the exercises of rights? And if these differences are systematic, how significant are they? I have suggested that the answers to these questions are largely negative. For reasons of space—as well as the fact that such negative arguments cannot be conclusively established—I leave this claim as a challenge. Critics may refute my argument with several well-chosen examples of substantial cultural variation either at the level of concepts or in systematic variations at the level of interpretation that undermine the apparent conceptual consensus. So far, at least, I

5. Gender equality, perhaps surprisingly, did not come up (although these were elite, English-speaking audiences, and Iran has, self-consciously, made considerable progress on women's rights issues in recent years). But even when it does, dispute usually focuses on the meaning of nondiscrimination or on particular practices, such as equal rights in marriage.

6. Logically, there can be at most one absolute right (unless we implausibly assume that rights never conflict with one another).

have not encountered anyone capable of presenting such a pattern of contradictory evidence, except in the case of small and relatively isolated communities.[7]

B. INTERPRETATIONS

What ought to count, for example, as adequate protection against unemployment? Does it mean a guaranteed job, or is it enough to provide compensation to those who are unemployed? Both seem to me plausible interpretations. Some such variations in interpreting rights seem not merely defensible but desirable, and even necessary.

Particular human rights are like "essentially contested concepts," in which there is a substantial but rather general consensus on basic meaning coupled with no less important, systematic, and apparently irresolvable conflicts of interpretations (Gallie 1968). In such circumstances, culture provides one plausible and defensible mechanism for selecting interpretations (and forms).

We should also note that the Universal Declaration lists some rights that are best viewed as interpretations. For example, the right of free and full consent of intending spouses reflects an interpretation of marriage over which legitimate controversy is possible. Notice, however, that the right (as stated in Sec. 2 of Art. 16) is subordinate to the right to marry and to found a family (over which, at this highest level of generality, there is little international dispute). Furthermore, some traditional customs, such as bride price, provide alternative protections for women that address at least some of the underlying concerns that gave rise to the norm of free and full consent.

I would suggest, however, that defensible variations in interpretations are likely to be relatively modest in number. And not all "interpretations" are equally plausible or defensible. They are *interpretations*, not free associations or arbitrary, let alone self-interested, stipulations. The meaning of, for example, "the right to political participation" is controversial, but an election in which a people were allowed to choose an absolute dictator for life ("one man, one vote, once," as a West African quip put it) is simply indefensible.

We must also note that considerable divergences in interpretation exist not only between but also *within* cultures or civilizations. Consider, for example, differences within the West between Europe and the United States on the death penalty and the welfare state. Japan and Vietnam have rather different interpretations of the rights to freedom of speech and association, despite being East Asians.

7. The general similarity of regional human rights instruments underscores this argument. Even the African Charter of Human and Peoples' Rights, the most heterodox regional treaty, differs largely at the level of interpretation and, in substance or concept, by addition (of peoples' rights) rather than by subtraction.

Even where there are variations between two cultures, we still need to ask whether culture in fact is the source of cause of these differences. I doubt that we are actually saying much of interest or importance when we talk of, say, Japan as Asian. Consider the common claim that Asian societies are communitarian and consensual and Western societies are individualistic and competitive. What exactly is this supposed to explain, or even refer to, in any particular Asian or Western country? Dutch or Norwegian politics is at least as consensual as Thai politics. The Dutch welfare state is in its own way as caring and paternalistic as the most traditional of Japanese employers. Such examples, which are easily multiplied, suggest that even where variations in practice exist, culture does much less explanatory work than most relativists suggest—or at least that the "culture" in question is more local or national rather than regional or a matter of civilization.

C. IMPLEMENTATION OR FORM

Just as concepts need to be interpreted, interpretations need to be implemented in law and political practice. To continue with the example of the right to work, what rate of unemployment compensation should be provided, for how long, in what circumstances? The range of actual and defensible variation here is considerable—although limited by the governing concept and interpretation.

Even a number of rights in the International Human Rights Covenants involve specifications at the level of form. For example, Article 10(2)(b) of the International Covenant on Civil and Political Rights requires the segregation of juvenile defendants. In some cultures the very notion of a juvenile criminal defendant (or a penitentiary system) does not exist. Although there are good reasons to suggest such rules, to demand them in the face of strong reasoned opposition seems to me to make little sense—so long as the underlying objectives are realized in some other fashion.

Differences in implementations, however, often seem to have little to do with culture. And even where they do, it is not obvious that cultural differences deserve more (or less) respect than differing implementations attributable to other causes (e.g., levels of economic development or unique national historical experiences).

I stress this three-level scheme to avoid a common misconception. My argument is for universality only at the level of the concept. The Universal Declaration insists that all states share a limited but important range of obligations. It is, in its own words, "a common standard of achievement for all peoples and all nations." The ways in which these rights are implemented, however, so long as they fall within the range of variation consistent with the overarching concept, are matters of legitimate variation (compare §7.7).

This is particularly important because most of the "hot button" issues in recent discussions have occurred at the level of implementation. For example,

debates about pornography are about the limits—interpretation or implementation—of freedom of expression. Most Western countries permit the graphic depiction of virtually any sex act (so long as it does not involve and is not shown to children). Many others countries punish those who produce, distribute, or consume such material. This dispute, however, does not suggest a rejection of human rights, the idea of personal autonomy, or even the right to freedom of speech.

We should also note that controversy over pornography rages internally in many countries. Every country criminalizes some forms of pornography, and most countries—Taliban Afghanistan being the exception that proves the rule—permit some depictions of sexual behavior or the display of erotic images that another country has within living memory banned as pornographic. Wherever one draws the line, it leaves intact both the basic internationally recognized human right to freedom of speech and the underlying value of personal autonomy.

D. UNIVERSALITY WITHIN DIVERSITY

There are at least three ways in which rights that vary in form and interpretation can still be plausibly described as "universal." First, and most important, there may be an overlapping consensus (see §3.2) on the substance of the list, despite diversity in interpretations and implementations. Second, even where there are differences at the level of substance or concept, a large common core may exist with relatively few differences "around the edges." Third, even where substantial substantive disagreements occur, we might still be justified in speaking of universal rights if there are strong statistical regularities and the outliers are few and clearly overshadowed by the central tendency.

In contemporary international society, I think that we can say that there are few far outliers (e.g., North Korea) at least at the level of agreed-on concepts. I would admit that overlapping conceptual consensus often is thin. Nonetheless, I think that we can fairly (although not without controversy) say that variations at the level of concepts are infrequent. Somewhat more contentious is the claim that I would also advance that the range of diversity in standard interpretations is modest and poses relatively few serious international political disputes.

We do not face an either-or choice between cultural relativism and universal human rights. Rather, we need to recognize both the universality of human rights and their particularity and thus accept a certain *limited* relativity, especially with respect to forms of implementation. We must take seriously the initially paradoxical idea of the relative universality of internationally recognized human rights.[8]

8. Coming at a similar perspective from the other end of the spectrum, Richard Wilson notes that human rights, and struggles over their implementation, "are embedded in local normative orders and yet are caught within webs of power and meaning which extend beyond the local" (1997: 23). Andrew Nathan has recently described this orientation as "tempered universalism" (2001).

5. Explaining the Persistence of Culturalist Arguments

If my argument for relative universality is even close to correct, how can we explain the persistence of foundational appeals to culture? If we could explain this puzzle, both for the relativist arguments considered in this chapter and for the claims about human rights in traditional societies considered in Chapter 5, the plausibility of a universalist perspective would be enhanced. At least six explanations come to mind.

First, it is surprisingly common for even otherwise sophisticated individuals to take the particular institutions associated with the realization of a right in their country or culture to be essential to that right. Americans, in particular, seem to have unusually great difficulty in realizing that the way we do things here is not necessarily what international human rights norms require.

Second, narrow-minded and ham-handed (Western, and especially American) international human rights policies and statements exacerbate these confusions. Consider Michael Fay, an American teenager who vandalized hundreds of thousands of dollars worth of property in Singapore. When he was sentenced to be publicly caned, there was a furor in the United States. President Clinton argued, with apparently genuine indignation, that it was abominable to cane someone, but he failed to find it even notable that in his own country people are being fried in the electric chair. If this indeed is what universalism means—and I hasten to repeat that it is not—then of course relativism looks far more attractive.

The legacy of colonialism provides a third important explanation for the popularity of relativist arguments. African, Asian, and Muslim (as well as Latin American) leaders and citizens have vivid, sometimes personal, recollections of their sufferings under colonial masters. Even when the statements and actions of great powers stay within the range of the overlapping consensus on the Universal Declaration, there is understandable (although not necessarily justifiable) sensitivity to external pressure. (Compare the sensitivity of the United States to external criticism even in the absence of such a historical legacy.) When international pressures exceed the bounds of the overlapping consensus, that sensitivity often becomes (justifiably) very intense.

Fourth, arguments of relativism are often rooted in a desire to express and foster national, regional, cultural, or civilizational pride. It is no coincidence that the "Asian values" debate (see Chapter 7) took off in the wake of the Asian economic miracle—and dramatically subsided after the 1977 financial crisis.

The belief that such arguments have instrumental efficacy in promoting internationally recognized human rights is a fifth important reason. For example, Daniel Bell plausibly argues that building human rights implementa-

tion strategies on local traditions (1) is "more likely to lead to long term commitment to human rights"; (2) "may shed light on the groups most likely to bring about desirable social and political change"; (3) "allows the human rights activist to draw on the most compelling justifications"; (4) "may shed light on the appropriate attitude to be employed by human rights activists"; and (5) "may also make one more sensitive to the possibility of alternative" mechanisms for protecting rights (1996: 657–659). I would insist only that we be clear that this is a practical, not a theoretical, argument; that we operate with a plausible theory of culture and an accurate understanding of the culture in question; and that we not assume that culture trumps international norms. "To realize greater social justice on an international scale, activists and intellectuals must take culture seriously, but not in the totalizing, undifferentiated way in which some leaders of non-Western nations have used it as a trump card" (L. Bell 2001: 21).

This leads to the sixth, and perhaps the most important, explanation for the prevalence of culturalist arguments, namely, that they are used by vicious elites as a way to attempt to deflect attention from their repressive policies. And well-meaning Westerners with a well-developed sense of the legacy of Western colonialism indirectly support such arguments when they shy away from criticizing arguments advanced by non-Westerners even when they are empirically inaccurate or morally absurd.

6. Culture and Politics

So far I have proceeded, in line with the standard assumption of cultural relativists, by treating "cultures" as homogenous, static, all-encompassing, and voluntarily accepted "things," the substance of which can be relatively easily and uncontroversially determined. None of these assumptions is defensible.

A. IDENTIFYING A "CULTURE"

Cultures are anything but homogenous. In fact, differences *within* civilizations often are as striking and as important as those between civilizations. "The Western tradition," for example, includes both Caligula and Marcus Aurelius, Francis of Assisi and Torquemada, Leopold II of Belgium and Albert Schweitzer, Jesus and Hitler—and just about everything in between.

We thus face a difficult problem even in determining what is to count as evidence for a claim of the form "civilization *x* holds belief *y*." Political authorities are but one (very problematic) source of evidence of the views and practices of a civilization. Nor can we rely on authoritative texts. For example, the Christian Bible has significantly shaped Western civilization. But even when particular practices do not diverge from what one might expect from reading this "foundational" text—and setting aside the fact that such expectations change with time, place, and reader—few Western practices are adequately explained in terms of, let alone reducible to, those texts.[9]

Even the long-established practice of leading states may diverge significantly from the norms and values of the civilization of which they are a part. The United States, for example, is in many ways a very *atypical* Western country in its approach to economic and social rights. In characterizing and comparing civilizations, we must not mistake some particular expressions, however characteristic, for the whole. For example, Christianity and secularism are arguably equally important to modern Western civilization. And the balance between secular and religious forces, values, and orientations varies dramatically with time, place, and issue in "the West."

Such cautions are especially important because culturalist arguments regularly rely on appeals to a distant past, such as the precolonial African village, Native American tribes, and traditional Islamic societies. The traditional culture advanced to justify cultural relativism far too often no longer exists—if it ever did in the idealized form in which it is typically presented. In the Third World today we usually see not the persistence of "traditional" culture in the face of "modern" intrusions, or even the development of syncretic cultures and values, but rather disruptive "Westernization," rapid cultural change, or people enthusiastically embracing "modern" practices and values.[10] And the modern nation-states and contemporary nationalist regimes that have replaced traditional communities and practices cannot be judged by standards of a bygone era.

We must also be careful to distinguish "civilization" or "culture" from religion and politics. The United States is a state, a political entity, not a civilization. Islam is not a civilization but a religion, or, as many believers would put it, a true and comprehensive way of life that transcends culture or civilization. An "Islamic civilization"—centered on Mecca and running, say, from the Maghreb to the Indus—does not include all Muslims, or even all majority Muslim countries. The broader Muslim world, running from Dakar to Jakarta, may be an international political unit of growing interest or importance, but it certainly is not a culture or civilization. And tens of millions of Muslims live outside of even this community.

9. To cite one example of misplaced textualism, Roger Ames (1997) manages to devote an entire article to "the conversation on Chinese human rights" that manages to make only a few passing, exceedingly delicate, mentions of events since 1949. China and its culture would seem to have been unaffected by such forces as decades of brutal party dictatorship or the impact of both socialism and capitalism on land tenure and residence patterns. In fact, although he cites a number of passages from Confucius, Ames does not even attempt to show how traditional Confucian ideas express themselves in contemporary Chinese human rights debates.

10. None of this should be surprising when we compare the legal, political, and cultural practices of the contemporary West with those of ancient Athens, medieval Paris, Renaissance Florence, or even Victorian London.

liberty, and the dimensions of gender equality merit intensive discussions both within and between states and civilizations.

Should traditional notions of "family values" and gender roles be emphasized in the interest of children and society, or should families be conceived in more individualistic and egalitarian terms? What is the proper balance between rewarding individual economic initiative and redistributive taxation in the interest of social harmony and support for disadvantaged individuals and groups? At what point should the words or behaviors of deviant or dissident individuals be forced to give way the interests or desires of society?

Questions such as these, which in my terminology involve conflicting interpretations, involve vital issues of political controversy in virtually all societies. In discussing them we must often walk the difficult line between respect for the other and respect for one's own values. A number of examples of how this might be done in contemporary Asia are found in §7.7. Here I want to consider a relatively easy case—slavery—in an unconventional way.

Suppose that in contemporary Saudi Arabia a group were to emerge arguing that because slavery was accepted in the early Muslim world it should be reinstituted in contemporary Saudi Arabia. I am certain that almost all Saudis, from the most learned clerics to the most ordinary citizens, would reject this view. But how should these individuals be dealt with?

Dialogue seems to me the appropriate route, so long as they do not attempt to *practice* slavery. Those in the majority who would remonstrate these individuals for their despicable views have, I think, an obligation to use precisely such forceful moral terms. Nonetheless, freedom of belief and speech requires the majority to tolerate these views, in the minimal sense of not imposing legal liabilities on those who hold or express them. Should they attempt to practice slavery, however, the force of the law is appropriately applied to suppress and punish this practice. Condemnation by outsiders also seems appropriate, although so long as the problem is restricted to expressions of beliefs only in Saudi Arabia there probably will be few occasions for such condemnations.

But suppose that the unthinkable were to occur and the practice of slavery were reintroduced in Saudi Arabia—not, let us imagine, as a matter of law, but rather through the state refusing to prosecute slave-holders. Here we run up against the state system and the fact that international human rights law gives states near total discretion to implement internationally recognized human rights within their own territories.

One might argue that slavery is legally prohibited as a matter of *jus cogens*, general principles of law, and customary (as well as treaty) law. But coercive international enforcement is extraordinarily contentious and without much legal precedent. Outsiders, however, remain bound by their own moral principles (as well as by international human rights norms) to condemn such practices in the strongest possible terms. And foreign states would be entirely justified in putting whatever pressure, short of force, they could mobilize on Saudi Arabia to halt the practice.

This hypothetical example illustrates the fact that *some* cultural practices, rather that deserve our respect, demand our condemnation. It also indicates, though, that some beliefs, however despicable, demand our toleration—because freedom of opinion and belief is an internationally recognized human right. So long as one stays within the limits of internationally recognized human rights, one is entitled to at least a limited and grudging toleration and the personal space that comes with that. But such individuals are *owed* nothing more.

Many cases, however, are not so easy. This is especially true where cultures are undergoing substantial or unusually rapid transformation. In much of the Third World we regularly face the problem of "modern" individuals or groups who reject traditional practices. Should we give priority to the idea of community self-determination and permit the enforcement of customary practices against modern "deviants" even if this violates "universal" human rights? Or should individual self-determination prevail, thus sanctioning claims of universal human rights against traditional society?

In discussing women's rights in Africa, Rhoda Howard suggests an attractive and widely applicable compromise strategy (1984: 66–68). On a combination of practical and moral grounds, she argues against an outright ban on such practices as child betrothal and widow inheritance, but she also argues strongly for national legislation that permits women (and the families of female children) to "opt out" of traditional practices. This would permit individuals and families to, in effect, choose the terms on which they participate in the cultures that are of value to their lives. Unless we think of culture as an oppressive external force, this seems entirely appropriate.

Conflicting practices, however, may sometimes be irreconcilable. For example, a right to private ownership of the means of production is incompatible with the maintenance of a village society in which families hold only rights of use to communally owned land. Allowing individuals to opt out and fully own their land would destroy the traditional system. Even such conflicts, however, may sometimes be resolved, or at least minimized, by the physical or legal separation of adherents of old and new values, particularly with practices that are not material to the maintenance or integrity of either culture.

Nevertheless, a choice must sometimes be made, at least by default, between irreconcilable practices. Such cases take us out of the realm in which useful general guidelines are possible. Fortunately, though, they are the exception rather than the rule—although no easier for that fact to deal with when they do arise.

It would be dangerous either to deny differences between civilizations where they do exist or to exaggerate their extent or practical importance. Whatever

the situation in other issue areas, in the case of human rights, for all the undeniable differences, it is the similarities across civilizations that are more striking and important. Whatever our differences, now or in the past, all contemporary civilizations are linked by the growing recognition of the Universal Declaration as, in its own words, "a common standard of achievement for all peoples and all nations." Or, as I prefer to put it, human rights are relatively universal.

7/ Human Rights and "Asian Values"

The debate over culture and human rights in the 1970s and 1980s was dominated by discussions of so-called nonwestern conceptions of human rights, which I discussed critically in Chapter 5. In the 1990s, discussions took on a more combative tone, especially in the debate over "Asian values."[1] Asian leaders and (often politically well-connected) intellectuals began to assert claims of legitimate, culturally based differences that justified substantial deviations from standard international interpretations of human rights norms.[2] Articles in prominent Western journals began appearing with titles such as "Asia's Different Standard" (Kausikan 1993), "Culture is Destiny" (Zakaria 1994), and "Can Asians Think?" (Mahbubani 1998). Regional figures, such as Singapore's Lee Kwan Yew and Malaysia's Mahathir bin Mohamad emerged onto a wider international stage. And the "East Asian Economic Miracle"—which even after the crisis of 1997 remains impressive—increased interest in such arguments in other regions.

The first six sections of this chapter present a critical reading of these arguments. The final section, however, steps back and seeks to illustrate the space for local variation in an Asian context; that is, the relative universality of internationally recognized human rights.

1. Langlois (2001) provides an excellent recent discussion. Chapter 1 offers a fine overview and Chapters 2 and 3 usefully seek to separate politics and cant from legitimate concerns and insights. For good collections of essays provoked by and participating in the Asian values debate, see Bauer and Bell (1999), Van Ness and Aziz (1999), van Hoof et al. (1996), Cauquelin, Lim, and Mayer-Konig (1998), and Jacobsen and Bruun (2000).

2. A focal point for this discussion was the Regional Meeting for Asia of the World Conference on Human Rights, held March 29–April 2, 1993 in Bangkok, and relativist arguments advanced that summer at the Vienna Conference. This discussion was also fostered by the decision of China to move from denial of the relevance of international human rights standards (and of its own human rights problems) to acceptance, but with a strong relativist twist, as symbolized in its 1991 White Paper (China 1991).

1. Sovereignty and International Human Rights

Sovereignty is one standard ground for rejecting international human rights standards.[3] Chinese officials and scholars in particular have insisted that "sovereignty is the foundation and basic guarantee of human rights" (Xie and Niu 1994; compare China 1991: 1). "The rights of each country to formulate its own policies on human rights protection in light of its own conditions should . . . be respected and guaranteed" (China 1993: 5; compare Cooper 1994: 69).

Taken at face value, this amounts to a claim that whatever a country does with respect to human rights is its business alone. Rather than a defensible conception of human rights, this would subordinate human rights to the competing rights and values of sovereignty. And, of course, there is nothing distinctively Asian about a commitment to sovereignty.

The record of Western (and Japanese) colonial rule certainly suggests that sovereignty is a necessary condition for a rights-protective regime. But it is by no means a sufficient condition. Sovereignty removes some international impediments to implementing internationally recognized human rights. It does little to address issues of *internal* human rights protection and violation. In fact, sovereignty is typically the mantle behind which rights-abusive regimes hide when faced with international human rights criticism.

Mahathir complains that "it would seem that Asians have no right to define and practice their own set of values about human rights" (1994: 9). This is to a considerable extent true, not just for Asians, but for all countries. Authoritative international human rights norms govern internationally defensible definitions of human rights. The Bangkok Declaration on Human Rights, adopted at the Asia and Pacific regional preparatory meeting for the Vienna Conference, reiterates the indisputable international legal right of all countries "to determine their political system." But there is also a substantial body of international human rights law—the authority of the Universal Declaration and the Covenants is reaffirmed by both the Bangkok Declaration and the Vienna Final Document—that severely restricts the range of internationally defensible definitions of human rights.

"Imposing the human rights standard of one's own country or region on other countries or regions is an infringement upon other countries' sovereignty and interference into other countries' internal affairs" (Xie and Niu 1994: 1; compare China 1991: 61). The standards being "imposed," however, are simply those of the Universal Declaration of Human Rights. These are not distinctively Western, as even many critics of the West emphasize. "All the countries of the region are party to the U.N. Charter. None has rejected the Universal Declaration" (Kausikan 1993: 25).

"They threaten sanctions, withdrawal of aid, stoppage of loans, economic and trade boycotts and actual military strikes against those they accuse of violating human rights" (Mahathir 1994: 7). Military strikes by one state in response to human rights violations in another would almost certainly violate sovereignty and territorial integrity. But Mahathir conveniently neglects to mention even a single example. In fact, he criticizes the West for *failing* to use force on behalf of the Iraqi Kurds and Bosnian Muslims (1994: 5, 6, 8). And the other activities of which he complains are entirely legitimate.

Why shouldn't a country withdraw aid if it objects to a recipient's human rights practices? Why must it loan money to tyrants? Were a state or group of states to claim "a right to impose their system of government" or "[arrogate] to themselves the right to intervene anywhere where human rights are violated" (Mahathir 1994: 4, 8) they would indeed be guilty of serious international offenses. But it is completely legitimate for a country to use its financial and political resources on behalf of internationally recognized human rights.

Human rights are a legitimate and well-established international concern. Sovereignty requires only that states refrain from the threat or use of force in trying to influence the human rights practices of other states. Short of force, states are free to use most ordinary means of foreign policy on behalf of internationally recognized human rights.

2. The Demands of Development

In Asia, as elsewhere, it is often argued that systematic infringements of internationally recognized human rights are necessary, and thus justifiable or even desirable, to achieve rapid economic development. §11.5 criticizes standard arguments for development-rights trade-offs. Here I restrict myself to questioning their plausibility and relevance to cross-cultural discussions of human rights.

We can begin by noting that there is nothing distinctively Asian to such arguments. The sacrifice of civil and political rights to economic development has been a mainstay of dictatorships of various stripes in all regions. The (short-run) sacrifice of economic and social rights to development has been a staple of capitalist development strategies and is part of the new orthodoxy preached (and imposed) by the International Monetary Fund and other (Western-dominated) international financial institutions. Rather than rely on culturally relative Asian values, trade-off arguments appeal to a universal developmental imperative that overrides both culture and human rights.

Furthermore, at most they justify only temporary human rights infringements. It is perhaps true that "when poverty and lack of adequate food are

3. For a complementary discussion of sovereignty and human rights, see Inoue (1999: 30–34). Xin (1996: 54–56) provides an unusually open attempt by a Chinese scholar to address the competing claims of sovereignty and human rights.

commonplace and people's basic needs are not guaranteed, priority should be given to economic development" (China 1993: 3). But this is at best a short-run excuse. Regimes that sacrifice either civil and political rights or economic, social, and cultural rights to development do not represent a desirable form of government. Such sacrifices ought to be a matter of profound regret and discomfort. They are to be endured, in the hope of a better life for one's children, not celebrated.

We must be especially wary of arguments for categorical sacrifices of human rights. For example, U.S.-style interest group politics may inappropriately favor certain special interests over the general welfare or introduce unacceptable political and administrative inefficiencies.[4] But this does not justify wholesale denial of freedom of speech, assembly, and association, let alone practices such as arbitrary arrest and detention or outlawing opposition political movements and parties.

We also need to be skeptical of the empirical basis of trade-off arguments. In Japan, Taiwan, and South Korea, extraordinary growth brought improved satisfaction of basic needs for the poor and did not create a wildly unequal income distribution. Although no state has launched sustained, rapid development at an early stage of growth under a rights-protective government, the necessity of repression—as opposed to its convenience for the wealthy and powerful—is hardly clear. And "authoritarian rule more often than not has been used as a masquerade for kleptocracies, bureaucratic incompetence, and worst of all, for unbridled nepotism and corruption" (Anwar 1994: 4).

Particular infringements of internationally recognized human rights may be justified in the pursuit of rapid economic development. But the burden of proof lies on those who would resort to the prima facie evil of denying rights. And even when trade-offs are justified, governments must be forcefully reminded that such sacrifices are tragic necessities that must be kept to an absolute minimum in number, duration, and severity.

3. Economic and Social Rights

"The central issue in the contemporary discourse on human rights is not so much whether it is Western or Eastern in origin but rather the balance between civil and political rights on the one hand, and societal[5] and economic rights on the other" (Anwar 1994: 2). Critics (e.g., Kausikan 1993: 35) typically argue that

4. Asian "soft authoritarianism," however, seems at least equally prone to the corrupting influences of special interests, but with a much narrower range of interests able to participate in the process.

5. I am unsure how to read "societal" here. I am taking it as an alternative verbal formula for "social" rights, as in economic and social rights. If it means instead the rights of society, it raises issues of group human rights that I address in Chapter 12.

in the West civil and political rights are overemphasized while economic, social, and cultural rights are systematically denigrated. But as I argued in §4.6, it is hard to imagine that anyone looking at the welfare states of Western Europe could make such claims seriously.

In any case, it simply is not clear that contemporary Asian societies give unusual emphasis to economic and social human rights. Many Asian governments seem willing, even anxious, to sacrifice (the short- and medium-term enjoyment of) economic and social rights to the pursuit of rapid growth. This certainly has been the case in China over the past decade. Too often in Asia—as in other regions—an alleged concern for economic and social rights is in fact a concern for growth/development irrespective of its distributional/rights consequences.

As I argue in more detail in §11.7, a developmental perspective is aggregate and focuses on production. Economic and social rights, by contrast, are concerned with *distributions* of goods, services, and opportunities, which must be guaranteed to every person even when pursuing the most noble social goals.

Consider Singaporean social welfare policy.

> It is the PAP government's policy not to provide direct funds to individuals in its "welfare" programs. Instead, much is spent on education, public housing, health care and infrastructure build-up as human capital investments to enable the individual and the nation as a whole to become economically competitive in a capitalist world. . . . For those who fall through the economic net . . . public assistance is marginal and difficult to obtain. . . . The government's position is that "helping the needy" is a moral responsibility of the community itself and not just of the state. So construed, the recipients of the moral largesse of the community are to consider themselves privileged and bear the appropriate sense of gratitude (Chua 1992: 95).

Whatever the merits of this approach, it clearly does not emphasize economic and social human rights. A system based on "moral largesse" that sees assistance as a privilege has little to do with human rights.

Setting aside issues of comparative practice, I want to argue against calls emanating from Asia for an overriding emphasis on economic and social rights. For example, at the Vienna Conference China argued that "the major criteria for judging the human rights situation in a developing country should be whether its policies and measures help to promote economic and social progress" (China 1993: 3). Even if we assume that this progress is equally distributed (which in the absence of civil and political rights it rarely will be), such claims reflect a sadly impoverished view of human dignity. A life constantly

subject to arbitrary power is one that human beings may learn to settle for, not one to which they do or ought to aspire.

Jiang Zemin's argument that the "right of survival of China's population is more important than political rights" (quoted in Cooper 1994: 56) may have some attractions in extraordinarily poor societies. If the denial of political rights will bring physical survival, a free people may choose survival (although even this is not obvious). But to reduce human rights to a guarantee of mere survival is a perverse betrayal of any plausible conception of human dignity. A state forced to make such a choice acts under a tragic necessity. Its policies represent, at best, triage. And if after more than forty years in power a regime must still rely on arguments of mere survival it is hard not to conclude that the poor are being forced to suffer doubly for the poverty to which their government has condemned them.

Such judgments do not reflect Western romanticism or ethnocentrism. The Bangkok Declaration reaffirms "the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the need to give equal emphasis to all categories of human rights." At Vienna, Korea's Minister of Foreign Affairs argued that "it is neither justifiable nor appropriate to deny some human rights in order to guarantee others." And the Ad Hoc Coalition of Asian NGO Participants at Vienna strongly rejected suggestions "that the enjoyment of civil and political rights be deferred until economic development has been achieved."

Whatever the cultural differences between East and West, I am aware of no evidence that Asians value protection from arbitrary government any less than their Western counterparts, or that Asians do not highly value the opportunity for families and individuals to make important choices about their lives and futures. "Tyranny and injustice are repugnant to civil society wherever they may occur, and to cite cultural differences or Asian values in order to deflect from ourselves criticism against human rights violations is an affront to our moral sense" (Anwar 1994: 1–2).

4. Individuals and Society

Another cluster of arguments centers on the claim that Western human rights practices reflect a corrosive, hedonistic individualism that gives inadequate attention to social duties and is incompatible not only with traditional values but with any plausible conception of human dignity and decency (compare §12.1). At the end of this chapter I will argue that international human rights norms are sufficiently broad to accommodate most Asian desires for more communitarian practices. Here I will focus on extreme communitarian arguments that amount to denials of human rights.

For example, Mahathir argues that "governments, according to the liberal democrats, cannot in any way act against the personal wishes of the individual in society. . . . incest to them is not wrong . . . if that is what is desired by the individuals" (1994: 6). This obviously, even ludicrously, misdescribes practice in the West. Rhoda Howard describes such arguments as examples of "The Central Park Thesis:" human rights have returned the western world to an anomic, Hobbesian state of nature best represented by New York's Central Park at night (Howard 1995a: 23). They reflect what she aptly labels "Occidentalism," a caricature of a static, monolithic, Western "other" (Howard 1995b).

Beneath this caricature lies a common misunderstanding of human rights as absolute rights. "There are no absolute rights and freedoms in the world. The individual rights and freedoms must be subjected to the requirement and provisions of the law" (Xie and Niu 1994: 4). One function of law is indeed to delimit the range of rights. But a central function of human rights is to set limits on the state and its laws. Legally sanctioned racial discrimination, for example, is especially reprehensible, not permissible.

Many internationally recognized human rights do require the state not to interfere with the pursuit of individual desires, for example, to speak one's mind, choose and practice a religion, associate with whomever one pleases, and raise a family. But none of these rights is absolute. Freedom of religion does not extend to human sacrifice. Freedom of association does not cover conspiracy to commit ordinary crimes. Family relations are constrained by rules to protect the health and safety of children.

What is at stake here is a society's understanding of the proper balance between individual and community rights and interests.

> The view of society as an organic whole whose collective rights prevail over the individual, the idea that man exists for the state rather than vice versa and that rights, rather than having any absolute value, derive from the state, have been themes prevailing in old as well as new China. . . . The idea of the individual was not absent: but it was of an order of importance secondary to a family-based community system which differentiated between roles and abilities (Kent 1993: 30–31).

To the extent that this description is correct—"man exists for the state rather than vice versa"—this comes close to denying the very idea of human rights.

> Any emphasis on individual human rights, apart from the rights of the community in which this individual lives, is sheer nonsense. In real history, human rights for the community come first, and human rights for any individual are conditioned by a healthy social environment and appropriate social institutions (Hussein 1994: 1).

This too amounts to a denial of human rights. The rights of the community, whatever priority we give to them, are not human rights (any more than the sovereign rights of states are human rights). *Enjoyment* of individual human rights will be greatly fostered by a healthy social environment and supportive social institutions. But if society is the source of all individual rights, such an individual has no *human* rights.

The Chinese claim at Vienna that "individuals must put the state's rights before their own" (quoted in Cooper 1994: 69) is incompatible with *any* plausible conception of human rights. An individual may often be legitimately asked, even required, to sacrifice or defer the exercise or enjoyment of her rights. But there have been many states whose rights merited little respect from individuals. And sometimes it is society that must give way to the basic rights of individuals.

"No one is entitled to put his individual right above the interest of the state, society, and others. This is the universal principle of all civilized society" (Xie and Niu 1994: 4). This is roughly equivalent to having no rights at all.[6] And a society in which self must always be categorically subordinated to other simply cannot be considered "civilized" in the twenty-first century.

There is no doubt that human rights are more individualistic than many other social and political practices. But to rail against it in the absence of an alternative solution to the very real problems of protecting the individual and human dignity in the face of modern markets and states is, at best, utopian or shortsighted.

5. Rights and Duties

As we saw in §5.4, not only were traditional Asian societies structured around duties, not rights, but any rights held by individuals, families, or communities were largely dependent on the discharge of duties.[7] Essential to any plausible conception of human rights, however, is the claim that all human beings have certain rights prior to and irrespective of their discharge of social duties.

"The rights and obligations of the citizens are indivisible and interrelated"

6. This is a common argument outside Asia as well. For example, Asmarom Legesse suggests that "if Africans were the sole authors of the Universal Declaration of Human Rights, they might have ranked the rights of communities above those of individuals" (1980: 128). Whether desirable or not, such a change would render human rights little more than an irrelevant formality. If an extensive set of social rights and duties were to take priority over individual "human rights," in those instances in which one would be inclined to assert or claim it (i.e., where the right is threatened, challenged, violated, or frustrated), the "right" would be largely useless because it would be easily overridden by the rights of society.

7. This, of course, is hardly a distinctively Asian view. Consider, for example, the claim by the Soviet commentator A. G. Egorov: "the significance and worth of each person are determined by the way he exercises his rights and performs his duties" (1979: 36).

(Xie and Niu 1994: 4). This commonly expressed view[8] is either false or merely trivially true. Rights do have correlative duties. Many (but not all) duties have correlative rights. But particular rights and duties may stand in a great variety of relations to one another. And many rights are held independent of the discharge of duties. Anne has a right to being repaid the ten dollars that Bob borrowed simply because he borrowed it. One has human rights simply because one is a human being.

It is not true that "freedom of speech entails a corresponding duty not to disseminate lies, not to incite communal and religious hatred, and generally not to undermine the moral fabric of society" (Anwar 1994: 5). A right to free speech has no logical connection to an obligation not to disseminate lies. Society and the state may legitimately punish me for spreading vicious lies that harm others. Those penalties, however, rest on the rights or interests of those who I harm, not on my right to free speech. If I slander someone, I do not lose my right to freedom of speech—if we conceive of it as a human right. Incitement to communal or religious hatred may be legitimately prohibited and punished, but even the most vocal hate monger still has a right to express his views on other subjects—if free speech is a human right.

Defensible limits on the exercise of a right should not be confused with duties inherent in the possession of a right. When irresponsible exercises of a recognized right threaten interests that are legitimate matters of social or political regulation, they may be appropriately prohibited. These restrictions, however, are separate from the right—unless the right in question is contingent on accepting those restrictions, in which case it is not a human right.

6. Traditional Order and Human Rights

Arguments against individualism and in favor of duty feed into a broader critique stressing social order and harmony. Traditional China provides a frequent point of reference.

The Confucian tradition stresses the pursuit of harmony (*he*) at all levels,

8. Again, this argument is in no way distinctively Asian. For example, from an Islamic perspective, Khalifa Abdul Hakim argues that "rights and duties are two facets of the same picture. Whoever demands a right to liberty has to respect a similar right in others, which circumscribes his right to personal liberty very considerably. If an individual thinks it his right to be fed and clothed and maintained in proper health and if he has a right to work, it is also his duty to work according to his energies and skill and accept the work which the welfare of the community demands from him" (1955). It was also a central theme in Soviet discussions of human rights. For example, Article 59 of the 1977 Soviet constitution states: "The exercise of rights and liberties is inseparable from the performance by citizens of their duties." This same characterization was common in semiofficial accounts. "The linkage of rights and duties [is] the special quality of socialist law" (Sawczuk 1979: 88). "The most important feature of the Soviet citizen's legal status is the organic unity between their rights and their obligations" (Chkhidvadze 1980: 18).

from the cosmic to the personal (Kent, 1993: 31–40; Fenton et al. 1983: ch. 14–16). The path to harmony is *li*. Although often translated as "propriety," that term, in contemporary American English at least, is far too weak to encompass *li*'s force, range, or depth. *Li* prescribes a complex set of interlocking, hierarchical social roles and relations centered on filial piety (*xiao*) and loyalty (*zhong*). Deference and mutual accommodation were the ideal. Personal ethics emphasized self-cultivation in the pursuit of *ren* (humanness), achieved by self-mastery under the guidance of *li*.

This system of values and social relations is incompatible with the vision of equal and autonomous individuals that underlies international human rights norms. In fact, the "Western" emphasis on individual rights is likely to seem little short of moral inversion.

Asian critics of demands for "Western" (internationally recognized) human rights argue that they have developed alternative political ideals and practices that preserve the values of family, community, decorum, and devotion to duty. And they are committed to avoiding the excesses of the rights-obsessed West: "guns, drugs, violent crime, vagrancy, unbecoming behavior in public—in sum, the breakdown of civil society" (Zakaria 1994: 111).

The most interesting arguments for an Asian third way, however, advocate a selective appropriation of "Western" values and practices to produce an Asian version of modernity. For example, Singapore's senior minister Lee Kwan Yew advocates a dynamic (if cautious) melding of the indigenous and the exotic. "Let me be frank; if we did not have the good points of the West to guide us, we wouldn't have got out of our backwardness. We would have been a backward economy and a backward society. But we do not want all of the West" (Zakaria 1994: 125).

Consider Chandra Muzaffar's call to move "from Western human rights to universal human dignity" (1994: 4).

> Mainstream human rights ideas . . . have contributed significantly to human civilization in at least four ways. *One,* they have endowed the individual with certain basic rights such as the right of free speech, the right of association, the right to a fair trial and so on. *Two,* they have strengthened the position of the ordinary citizen against the arbitrariness of power. *Three,* they have expanded the space and scope for individual participation in public decision-making. *Four,* they have forced the State and authority in general to be accountable to the public (Muzaffar 1994: 1; compare 1999: 25–26).

Implicit in this list of contributions is a powerful critique of traditional society for inadequate attention to individual equality and autonomy. But Muzaffar sees human rights (and democracy), particularly in their characteristic Western implementations, as inadequate to achieve the broader and higher goal of human dignity.

Such arguments cannot be rejected out of hand. It is for the people of Asia, individually and collectively, to resolve these issues as they see fit. Within certain fairly broad limits, a free people is free to order its life as it sees fit. This is the fundamental implication of the rights to self-determination and political participation. Nonetheless, I am skeptical of projects for an Asian third way.

Many are politically naive. For example, Muzaffar argues that the remedy to "the crass individualism and self-centredness which both capitalism and democracy (as it is practised) tend to encourage" lies in the "much cherished ideal in all religious traditions" of "sacrificing one's own personal interests for the well-being of others." "Religion integrates the individual with society in a much more harmonious way" (Muzaffar 1994: 10, 11). This borders on a utopian denial of the notorious problems of linking religion and politics. Critics of the destructive unintended consequences of Western practices must confront the problems of implementing their alternative visions. To compare existing Western practices with a vague, never-yet-implemented ideal is unfair and unilluminating—as is underscored by the deviation between Western ideals and practice on which so much Asian criticism rests.

A different form of political naiveté can be seen in the assumption of the continuing relevance of traditional practices in modern conditions. Is an authoritarian leader backed by the coercive capabilities of the modern state really all that similar to traditional leaders? What has happened to traditional local autonomy in the face of economic and political integration in a modern nation state? How relevant to modern urban life are practices developed for rural societies with little social mobility or demographic change? Can consensual community decision-making and dispute resolution through nonlegal means really work in the absence of relatively closed and close-knit communities? What would they even look like in sprawling urban centers inhabited by strangers and migrants? These are only rhetorical questions, not arguments. But they are the sorts of questions that need to be answered before we can accept denying internationally recognized human rights in the name of traditional culture.

I am especially skeptical of such claims because most of the arguments being made about Asian differences could have been made equally well in eighteenth century Europe.[9] Although Asians need not follow the same path of development, I think it is legitimate to ask why they are likely to respond to similar conditions in very different ways.

Arguments for an Asian alternative rest on the claim that Asian peoples do not want to live in a liberal democratic welfare state. "Popular pressures against

9. In a recent conversation, Ken Booth commented that when he hears talk about Asian values all he can think is "That's my grandfather!" (a Welchman).

East and Southeast Asian governments may not be so much for 'human rights' or 'democracy' but for good government: effective, efficient, and honest administrations able to provide security and basic needs with good opportunities for an improved standard of living" (Kausikan 1993: 37). But even granting that this is true—and in fact I think this is a description of the minimum people are willing to tolerate rather than that to which they aspire—I would suggest that good government is unlikely in the absence of human rights.

Even if a country is fortunate enough to get an efficient and relatively benevolent and incorruptible despot or ruling elite, I am skeptical that Asians will prove more successful than Westerners in keeping the successor generation from succumbing to corruption without reliance on human rights—especially with the immense wealth made available by economic growth. The spread of money politics throughout the region, which increasingly distances people from rulers and makes politics not merely venal but predatory, raises serious questions about the future of even minimal good government in regimes that do not open themselves to the often adversarial popular scrutiny of "Western" human rights. Asian authoritarianism, like its Western counterpart, lacks the powerful internal mechanisms of self-correction and continued rededication to the common good provided by human rights.

Human rights, in contrast to traditional (Eastern and Western) political practices, provide clear and powerful mechanisms for ascertaining whether rulers' claims about popular preferences are true. For all their shortcomings, free, fair, and open periodic elections carried out in an environment with few restrictions on freedoms of speech, press, assembly, and association do provide a relatively reliable gauge of popular political preferences. Alternative schemes based on duty, deference, or hierarchy rarely do.

Consider, for example, the argument of Indonesia's Foreign Minister at the Vienna Conference. "When it comes to a decision by a Head of State upon a matter involving its [the State's] life, the ordinary rights of individuals must yield to what he deems the necessities of the moment" (quoted in van Hoof 1996: 6). Setting aside the fact that decisions involving the state's very existence are rare, how should we deal with cases in which the people disagree with their ruler's judgment of the necessities of the moment? Electoral accountability provides at least some sort of test once the (alleged) crisis has passed. Individual rights to freedom of political speech provide a mechanism for immediate dissent. Traditional mechanisms of remonstrance, by contrast, have little relevance in a world of powerful, intrusive, centralized states and modern political parties. Party cadres are hardly analogous to traditional Confucian bureaucrats.

If the problem in the West is that too many people and institutions are guarding the guardians, the problem with "traditional" Asian alternatives, at least as they operate in their contemporary variants, is that too few are guarding, and they have inadequate power. Not surprisingly, I suggest that if we must err it should be on the side of human rights. I say this, however, not simply as a Westerner who is comfortable with liberal democracy, but as a believer in universal human rights who is convinced that if the differences between East and West truly are as claimed, Asians can be trusted to exercise internationally recognized human rights in responsible ways that make the proper allowances for their cultural values. Asian autocrats, it seems, think much less of the inclinations and capabilities of their people.

7. Human Rights and "Asian Values"

None of the above is meant to suggest that Asian societies ought to follow "Western" models blindly. Quite the contrary, internationally recognized human rights leave considerable space for distinctively Asian implementations of these rights.

In the preceding chapter I described this approach to human rights as "weak cultural relativism." Andrew Nathan speaks of "tempered universalism" (2001). Human rights are treated as fundamentally universal, but substantial space is allowed for variations in implementing these universal norms.

Core rights "concepts" laid down in authoritative international documents, such as equal protection and social security, should be considered largely invariant. But they are subject to differing "interpretations," within the range laid down by the concept. And concrete "implementations" of these interpretations have a wide range of legitimate variation.

Consider, for example, Article 10 of the Universal Declaration of Human Rights: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal." (Art. 10) "Independent" and "impartial" certainly are subject to a variety of legitimate (and illegitimate) interpretations. And while "full equality" would seem to require some sort of right to competent legal advice, the particular form may vary with differing national conceptions of fairness (as well as differing levels of available resources).

Internationally recognized human rights concepts may be interpreted and implemented in significantly divergent ways. But legitimate variations are limited to the (relatively narrow) range specified by the core concept of the right in question. And countries cannot legitimately just pick and choose among internationally recognized human rights.

Consider a few Asian examples. James C. Hsiung presents the Northeast Asian practice of permanent employment as a distinctively Asian style of implementing economic and social rights (1985: 20–21). Likewise, families in Asia often bear social welfare obligations that in the West today fall more on the state. (This would seem to be central to Japan's remarkable social stability after a decade of recession.) International human rights standards leave Asians en-

tirely free to follow these preferences, so long as the state assures that people who are not adequately cared for by these preferred mechanisms have another recourse.[10]

Deference to seniority and hierarchy, which is often presented as characteristic of Asian societies, may, as Lawrence Beer notes of Japan, "stifle the free expression of individual thought" (1976: 105). But this deference is not very problematic (from a human rights perspective) when it is enforced largely through informal social sanction rather than government policy. This is how people in Japan typically choose to interact with one another, how they choose to exercise their rights of free speech—which are legally guaranteed. As Beer emphasizes, despite such cultural differences in standard patterns of verbal interaction, "freedom of expression is viable and protected in Japan" (1976: 99).

"Rulers in Korea have always been father figures. A super-father figure like Kim Il-sung . . . is not an accidental phenomenon, for the principles of hierarchy and deference to superiors remain deeply ingrained in the behavior of all Koreans" (Lee 1985: 136). Citizens may exercise their political rights to select and defer to a patriarchal leader—although this is a highly problematic reading of the situation in North Korea. It is entirely defensible for free and equal citizens to consent and defer to paternalistic political authorities, as happened, for example, in many immigrant wards of large American cities for much of this century.

The Asian preference for consensual decision making is likely to have a major impact on party politics. Consider, for example, Japan's system of de facto one party rule. So long as peaceful political activity by opposition parties and groups is unhindered and the rules by which elections are contested are generally perceived as fair and impartially executed, the choice of voters to return candidates predominantly from a single party cannot be legitimately questioned or denied.

Gender equality is often a particularly sensitive matter in cross-cultural discussions. International standards do require that all human rights be available to men and women without discrimination. But that does not require the elimination of differential gender roles. For example, women cannot be denied the right to run for political office. They do, however, remain free to choose not to see that as their role, and voters of both sexes are at liberty to treat sex as a relevant consideration in selecting candidates. Everyone has the right to work and to free choice of employment. Therefore, women cannot legitimately be prevented from working outside the home. They are, however, free to choose not

10. Where the state does not provide a safety net, however, it is guilty of human rights violations. And if huge numbers of people "fall through the cracks," as happens, for example, in the United States, the basic strategy would appear problematic.

to. Similarly, women cannot be prevented from speaking in public, although they remain free to keep a deferential silence.

I realize that this talk of freedom to choose is somewhat forced. Women are under immense social pressure to conform to traditional gender roles in Asia (as in all other regions of the world). But that is precisely why insisting on the right to choose is so crucial. The right to nondiscrimination not only precludes the state from sanctioning or imposing gender discrimination, it requires the state to protect those who flout convention. "Free" choice rarely is without costs. But so long as the choice is a matter of human rights, those costs must not be imposed by the state.

The right to nondiscrimination allows women to determine—in conjunction with those with whom they associate, intimately as well as casually, in a great variety of circumstances—the extent to which they will conform to, reject, or modify traditional gender roles. If they choose traditional roles, that choice is protected, no less (but no more) than the choice to challenge conventional definitions of what they ought to be and how they ought to act. Human rights simply seek to assure that no group of human beings is authorized to use the apparatus of the state to impose on any other group of human beings standards, rules, or roles that they do not also impose on themselves.[11]

Human rights empower those individuals and groups who will bear the consequences to decide, within certain limits, how they will lead their lives. Some differences in implementing international human rights therefore are not merely justifiable but desirable. For example, rural Thai children might be expected to give greater weight to the views and interests of their families in decisions to marry than urban Norwegian children. Confrontational political tactics will be less common (and less effective). There will be greater social constraints on deviant public speech and behavior of all sorts.

These examples, however, illustrate individuals exercising their internationally recognized human rights in a particular fashion, not a fundamentally different conception of human rights. And they do not suggest the legitimacy, let alone the necessity, of coercively prohibiting the "Western" style of exercising these rights. If Asians choose to exercise their rights in "Western" ways, that too is their right.

Children cannot be legally prohibited from marrying the partner of their

11. This is obviously an exaggeration. Any system of law involves imposing social values. Nonetheless, human rights seek to specify domains of personal autonomy in which the values of others are legitimately held at bay, no matter how widely or deeply they are shared by the mainstream of society. The idea of human rights rests on the claim that there are important and substantial areas in the lives of individuals from which the state and society are legitimately excluded. Debates over lists of human rights, and their interpretations and implementations, are about how to define these protected domains.

choice—unless we are to deny the human right to marry and found a family. Families may sanction their choices in a variety of ways, but it is not the role of the state to enforce family preferences on adult children. Members of minority religious communities may (not il)legitimately suffer social sanctions or even ostracism. But unless we deny the human right to freedom of religion, the state has no business punishing or discriminating against people for their religious beliefs or practices. If individuals and groups that make unpopular choices are willing to accept the social sanctions associated with "deviant" behavior, their decisions, whatever their relation to cultural tradition, must be not merely tolerated but protected by the state—or we must abandon the idea of human rights.

A human rights approach assumes that people probably are best suited, and in any case are entitled, to choose the good life for themselves. If Asians truly do value family over self, they will exercise their personal rights with the consequences for their family in mind. If they value harmony and order, they will exercise their civil liberties in a harmonious and orderly fashion. International human rights norms do not require or even encourage Asians to give up their culture—any more than Locke, Paine, or Jefferson asked their contemporaries to give up their culture.

But human rights also empower people to modify or reject parts of their traditional culture. Cultural traditions are socially created legacies. Some are good. Others are bad. Still others are simply irrelevant. And which is considered which varies among individuals and changes with time. Tradition legitimately governs and limits fundamental life choices covered by human rights guarantees only to the extent that individuals and groups choose to follow, and thus reproduce, that tradition.

To the extent that traditions continue to have valued meanings, they are likely to be reproduced. If people choose not to conform to tradition, however, so much the worse for tradition. In particular, so much the worse for those who hold political power who insist that tradition must be followed. For example, the fact that the Chinese tolerated, accepted, or even embraced often arbitrary imperial rule for centuries is no reason why they should embrace repressive party rule today. The people, not their rulers, must decide what they value.

So long as individual and group choices are protected by and within the limits laid out by international human rights standards, they must be respected—by both foreigners and Asian governments and elites. Anyone, anywhere, who denies these choices, must be opposed. And once we recognize that Asian values need not be sacrificed in the name of human rights, many of the arguments I have considered above appear in their true light, namely, as efforts by rapacious ruling elites to manipulate public fear and understandable resentment against an often arrogant and overbearing West in order to shore up their

predatory rule and to deflect attention from their own responsibility for the sufferings of their fellow citizens.

One of the things that makes us human is our capacity to create and change our culture. Nonetheless, the essential insight of human rights is that the worlds we make for ourselves, intentionally and unintentionally, must conform to relatively universal requirements that rest on our common humanity and seek to guarantee each person equal concern and respect from the state.

Human rights, as specified in the Universal Declaration and the Covenants, represent the international community's best effort to define the social and political parameters of our common humanity. Within these limits, all is possible. Outside of them, little should be allowed.

PART III

Human Rights and International Action

8/ International Human Rights Regimes

Although human rights have hardly replaced considerations of power, security, ideology, and economic interests in international relations, they have, as we have seen, become a significant international concern. This chapter examines the multilateral machinery that has been developed to implement internationally recognized human rights. Chapter 9 considers human rights in bilateral foreign policy.

1. International Regimes

Students of international relations often speak of "international regimes," systems of norms and decision-making procedures accepted by states as binding in a particular issue area.[1] Regime norms, standards, or rules (I use the terms interchangeably here) may run from fully international to entirely national. International human rights norms are widely accepted by states as authoritative. In May 2002, the six leading international human rights treaties had an average of 157 parties.[2]

Decision-making procedures in international regimes can be roughly grouped into enforcement, implementation, and promotional activities. International enforcement involves binding international decision making (and perhaps also very strong forms of international monitoring of national compliance with international norms). International implementation includes monitoring procedures and policy coordination, in which states make regular use of an international forum to coordinate policies that ultimately remain under national control. International promotion involves encouraging or assisting national implementation of international norms.

1. The standard discussion introductory discussion is Krasner (1982). See also Haggard and Simmons (1987), Rittberger and Mayer (1993), Hasenclever, Mayer, and Rittberger (1997), and Hasenclever, Mayer, and Rittberger (2000).

2. See http://www.unhchr.ch/pdf/report.pdf

Figure 8.1 Types of International Regimes

Based on these procedures we can classify international regimes as promotional, implementation, and enforcement regimes, each of which can be further classified as relatively strong or weak. To this, we can add declaratory regimes, which involve international norms but no international decision making (except in the creation of norms). Figure 8.1 diagrams this typology. Table 8.1 in §6 applies the typology to the major international and regional human rights regimes.

2. The Global Human Rights Regime

The Universal Declaration and the Covenants provide the norms of what we can call "the global human rights regime," a system of rules and implementation procedures centered on the United Nations. Its principal organs are the UN Commission on Human Rights, the Human Rights Committee, and the High Commissioner for Human Rights.

A. THE UN COMMISSION ON HUMAN RIGHTS

The most important body in the global human rights regime is the United Nations Commission on Human Rights.[3] Since 1946 it has been the principal forum for negotiating international human rights norms (including the Universal Declaration and the Covenants). Over the past three decades it has also acquired some modest monitoring powers.

Economic and Social Council (ECOSOC) resolution 1503 (1970) authorizes the Commission to investigate communications (complaints) that "appear to reveal a consistent pattern of gross and reliably attested violations of human rights." ECOSOC resolution 2000/3 recently reorganized procedures for handling communications. A new Working Group on Communications, may refer a country's practices to the (also newly created) Working Group on Situations, which may in turn refer the case to the full Commission.

Stringent criteria of admissibility[4] limit the cases considered. Only situations of gross and systematic violations are covered; particular abuses and individual cases cannot be examined. The entire procedure is confidential until a final report is made to ECOCOC.[5] Although confidentiality may encourage cooperation by states, it can dramatically slow an already cumbersome pro-

3. Although somewhat out of date, Tolley (1987) remains the best single work on the Commission. On recent developments, see Dennis (2002, 2001, 2000).

4. See Zuijdwijk (1982: 30–39) and, more briefly, http://www.unhchr.ch/html/menu2/8/1503.htm.

5. The Commission has circumvented some of the strictures of confidentiality by, beginning in 1978, publicly announcing a "black list" of countries being studied. We thus know that practices of more than fifty countries have been examined under the procedure. Given the hurdles involved in reaching this stage, appearance on the blacklist is typically "interpreted as at least demonstrating that the allegations in a communication have some merit" Shelton (1984: 65).

TABLE 8.1 Change in International Human Rights Regimes, 1945–2000

	1945	1960	1975	1990	2000
GLOBAL REGIME	NONE	DECLARATORY	PROMOTIONAL	STRONG PROMOTIONAL	STRONG PROMOTIONAL
Norms	None	Guidelines	Standards with exemptions	Global norms with exemptions	Authoritative global norms
Procedures	None	Weak promotion	Promotion	Strong promotion/monitoring	Strong promotion/monitoring
REGIONAL HUMAN RIGHTS REGIMES					
European Regime	None	Promotional/ Implementation	Implementation/ Enforcement	Enforcement	Strong Enforcement
Norms	None	Guidelines/ regional norms	Regional norms	Authoritative regional norms	Authoritative regional norms
Procedures	None	Promotion/ monitoring	Regional decisions with exemptions	Regional decisions	Binding regional decisions
Inter-American Regime	None	Declaratory	Promotional	Strong Promotional	Strong Promotional
Norms	None	Guidelines	Standards with exemptions	Regional norms	Authoritative regional norms
Procedures	None	None	Promotion/monitoring	Monitoring/very limited regional decisions	Monitoring/very limited regional decisions
African Regime	None	None	None	Declaratory	Declaratory
Norms	None	None	None	Guidelines	Weak standards with exemptions
Procedures	None	None	None	Weak promotion	Weak promotion
Asia	None	None	None	None	None
Middle East	None	None	None	None	None
SINGLE-ISSUE REGIMES					
Worker's Rights	Promotional	Strong Promotional	Strong Promotional	Strong Promotional	Strong Promotional
Norms	Limited guidelines	Standards with exemptions	Strong standards with exemptions	Strong standards with exemptions	Strong standards with exemptions
Procedures	Promotion/ monitoring	Promotion/ monitoring	Promotion/monitoring	Promotion/monitoring	Promotion/monitoring
Racial Discrimination	None	None	Promotional	Strong Promotional	Strong Promotional
Norms	None	None	Standards with exemptions	Strong standards with exemptions	Strong standards with exemptions
Procedures	None	None	Promotion/weak monitoring	Promotion/weak monitoring	Promotion/weak monitoring
Women's Rights	None	None/Very Weak Declaratory	Declaratory	Strong Promotional	Strong Promotional
Norms	None	None/Limited guidelines	Guidelines	Standards with exemptions	Standards with exemptions
Procedures	None	None	Weak promotion	Promotion/weak monitoring	Promotion/weak monitoring
Torture	None	None	Declaratory	Strong Promotional	Strong Promotional
Norms	None	None	Guidelines	Strong standards with exemptions	Global norms
Procedures	None	None	None	Promotion/monitoring	Promotion/monitoring
Genocide	None	Very Weak Declaratory	Very Weak Declaratory	Very Weak Declaratory	Declaratory/Ad hoc Enforcement
Norms	None	Guidelines	Guidelines	Guidelines	Authoritative global norms
Procedures	None	None	None	None	None/Ad hoc Enforcement
Children	None	None	None	Declaratory/Promotional	Promotional
Norms	None	None	None	Guidelines	Standards with exemptions
Procedure	None	None	None	None	Promotion/weak monitoring

cess.[6] In the end, "enforcement" means making publicly available the evidence that has been acquired, along with the Commission's views on it. Only a handful of cases have even reached this stage.

The 1503 procedure is thus largely a promotional device involving weak, sporadic, and limited monitoring. In addition, it is at best semi-independent: the Commission is composed of state representatives, not independent experts. Given the sensitivity of human rights questions, even this may be of real practical value, especially where a government cares about its international reputation. The limitations of the procedure, however, deserve at least as much emphasis as its achievements.

Much the same is true of the Commission's other activities. For example, the 26-member Sub-Commission on the Promotion and Protection of Human Rights (known until 1999 as the Sub-Commission on the Prevention of Discrimination and Protection of Minorities) has undertaken a number of useful studies. Together with the Commission, it has helped to focus international public opinion on conditions in at least a few countries (e.g., South Africa, Chile) and on selected violations and issues such as disappearances, torture, religious liberty, human rights defenders, migrant workers, and indigenous peoples.

Particularly important in this regard are the Commission's "global" or "thematic" procedures involving working groups and special rapporteurs on a wide range of topics, including disappearances, torture, summary or arbitrary executions, and, most recently, human rights defenders, food, housing, and indigenous peoples. In recent years, about twenty separate thematic initiatives have been taking place at any given time.[7] The Commission has also given considerable attention to particular vulnerable groups, especially women, children, indigenous people, minorities, displaced persons, migrant workers, and human rights defenders.

The Commission also addresses human rights situations in individual countries, both in public during its annual session—situations in more than two dozen countries are discussed each year—and through the activities of country rapporteurs and representatives, who have examined situations even in high-profile countries such as Guatemala, Iran, Iraq, occupied Palestinian territories, and Burma.[8] Like their thematic counterparts, the country rapporteurs are individual experts who report to the Commission, rather than the voice of the Commission as a whole. Thus not only do they operate with fewer diplomatic and political constraints, but their narrow mandate also allows them to maintain sustained, focused attention and in some cases even develop a constructive exchange of views with a government.

The limitations of all of these procedures, however, are tragically illustrated by the case of Rwanda. Rwanda was discussed confidentially under the 1503 procedure in 1992 and 1993. In addition, the report of the special rapporteur on extrajudicial executions was discussed in the spring of 1994, just before the outbreak of the genocide. In it, the special rapporteur confirmed reports of official involvement in the massacre of civilians and explicitly suggested that genocidal acts were already occurring. Nonetheless, it was not until May 25—seven weeks after the genocide began, almost a month after the Secretary-General called for Security Council action, and even a week after the Security Council (belatedly) authorized a new peacekeeping force—that the Commission even appointed a country rapporteur.

This example, however, is in many ways unfair. The Commission was never intended to have enforcement powers, let alone the capacity to stop human rights violations before they occurred. In the area of promotion, it does serve a variety of useful roles, particularly as a source of authoritative information and publicity about human rights practices in any country of the world. Furthermore—and I think most important—its role in developing international human rights norms has been, and remains, vital and irreplaceable. For all its limitations, the United Nations Commission on Human Rights is in many ways the heart of the global human rights regime.

B. THE HUMAN RIGHTS COMMITTEE

The second principal body of the global human rights regime is the Human Rights Committee, a body of eighteen independent experts established to monitor compliance with the International Covenant on Civil and Political Rights.[9] The primary function of the Committee is to review periodic reports on compliance submitted by parties.[10]

6. The 1503 procedure rarely can be brought fully into play in less than two or three years after complaints are received (which may be well after serious violations began). A state can usually delay at least a year by pretending to cooperate, as Argentina did in 1979 and 1980. Political considerations often stretch a case out even longer. For example, genocide against Paraguayan Indians remained under scrutiny for nine years without any action. A decision on Uruguay, after seven years of scrutiny, came only after the guilty government had been removed from office. Things have improved a bit since the end of the Cold War, but the procedure still could never be called efficient or timely.

7. For a list of currently operating thematic procedures, see http://www.unhchr.ch/html/menu2/7/b/tm.htm.

8. In 2001, special rapporteurs, representatives, and experts examined situations in Afghanistan, Bosnia and Yugoslavia, Burundi, Cambodia, Democratic Republic of the Congo, Equatorial Guinea, Haiti, Iran, Iraq, Myanmar (Burma), occupied Palestinian territories, Somalia, and Sudan. See http://www.unhchr.ch/html/menu2/7/a/cm.htm for links to reports, documents, and related materials.

9. McGoldrick (1991) is the standard study of the Committee. See also Joseph, Schultz, and Castan (2000). More briefly see Steiner (2000).

10. The International Covenant on Economic, Social, and Cultural Rights also requires periodic reports. These reports were reviewed by a Sessional Working Group of ECOSOC until 1986, when the Committee on Economic, Social, and Cultural Rights, a body of experts roughly analo-

The committee does not formally judge or evaluate state practices. Reports are discussed in a public session, however, often lasting a full day, in which state representatives are questioned in an environment that is relatively free of posturing and, by diplomatic standards at least, neither excessively deferential nor merely pro forma. In many instances, state representatives are responsive, occasionally even thoughtful. In such cases the result is a genuine exchange of views that provides a real element of international monitoring. The procedure has even provoked minor changes in national law, and a number of parties use their dealings with the Committee to review and reexamine national laws, policies, and practices (on Canada, see Nolan 1988).

The reporting procedure thus has provided a fairly widely accepted promotional mechanism,[11] but it involves only information exchange and the weakest monitoring. Even the information exchange is flawed. The reports of many countries are thorough and revealing, but others are farces.[12] Some are not submitted.[13] Furthermore, only parties to the Covenant must report—although with three quarter's of the world's countries now parties (148 in May 2002), this is less of a drawback than in the past.

The Committee also considers individual petitions under the (first) Optional Protocol.[14] Through November 13, 2001, 1026 communications had been registered concerning 69 countries. Approximately half of these cases were either found to be inadmissible or discontinued. Substantive determinations, however, had been reached on 377 communications, and another 206 were still within the system. The procedure seems to be relatively open and highly independent, providing genuine (if extremely limited) international monitoring, which in at least a few cases has altered state practice.

The procedure, however, covers only parties to the Optional Protocol, which in May 2002 numbered 103. Furthermore, almost half of the violations examined have been in two countries, Jamaica and Uruguay. Relatively strong procedures thus apply primarily where they are not most needed. Unfortunately, this is only to be expected, given that participation is entirely voluntary.

gous to the Human Rights Committee, was created. On the operation of the Committee, see Leckie (2000) and Dandan (2000).

11. On reporting procedures in general and in other treaty bodies, see Bayefsky (2000: Part I), especially Connors (2000), and Clapham (2000).

12. For example, many reports consist principally of extracts from national constitutions and statutes. A significant number are simply evasive. For example, Guinea has claimed that "citizens of Guinea felt no need to invoke the Covenant because national legislation was at a more advanced stage" (A/39/40 par. 139). The Mongolian representative, in response to a question by a member of the Committee, proudly claimed that there had never been a complaint about torture or cruel or inhuman treatment made in his country (A/35/40 par. 108).

13. Zaire (Congo) presents an extreme case. Its initial report, due in 1978, was not submitted until 1987, despite ten reminders. Its second report was submitted essentially on time two years later. But as of August 2001 no further reports had been submitted. On the general problem of absent or tardy reports to supervisory committees, see Crawford (2000: 4–5).

14. Steiner (2000) provides a good overview and evaluation of the process. On individual complaint mechanisms more broadly and in other bodies, see Bayefsky (2000: Part III), and especially Byrnes (2000).

C. THE HIGH COMMISSIONER FOR HUMAN RIGHTS

The office of United Nations High Commissioner for Human Rights, created in 1993, generalizes this investigation-advocacy approach. The High Commissioner has the global reach of the Commission, without its cumbersome procedures. Like the special rapporteurs, the High Commissioner may deal directly with governments to seek improved respect for internationally recognized human rights—but with the added advantage of an explicit mandate to deal with all governments on all issues. Additionally, the High Commissioner holds the office in her personal capacity, not as a representative of any state.[15]

The initial appointee, José Ayala Lasso, who served from 1994 to 1997, showed little enthusiasm for public action. The current incumbent, Mary Robinson, has done much to increase the profile of the High Commissioner and has tried, with some success, to expand her authority and reach. If the Commission on Human Rights is the heart of the global human rights regime, Mrs. Robinson has gone a long way toward making the High Commissioner its public face.[16] Considerable progress has also been made in improving the office's capacity to disseminate information, especially through its admirable website (http://www.unhchr.ch). A fairly extensive system of technical assistance and cooperation has also become institutionalized (see http://www.unhchr.ch/html/menu2/techcoop.htm).

3. Political Foundations of the Global Regime

The global human rights regime involves widely accepted substantive norms, authoritative multilateral standard-setting procedures, considerable promotional activity, but very limited international implementation that rarely goes beyond mandatory reporting procedures. There is no international enforcement. Such normative strength and procedural weakness is not accidental but the result of conscious political decisions.

Regimes are political creations set up to overcome perceived problems arising from inadequately regulated or insufficiently coordinated national action. Robert Keohane (1982) offers a useful market analogy: regimes arise when sufficient international "demand" is met by a state or group of states willing and

15. For the mandate and mission statement of the High Commissioner, see http://www.unhchr.ch/html/hchr.htm;ew and ;owhttp://www.unhchr.ch/html/ohchrmission.htm.

16. For a good, brief official overview of the various dimensions of the United Nations Human Rights Programme, see http://www.unhchr.ch/html/abo-intr.htm.

able to "supply" international norms and decision-making procedures. In each issue area there are makers, breakers, and takers of (potential) international regimes. Understanding the structure of a regime (or its absence) requires that we know who has played which roles, when and why, and what agreements they reached.

World War II marks a decisive break not just in international politics but in international human rights as well: the defeat of Germany ushered in the global human rights regime. Revulsion at the array of human rights abuses that came to be summarized in the term *Nazi* engendered a brief period of enthusiastic international action. Hitler's actions shocked the conscience of the international community, but they did not clearly contravene well-established explicit international norms. It was therefore *relatively* easy to agree on a set of international principles against gross and persistent systematic violations of basic rights—namely, the Universal Declaration and the Convention on Genocide, which was even more clearly a direct legacy of Hitler.

It is perhaps surprising that this moral "demand" should have produced even this much in a world in which more material national interests usually prevail. Immediately following World War II, however, there were willing and able makers, numerous takers, and no breakers of the regime. The moral and emotional demands ran both wide and deep, and, prior to the emergence of the Cold War, countervailing concerns and interests were largely subordinated.

A cynic might suggest that these postwar "achievements" simply reflect the minimal international constraints and very low costs of a declaratory regime: implementation and decision making under the Universal Declaration remained entirely national, and it would be nearly thirty years before even the rudimentary promotion and monitoring procedures of the Covenants came into effect. Yet before the war, even a declaratory regime had rarely been contemplated.

Moving much beyond a declaratory regime, however, has proved difficult. It is in this relative constancy of the regime (critics and frustrated optimists are likely to say "stagnation") that the weakness of the demand is most evident. A strong global human rights regime simply does not reflect the perceived interests of a state or coalition willing and able to supply it.

States typically participate in an international regime only to achieve national objectives in an environment of perceived international interdependence. Even then they usually participate only when independent national action has failed and when participation appears "safe," all things considered—a very serious constraint, given states' notorious jealousy of their sovereign prerogatives. Few states today see a stronger global regime as a safe source of important but otherwise unattainable national benefits.

Moral interests such as human rights are no less "real" than material interests. They are, however, less tangible, and national policy, for better or worse, tends to be made in response to relatively tangible national objectives.

In addition, the extreme sensitivity of human rights practices makes the very subject intensely threatening to many states. National human rights practices often would be a matter for considerable embarrassment should they be subject to full international scrutiny. In a number of cases, such as Iraq, North Korea, Zimbabwe, and Cuba, compliance with international human rights standards would mean removal of those in power.

Finally, human rights—at least in the Universal Declaration model—are ultimately a profoundly national, not international, issue. As I will argue in Chapter 10, international action usually can be, at best, an impetus toward and support for national action to implement and enforce human rights.

If international regimes arise primarily because of international interdependence—the inability to achieve important national objectives by independent national action—how can we account for the creation, and even modest growth, of the global human rights regime? First and foremost, by the persisting relevance of the "moral" concerns that brought it into being in the first place. Butchers such as Pol Pot and the *genocidaires* of Rwanda still shock the popular conscience and provoke a desire to reject them as not merely reprehensible but also prohibited by clear, public, authoritative international norms. Even governments with dismal human rights records seem to feel compelled to join in condemning the abuses of such rulers.

Although cynics might interpret such condemnations as craven abuse of the rhetoric of human rights, they are just as easily seen as expressions of a sense of *moral* interdependence. States—not only governments, but frequently citizens as well—often are unwilling to translate this perceived moral interdependence into action, let alone into an international regime with strong decision-making powers. But they also are unwilling (or at least politically unable) to return to treating national human rights practices as properly beyond international scrutiny and evaluation.

A weak global human rights regime also may contribute, in a way acceptable to states, to improved national practice. For example, new governments with a commitment to human rights may find it helpful to be able to draw on and point to the constraints of authoritative international standards. We can see this, perhaps, in the case of the Alfonsin government, which took power after the Dirty War in Argentina, and in post-Soviet regimes in Central Europe. Likewise, established regimes may find the additional check provided by an international regime a salutary supplement to national efforts, as seems to be the case for many smaller Western powers. And most states, even if only for considerations of image and prestige, are likely to be willing to accept regime norms and procedures that do not appear immediately threatening.

An international regime reflects states' collective vision of a problem and its solutions and their willingness to "fund" those solutions. In the area of human rights, this vision does not extend much beyond a politically weak moral interdependence. States are willing to "pay" very little in diminished national sovereignty to realize the benefits of cooperation. The result is a regime with extensive, coherent, and widely accepted norms but extremely limited international decision-making powers—that is, a strong promotional regime.

4. Regional Human Rights Regimes

Adopting a metaphor from Vinod Aggarwal, Keohane notes that international regimes "are 'nested' within more comprehensive agreements . . . that constitute a complex and interlinked pattern of relations" (1982: 334). Although "nesting" may imply too neat and hierarchical an arrangement, some regional and single-issue human rights regimes can usefully be seen as autonomous but relatively coherently nested international human rights (sub) regimes. This section considers regional regimes. The following section takes up single-issue human rights regimes.

A. EUROPE

A strong regional regime exists among the (primarily Western European) members of the Council of Europe. Personal, legal, civil, and political rights are guaranteed by the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Protocols, and economic and social rights are laid down in the European Social Charter (1961, revised 1996).[17] The lists of rights in these documents are very similar to those of the Universal Declaration and the Covenants. The decision-making procedures of the European regime, however, are of special interest, especially the authoritative decision-making powers of the European Court of Human Rights.

A two-tier system was initially created. The European Commission of Human Rights, an independent body of experts (one from each member state),

17. I shall restrict the term "European human rights regime" to the norms and procedures established in these documents. For a brief introduction see O'Boyle (2000). For extended legal analyses, see Dijk and Hoof (1998), Harris, O'Boyle, and Warbrick (2001), and Mowbray (2001). The official website (http://www.echr.coe.int/) is excellent. Although the international human rights activities of the European Union have become increasingly significant (see Alston 1999), for reasons of space they are not considered here. Of particular symbolic importance was the adoption in 2000 of the Charter of Fundamental Rights of the European Union. Space also precludes considering the Organization for Security and Cooperation in Europe (OSCE), which has a historically important place in the process leading to the end of the Cold War and which has undertaken some important human rights initiatives through its Office for Democratic Institutions and Human Rights (see http://www.osce.org/odihr/overview/), especially in the area of minority rights (see Kemp 2001).

reviewed "applications" (complaints) from persons, groups of individuals, nongovernmental organizations (NGOs), and states alleging violations of the rights guaranteed by the Convention. If friendly settlement could not be reached, the Commission was authorized to report formally its opinion on the state's compliance with the Convention. Although these reports were not legally binding, they usually were accepted by states. If not, either the Commission or the state involved could refer the case to the Court for binding enforcement action.

Not only are these procedures, which have been implemented with scrupulous impartiality, of unmatched formal strength and completeness, they also have been almost completely accepted in practice. Decisions of the European Commission and Court have had a considerable impact on law and practice in a number of states (Blackburn 1996). For example, detention practices have been altered in Belgium, Germany, Greece, and Italy. The treatment of aliens has been changed in the Netherlands and Switzerland. Press freedom legislation was altered in Britain. Wiretapping regulations have been changed in Switzerland. Legal aid practices have been revised in Italy and Denmark. Procedures to speed trials have been implemented in Italy, the Netherlands, and Sweden. Privacy legislation was revamped in Italy.

The impact of the Court has been especially strong and important because of its adoption of the principle of "evolutive interpretation." The Court interprets the European Convention not according to the conditions and understandings that existed in 1950 when it was drafted but in light of the current regional practices. This has resulted in a slowly but steadily rising bar and considerable pressure on states that lag behind European norms. Examples include restrictions on corporal punishment in schools in the United Kingdom and eliminating discrimination against unmarried mothers and children born outside of marriage in Belgium.

The growing success of the system and the post–Cold War expansion of membership, however, led to a crushing administrative burden. In 1981 the Commission registered 404 applications. By 1993 this had increased to 2037, and by 1997 the number had jumped to 4750 (with nearly 8000 additional files opened that did not lead to registered applications). Cases referred to the Court in those years rose from 7 to 52 to 119.

A complete restructuring was proposed in 1994 in Protocol No. 11, which was ratified in 1997 and came into effect the following year. In late 1999, the Commission was merged into a completely restructured European Court of Human Rights. In addition, jurisdiction of the Court was made compulsory (previously states had the option to participate in only the Commission and not the Court).

The Parliamentary Assembly of the Council of Europe elects one judge for each member state (currently forty-one) for a six-year term. The Court is di-

vided into four Sections, with attention to geographical and gender balance and representation of different legal systems. Each Section includes a committee of three judges that performs much of the filtering work previously assigned to the Commission. Seven member Chambers in each Section (including the Section President and a judge representing the state in question) hear cases. There is also a seventeen-member Grand Chamber representing all the Sections.

Another notable post–Cold War innovation has been the creation of a Council of Europe Commissioner for Human Rights in 1999 (see http://www.commissioner.coe.int/). This entirely independent institution aims to promote education and awareness of human rights issues, improve the enjoyment of recognized rights, and identify possible shortcomings in national law and practice. Other than the requirement that he or she not deal with individual complaints, the Commissioner may look into any aspect of human rights in Europe, deal directly with governments, and issue opinions, reports, and recommendations. Member states even have a positive obligation to facilitate the independent and effective functioning of the Commissioner. On paper at least, these powers are of unprecedented strength and scope, and there seems every reason to believe that they will be utilized, especially as the Commissioner—Alvaro Gil-Robles of Spain was elected in 1999— and his staff become settled in their work.

The system for dealing with economic, social, and cultural rights has also changed significantly. The substance of the 1961 European Social Charter was substantially expanded by protocols in 1988, 1991, and 1995. In 1996 these changes, and some others, were consolidated into a Revised Charter of Social Rights, which entered into force in 1999. The net result was not only to expand the rights covered but also to strengthen the supervisory system and open it more fully to NGOs and so-called social partners such as workers' organizations. Rather than judicial settlement, however, supervision is through a system of reporting and collective complaints to an Independent Committee of Experts, which reports to the Council of Ministers for further action (see Harris 2000).

The Council of Europe system also includes a European Committee for Equality Between Women and Men, a Human Rights Documentation Center, and a Steering Committee for Human Rights (with three expert committees, dealing with the further development of human rights norms, improving procedures, and promotion, education, and information, respectively). There are also well-developed procedures for NGO participation.

The real strength of the European regime lies in voluntary acceptance of the regime by its participating states. The machinery of even the strongest international regime primarily checks backsliding, applies pressure for further progress, provides authoritative interpretations in controversial cases, and remedies occasional deviations (compare Chayes and Chayes 1995). These are hardly negligible functions; they are precisely what is lacking in the global regime. Strong international procedures, however, rest ultimately on national commitment, which is both wide and deep in Europe. Strong procedures are less a cause than a reflection of the regime's strength.

A regime's shape and strength, as I argued in §3, usually can be explained by perceptions of interdependence, of benefits to be received (including burdens avoided), and of the risks of turning over authority to an international agency. The strong national commitment of the European states to human rights greatly increases the perceived value of the "moral" benefits that states can expect to achieve, suggesting that moral interdependence can occasionally rival material interdependence in political force. Furthermore, relatively good national human rights records reduce the political risks of strong international procedures. The European regime is also "safe," because it operates within a relatively homogeneous and close sociocultural community, which greatly reduces both the likelihood of radical differences in interpreting regime norms and the risk of partisan abuse or manipulation of the regime. Perceived community also helps to increase the perception of moral interdependence.

Although voluntary compliance is the heart of the regime's success, we should not belittle either the strength or the significance of the European regime's enforcement measures. Not only is completely voluntary compliance a utopian ideal, but the European case also suggests a process of mutual reinforcement between national commitment and international procedures. A strong regime is a device to increase the chances that states will enjoy the best that they "deserve" in that issue area—that is, the best to which they will commit themselves to aspire, and then struggle to achieve.

B. THE AMERICAS

The American Declaration of the Rights and Duties of Man (1948) presents a list of human rights very similar to that of the Universal Declaration. The American Convention on Human Rights (1969) recognizes personal, legal, civil, and political rights, plus the right to property. The 1988 "Protocol of San Salvador," which deals with economic, social, and cultural rights, came into force in 1999. As in the European case, though, the procedures rather than the norms are of most interest.[18]

The Inter-American Court of Human Rights, established in 1979 and sitting in San Jose, Costa Rica, may take binding enforcement action, although its ad-

18. Medina Quiroga (1988), although often dry and technical, is excellent on the Cold War era. Harris and Livingstone (1998) is probably the best single source today.

judicatory jurisdiction is optional.[19] The Court may also issue advisory opinions requested by members of the Organization of American States (OAS). The Court, however, has handled far fewer cases, with much less impact, than the European Court, despite an apparently much greater potential caseload.

The procedural heart of the regime lies instead in the Inter-American Commission of Human Rights. It is empowered to develop awareness of human rights, make recommendations to governments, respond to inquiries of states, prepare studies and reports, request information from and make recommendations to governments, and conduct on-site investigations (with the consent of the government). The Commission also may receive communications (complaints) from individuals and groups concerning the practice of any member of the OAS, whether a party to the Convention or not.

An "autonomous entity" within the Organization of American States (OAS), established twenty years before the Inter-American Court, the Commission has vigorously exploited this autonomy, especially in the 1970s and 1980s, in the face of strongly resistant states. It has adopted decisions and resolutions arising from individual communications from more than twenty countries in the region, including the United States. Country Reports documenting particularly serious human rights situations in more than a dozen countries have been issued, usually to be followed up by renewed and intensified monitoring. The Commission has also adopted special resolutions on major regional problems, such as states of siege.

The wide-ranging nonpartisan activism of the Commission can be attributed largely to the fact that its members serve in their personal capacity; it is more a technical, quasi-judicial body than a political body. But how are we to explain the fact that the American states, many of which have not been notably solicitous toward human rights (especially during the Cold War), have allowed the Commission to be so forceful and so active? A large part of the explanation lies in the dominant power of the United States.

The literature on international economic regimes suggests that the power of a hegemonic state typically is crucial to establishing (although not necessarily to maintaining) strong, stable regimes (Keohane 1984). Although hegemonic power had virtually nothing to do with the European regime, it has been central to the genesis and operation of the Inter-American regime. The United States, for whatever reasons, has often used its hegemonic power to support the Inter-American regime, which has also been strongly supported by some of the more democratic regimes of the region.

Consensual commitment and hegemonic power are, to a certain extent,

19. By 2000, twenty states had accepted the Court's jurisdiction. On the functioning of the Court, see Davidson (1992) and Travieso (1996) and the relevant portions of Buergenthal and Shelton (1995), Davidson (1997), and Harris and Livingstone (1998).

functional equivalents for establishing state acceptance. Voluntary compliance is, of course, the ideal, both for its own sake and because of the limited ability of even hegemonic power to overcome persistent national resistance. Coercion, however, may produce a certain level of limited participation. Consider, for example, the grudging participation of military dictatorships in Chile and Argentina during the 1970s.

Nevertheless, the relative mix of coercion and consensus does influence the nature and functioning of a regime. Coerced participation is sure to be marked by constant and often effective national resistance, and regime procedures are likely to be more adversarial. Hegemony may ensure a certain degree of international monitoring, but even a hegemon can impose only a limited range of changes.

Democratization in the region over the past two decades has led to voluntary acceptance largely replacing external coercion. It has also created a much more genuinely regional commitment to human rights. Nevertheless, only very modest incremental growth has occurred in the regime. Consent has largely replaced coercion without any significant increases in regime strength.

Both the Court and the Commission have modestly increased their levels of activity. New conventions, on torture (1985), disappearances (1994), violence against women (1994), and disabled persons (1999, not yet entered into force), have been adopted. The OAS General Assembly, the Inter-American system's principal political organ, has become much more sympathetic to human rights (in sharp contrast to its stance in the 1970s, when it was often an active impediment to the Commission). Democracy promotion activities have increased dramatically. States have even adopted much less adversarial attitudes toward the Commission. They have not, however, shown any enthusiasm for strengthening regional institutions (compare King-Hopkins 2000).

C. AFRICA, ASIA, AND THE MIDDLE EAST

In 1981 the Organization of African Unity (OAU) adopted The African Charter on Human and Peoples' Rights, drafted in Banjul, Gambia.[20] There are some interesting normative innovations in the African (Banjul) Charter, most notably the addition of and emphasis on collective or "peoples'" rights (Art. 19–24), such as the rights to peace and development, and the particularly prominent place the Charter gives individual duties (Art. 27–29). Typically, however, the substantive guarantees are narrower or more subject to state discretion than in other international human rights regimes.

20. Evans and Murray (2002) provide the first comprehensive scholarly evaluation of the operation of the African Charter system. Murray (2000) adopts a feminist perspective that leads to some unusual but often interesting assessments. On the issue of the relationship between the African Charter and national law and practice in the region, see Lindholt (1997).

The Banjul Charter creates an African Commission on Human and Peoples' Rights that may receive interstate complaints and individual communications. The activities of the Commission, however, are severely hampered by woefully inadequate administrative resources[21] and a requirement of complete confidentiality until an investigation has been completed. Little of substance seems to have emerged from its proceedings, although it has played a significant role in fostering the development and improving the functioning of local and regional human rights NGOs (Welch 1995; International Commission of Jurists 1996).

The regional organizational environment in Africa is extremely unpromising for any substantial strengthening of the regime. Previous efforts at regional and even subregional cooperation in other issue areas have not been very successful. The OAU is not only highly politicized but extremely deferential to sovereignty. Although this is understandable, given the weak states and strong subnational loyalties in most of black Africa, there is no reason to expect the OAU to deviate from its standard practice in an area as sensitive as human rights.

The prospects are no better when we took at national practice. During the Cold War, the human rights record of the typical African country was about average for the Third World, despite lurid and relatively overreported aberrations such as occurred under the rule of Idi Amin and "Emperor" Bokassa. Today, only the Middle East has a worse regional record. In the absence of strong pressure by a regional hegemon, the national human rights record of the typical African government suggests a high degree of aversion to international monitoring. Furthermore, the low level of autonomous economic, social, and political organization in most African states suggests that this situation is unlikely to be changed soon through mass popular action.

Even the weak procedures of the African regime, though, are far more developed than those in Asia and the Middle East. In Asia there are neither regional norms nor decision-making procedures.[22] The Association of South East Asian Nations (ASEAN) is perhaps the most promising subregional organization, but even there deference to sovereignty is high and regional cooperation low (compare Thio 1999).

The League of Arab States established a Permanent Arab Commission on Human Rights in 1968, but it has been notably inactive, except for publicizing

21. On the broad issue of resource shortages, which are a serious problem in all international human rights (with the possible but only partial exception of Europe), see Evatt (2000) and Schmidt (2000).

22. The 1996 Asian Human Rights Charter is an interesting effort by Asian NGOs to forge a regional document, but it clearly reflects NGO perspectives. See http://www.ahrchk.net/charter/final_content.html. For a report on the most recent official discussions of a regional system, see United Nations (1996).

the human rights situation in the Israeli-occupied territories. Even the regional normative environment is weak. The Arab Charter of Human Rights languished largely ignored from its drafting in 1971 until it was finally adopted by the Council of the League in 1994.[23] There currently is no basis for even the weakest of regional regimes, which is not surprising given the generally dismal state of national human rights practices in the region.[24]

5. Single-Issue Human Rights Regimes

A different type of "nested" human rights (sub)regime is represented by universal membership organizations with a limited functional competence and by less institution-bound single-issue regimes. Single-issue regimes establish a place for themselves in the network of interdependence by restricting their activities to a limited range of issues—for example, workers' or women's rights—to induce widespread participation in a single area of mutual interest.

A. WORKERS' RIGHTS

The first international human rights regime of any sort was the functional regime of the International Labor Organization (ILO),[25] established by the Treaty of Versailles. Most of the regime's substantive norms were developed after World War II, including important conventions on freedom of association, the right to organize and bargain collectively, discrimination in employment, equality of remuneration, forced labor, migrant workers, workers' representatives, and basic aims and standards of social policy. Although developed autonomously, these rules supplement and extend parallel substantive norms of the global regime.

Because regime norms are formulated in individual Conventions and Recommendations, which states adopt or not as they see fit, there is neither universality nor uniformity of coverage. Nevertheless, states are required to submit all Conventions and Recommendations to competent national authorities to be considered for adoption, and they may be required to submit reports on their practice even with respect to Conventions they have not ratified.

23. For the text, see http://www1.umn.edu/humanrts/instree/arabhrcharter.html. I can find no evidence that it has had any appreciable effect. The Cairo Declaration on Human Rights in Islam may also be of some normative interest. See http://www1.umn.edu/humanrts/instree/cairodeclaration.html.

24. On the general regional situation, see Magnarella (1999), Dwyer (1991), and Strawson (1997). See also Waltz (1995), which provides a careful and still largely accurate overview of the opportunities for and limits on human rights activism in the region.

25. The classic study of human rights in the ILO is Haas (1970). See also Wolf (1984) and Bartolomei de la Cruz, Potobsky, and Swepston (1996).

Periodic reports are required on compliance with ratified Conventions.[26] The highly professional Committee of Experts on the Application of Conventions and Recommendations reviews reports. Although it may only make "observations," it does so with vigor and considerable impartiality, and Committee observations have often induced changes in national practice.

Much of the success of this reporting-monitoring system lies in the ILO's "tripartite" structure, in which workers' and employers' delegates from each member state are voting members of the organization, along with government representatives. Because "victims" are represented by national trade union representatives, it is relatively difficult for states to cover up their failure to discharge their obligations, especially if some national workers' representatives adopt an internationalist perspective and question practices in countries where labor has less freedom to organize and advocate.

The issue of workers' rights has also been important to the strength and success of the ILO regime, providing considerable ideological homogeneity across a universal membership. During the Cold War, Western, Soviet bloc, and "socialist" Third World regimes certainly had different interpretations of the meaning of "freedom of association" and other relevant norms, but all faced serious internal and ideological constraints on overt noncompliance.

In a reversal of the usual pattern, however, post-Cold War changes have not been favorable for workers' rights. Globalization and neo-liberal structural adjustment have not been kind to organized labor and its advocates. Furthermore, the Cold War era's warm ideological embrace of workers pretty much across the mainstream of the political spectrum has turned tepid, and in some cases downright chilly.

To the extent that organizational structure and ideological appeal explain the success of the ILO's functional human rights regime, the prospects for other single-issue regimes seem dim. Direct voting representation for victims has not been, and almost certainly will not be, replicated in other organizations and only a handful of other human rights issues have near-universal ideological appeal.

B. RACIAL DISCRIMINATION

Racial discrimination, however, is one such issue.[27] The 1965 International Convention on the Elimination of All Forms of Racial Discrimination provides a clear and powerful extension and elaboration of the global regime's norms

26. There is a procedure for interstate complaints, but it is rarely used. Of more importance is the special complaint procedure for freedom-of-association cases arising under Conventions 87 and 98, which works through national and international trade union complaints, reviewed by the Governing Body's Standing Committee on Freedom of Association.

27. See Alston and Fredman (2001), Banton (1996), and more briefly Banton (2000) on the racial discrimination regime.

against racial discrimination, but its implementation provisions are fairly weak. The Committee on the Elimination of Racial Discrimination (CERD), a body of experts established under the Convention, has very narrowly interpreted its powers to "make suggestions and general recommendations based on the examination of the reports and information received from the States Parties" (Art. 9[2]). The interstate complaint procedure has never been utilized and fewer than two dozen individual communications have been considered. Even the information-exchange elements of the reporting procedure are not without flaws; the public examination of reports, although sometimes critical, often is less penetrating than in the Human Rights Committee.

Much of the explanation of this weakness lies in the very different institutional environments of the ILO and CERD. Most of the hundreds of ILO Conventions and recommendations are technical instruments regulating working conditions: for example, hours of work, minimum age, weekly rest and holidays with pay, seafarers' identity documents, radiation protection, fishermen's medical examinations, and exposure to benzene. Much of the work of the Committee of Experts thus deals with relatively uncontroversial technical matters. In the course of this work, expectations of neutrality are established and reconfirmed, so that when human rights issues are considered they are examined in a relatively depoliticized context as only one part of the work of an essentially technical body of experts. In addition, the wide range and great number of ILO activities tie states into a web of interstate, transgovernmental, and transnational relationships centered on the organization. CERD enjoys none of these advantages.

C. TORTURE

Another human rights issue with nearly universal appeal is torture. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contains a strong elaboration of norms against torture, providing a good illustration of the contribution of additional treaties to the progressive development of substantive international human rights law. "No exceptional circumstances whatsoever, whether a state of war or threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture" (Art. 2[2]). Orders from superiors are explicitly excluded as a defense. Special obligations are established for training law enforcement personnel and reviewing interrogation regulations and methods. To reduce incentives for torture, statements obtained through torture must be made inadmissible in all legal proceedings. The convention also requires that wherever the alleged torture occurred, and whatever the nationality of the torturer or victim, parties must either prosecute alleged torturers or extradite them to a country that will.

A Committee against Torture receives and reviews periodic reports from

states parties every four years. The Convention also contains optional provisions that allow the Committee to receive communications analogous to those permitted under the 1503 procedure, as well as interstate complaints and individual communications.[28]

Although the Convention and the Committee stand at the core of the international regime against torture, other actors are important participants. The Special Rapporteur on Torture of the UN Commission on Human Rights has played a prominent role, especially in the 1980s. We should also note the very strong European regional regime against torture (Evans and Morgan 1998; Morgan and Evans 1999), which has unprecedented on-site investigatory powers. The weaker 1985 Inter-American Convention to Prevent and Punish Torture is also of some note, especially in the context of the history of the region.

Ongoing promotional activities should also be noted. For example, the UN Voluntary Fund for Victims of Torture, established in 1982, makes grants to groups throughout the world. In 2000 and 2001, it disbursed about $7 million to approximately 150 NGOs in 65 countries.

Finally, the NGO dimension is particularly significant in the area of torture (as well as in women's rights, considered immediately below).[29] The campaigns of Amnesty International contributed greatly to the creation of both the Convention and the Special Rapporteur and have been extremely important in continuing to publicize the issue, thus increasing the impact of the regime. In a very different vein, Copenhagen is the home of an international Rehabilitation and Research Center for Torture Victims, a location that reflects the leading role of Denmark in international action against torture. Similar centers operate in Canada, Norway, and other countries.

D. WOMEN'S RIGHTS

Women's rights was until recently something of a stepchild in the field of human rights.[30] Although racial discrimination is considered in the UN Commission on Human Rights and throughout the UN-centered regime, gender discrimination was largely segregated in the UN Commission on the Status of Women. In past two decades, though, there have been a substantial normative and procedural changes in the women's rights regime and the language of

28. On the Committee against Torture, see United Nations (1992), Bank (2000), and Burns (2000).

29. For a good introduction to the role of NGOs in UN treaty bodies, see Bayefsky (2000: Part IV) and especially Grant (2000).

30. Among the substantial literature on women's human rights, see, for example, Askin and Koenig (1999), Grimshaw, Holmes, and Lake (2001), Wallace (1997: chap. 2), and Cook (1994). On the particularly important issue of national legal implementation, see Byrnes, Connors, and Bik (1997), Adams and Byrnes (1999), and United Nations (2000).

"women's human rights"—as opposed to classic "women's rights"—has entered the mainstream of discussions.[31]

The Commission on the Status of Women, a subsidiary body of ECOSOC established in 1947, has played a role in norm creation very similar to that played by the Commission on Human Rights, having drafted a variety of specialized treaties, such as the 1952 Convention on the Political Rights of Women, as well as the major general treaty in this area, the 1979 Convention on the Elimination of All Forms of Discrimination against Women. The Commission has also undertaken various promotional activities and studied individual communications between 1984 and 2000.

The Optional Protocol to the Convention, which entered into force at the end of 2000, has moved the consideration of communications to the Committee on the Elimination of Discrimination against Women (CEDAW). CEDAW, which meets annually, has examined reports of states parties since its inception in 1982 (see Shalev 2000). It now has an array of powers roughly comparable to that of the Human Rights Committee. Although the symbolism of this change was very important to a number of activists, it is much too early to say whether it will have much impact on the functioning of the regime.[32]

The strengthening of the women's rights regime can be traced primarily to the changing international awareness of women's issues centered around the designation of 1975 as International Women's Year and the associated World Conference in Mexico City. In conjunction with political and "consciousness-raising" activities of national women's movements, a major international constituency for women's rights was created; a growing set of regime makers and takers emerged, while potential breakers were deterred from active opposition either by domestic ideological stands or by the emerging international normative consensus. Follow-up conferences in Nairobi in 1985 and Beijing in 1995 have helped to solidify and deepen this international consensus. They have also provided striking illustrations of the important role of NGOs, and their dramatic proliferation, especially in the non-Western world.

E. CHILDREN

Children are perhaps the only group with more universal appeal than victims of racial or gender discrimination and torture.[33] Nonetheless, the speed with

31. For a useful discussion of these linguistic issues and some of their implications, see Peach (2001).

32. For a thoughtful assessment of the opportunities and constraints facing the Committee, see Bustelo (2000).

33. Alston, Parker, and Seymour (1992), Asquith and Hill (1994), Wallace (1997: chap. 5), Van Beuren (1998), Fottrell (2000), and Detrick (2000) provide good general overviews of the children's rights regime. For a more philosophical approach, see Freeman (1997). On the Convention on the

which the 1989 Convention on the Rights of the Child came into force was stunning: it took less than a year to obtain the twenty required parties (in contrast to two and a half years for the Convention against Torture) and barely more than two years to reach 100 parties. In May 2002 it had 191 parties, by far the most of any international human rights treaties.

The Committee on the Rights of the Child is structured and functions much like other treaty-based supervisory committees (Lansdown, 2000; Karp, 2000). It does not have the power to receive individual communications.

F. GENOCIDE

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide was a central part of the first wave of post–World War II international human rights action.[34] It was the most direct international response to the Holocaust, which played a decisive role in moving human rights onto international agendas. In the ensuing decades, however, the genocide regime remained purely declaratory and of little or no practical effect.

The Genocide Convention envisions enforcement solely through national and international courts; it establishes no supervisory machinery. The UN Commission on Human Rights and its Sub-Commission, which might have had the authority to explore issues of genocide, were notably silent on this important class of violations. In fact, genocide until very recently has been treated largely outside the framework of international human rights law and institutions.[35]

One of the major changes in the post–Cold War politics of international human rights has been the development of a practice of multilateral armed intervention against genocide (see Chapter 14). At the same time, and through closely related political processes, a system of individual criminal responsibility has been established through ad hoc tribunals for Rwanda and the former Yugoslavia and the creation of the International Criminal Court.

The interesting, although very odd, result has been the development of a regime with real powers of international judicial punishment and even the capacity to intervene with military force. Yet the regime still lacks a clear institutional focus or any multilateral supervisory mechanism. Furthermore, international

Rights of the Child in particular, see Detrick, Doek, and Cantwell (1992) and LeBlanc (1995). The important issue of integrating international standards with traditional values and practices, which provides an interesting context for exploring some of the issues we considered in Part II, is considered in Alston and Gilmour-Walsh (1996) and Douglas and Sebba (1998).

34. The standard international legal discussion is now Schabas (2000). On the rather tortured relationship of the United States to the Genocide Convention, see LeBlanc (1991) and Ronayne (2001).

35. During the Cold War in particular it was much more likely to have been addressed in the context of international humanitarian law or even the law of war. On the relationship between human rights and humanitarian law, see Provost (2002) and Meron (2000).

efforts remain largely focused on punishing violators rather than on the promotional and preventive activities characteristic of most other international human rights regimes.

G. MINORITIES

The final international human rights regime I want to consider here is the emerging one on minority rights.[36] Although racial discrimination has been a central international human rights concern at least since the 1960s—the racial discrimination convention was adopted even before the Covenants—discrimination against other minorities was largely ignored until well into the 1980s. In 1992, however, the UN General Assembly adopted the Declaration on the Rights of Persons belonging to National, or Ethnic, Religious and Linguistic Minorities. The Working Group on Minorities and Indigenous Peoples of the UN Sub-Commission has done important promotional work in recent years.

The most interesting work, however, is being done in Europe, where the issue of minority rights first received significant multilateral attention (during the interwar period) and where the aftermath of the breakups of Yugoslavia and the Soviet Union have given the issue immense topic significance (Jackson Preece 1998). Both the Council of Europe and the Organization for Security and Cooperation in Europe have active and innovative promotional programs that involve working with both states and civil society at local, national, and regional levels (see Cumper and Wheatley 1999).

6. The Evolution of Human Rights Regimes

What, if anything, can we say in general about the nature, creation, and evolution of international human rights regimes? Table 8.1 presents a summary overview of the regimes discussed in this chapter, viewed at several intervals since 1945. The most striking pattern is the near-complete absence of international human rights regimes in 1945, in contrast to the presence of several in all the later periods. We can also note the gradual strengthening of most international human rights regimes over the last thirty years. Even today, though, promotional regimes remain the rule.

Once states accept norms stronger than nonbinding guidelines, declaratory

36. The literature on minority rights has exploded in recent years. Perhaps the best places to start are Jackson Preece (1998), which despite its focus on Europe has wide general applicability, Wallace (1997: chap. 3), and Alfredsson and Ferrer (1999). Claude (1955) still merits consideration, despite being obviously dated. Among other sources, I would single out Phillips and Rosas (1995), Henrard (2000), Rehman (2000), and Skurbaty (2000). In large part as a result of the work and influence of Will Kymlicka, an excellent theoretical literature, with direct practical application, is available. See especially Kymlicka (1995) and Kymlicka and Norman (2000). The issue of group human rights for minorities is addressed in §12.5.

regimes readily evolve into promotional regimes. If the regime's norms are important or appealing enough for states to commit themselves to them, then it is difficult to argue against promoting their further spread and implementation. The move to implementation or enforcement, however, involves a major qualitative jump that most states resist, with considerable vigor when necessary, and usually with success.[37]

Regime evolution may be gradual and largely incremental within declaratory and promotional regimes (and perhaps within implementation and enforcement regimes as well), but there seems to be a profound discontinuity in the emergence of implementation and enforcement activities. Promotional regimes require a relatively low level of commitment. The move to an implementation or enforcement regime requires a major qualitative increase in the commitment of states that rarely is forthcoming. Most of the growth in international human rights regimes has therefore been "easy" growth that does not naturally lead to further expansion. This would seem to explain the merely incremental growth of almost all international human rights regimes in the post–Cold War era, despite the substantially improved international human rights climate.

We have already considered some of the central factors that explain this pattern of limited growth, emphasizing both awareness and power, which usually are created or mobilized by conceptual changes in response to domestic political action (e.g., women's rights) or international moral shock (e.g., the global regime or torture). By galvanizing support for the creation or growth of a regime and delegitimizing opposition, human rights advocates may make moral interdependence more difficult for states to resist. National commitment, cultural community, and hegemony are of significant importance in the processes of change.

National commitment is the single most important contributor to a strong regime; it usually is the source of the often mentioned "political will" that underlies strong regimes. If a state has a good human rights record, then not only will a strong regime appear relatively unthreatening but also the additional support it provides for national efforts is likely to be welcomed. The European regime's unprecedented strength provides the most striking example of the power of national commitment.

The importance of cultural community is suggested by the fact that the only enforcement regimes are regional. In the absence of sociocultural and ideological consensus, strong procedures are likely to appear too subject to partisan use or abuse to be accepted even by states with good records and strong national commitments.[38] For example, opponents of stronger procedures in the global human rights regime and in single-issue regimes include major countries from all regions with good, mediocre, and poor national human rights records alike. The broad membership of all but the regional regimes undercuts the relative homogeneity that seems almost necessary for movement beyond a promotional regime.

37. For an interesting recent attempt to theorize the national adoption of international human rights norms, based on carefully designed and executed case studies, see Risse, Ropp, and Sikkink (1999).

Finally, we must stress the importance of dominant power and hegemony, which should be kept analytically distinct. Beyond mere dominant power, hegemonic leadership requires substantial ideological resources, a crucial element in the acceptance of, or at least acquiescence in, the authority of the hegemon. The effective exercise of even hegemonic power usually requires not merely dominating material and organizational resources, but also an ideological justification sufficiently powerful to win at least acquiescence from nonhegemonic powers.

Leaders require followers; regime makers need takers. The reasons for taking a regime may be largely accidental or external to the issue, but sometimes the reasons for taking a regime are connected with the ideological hegemony of the proposed project.[39] The seemingly inescapable normative appeal of human rights over the past half century, even during the ideological rivalry of the Cold War, thus is an important element in the rise of international human rights regimes. Power, in the sense that the term traditionally has had in the study of international politics, still is important, but true hegemony often is based on ideological "power" as well. We might even argue that the ideological hegemony of human rights is more important than dominant material power.

A hegemonic idea such as human rights may actually draw power to itself; power may coalesce around, rather than create, hegemonic ideas, such as human rights and the regimes that emerge from them. For example, the overriding ideological appeal of the idea of workers' rights has been crucial to the success of the ILO. In Europe, the "hegemonic" power behind the very strong European regime came not from any single dominant state but from a coalition built around the ideological dominance of the idea of human rights. The ideological hegemony of human rights is essential to explaining the creation of an African human rights regime in the face of the OAU's notorious respect for even the tiniest trappings of sovereignty. The emergence of the global human rights regime cannot be understood without taking account of this impulse, discussed earlier in terms of perceived moral interdependence.

38. The United States presents an exaggerated version of such fears, most strikingly in the U.S. Senate's extended resistance to, for example, the Genocide Convention and the International Covenant on Civil and Political Rights, with which U.S. law and practice already conformed in almost all particulars. These fears, in a less extreme form, are common and widespread.

39. Ruggie's (1982) account of "embedded liberalism" and the importance of the ideology of the welfare state in the creation of postwar economic regimes might be read in this way.

Hegemonic power, however, does ultimately require material power, and even hegemonic ideas have a limited ability to attract such power. Hegemonic ideas can be expected to facilitate states accepting relatively weak regimes, but beyond promotional activities (that is, once significant sacrifices of sovereignty are required) something more is needed. In other words, hegemony too points to the pattern of limited growth noted earlier.

The evolution toward strong promotional procedures can be expected to continue, but we should expect states to resist, usually successfully, efforts to cross over to implementation and enforcement. We have little reason to expect that the 2010 column of Table 8.1 will show many significant changes from 2000.[40] We must not forget, though, how far we have come since 1945.

40. Over the coming decade, I would expect only the development of weak declaratory regimes for the rights of indigenous peoples (see §12.7) and of the disabled (see Degener and Koster-Dreese [1995] and Wallace [1997: chap. 6]). In the dozen years between the first and second editions of this book, the only significant changes were (a) in the genocide regime, which was sufficiently weak and moribund that I did not even include it in the table, and (b) the creation of a weak declaratory minority rights regime.

9/ Human Rights and Foreign Policy

In addition to the activities in the multilateral forums discussed in Chapter 8, human rights have become increasingly important in the bilateral policies of many states. Few states, however, make more than occasional, modest sacrifices of other foreign policy interests in the name of human rights. In this chapter I try to draw attention to both the reality and the limits of states' concern with international human rights.

1. Human Rights: A Legitimate Concern of Foreign Policy?

I want to begin, however, with debates over incorporating human rights concerns into national foreign policies. As John Vincent put it at the outset of *Foreign Policy and Human Rights*, "there is no obvious connection between human rights and foreign policy" (1986: 1). In fact, there are at least three standard arguments against making the connection.

The realist rejects a concern for international human rights because foreign policy ought to be about the national interest defined in terms of power. The statist (or legalist) considers an active concern for the human rights practices of other states inconsistent with the fundamental principle of state sovereignty. The relativist (or pluralist) views international human rights policies as moral imperialism.

These arguments point to problems in overemphasizing human rights in foreign policy. They do not, however, establish that the human rights practices of other states are or ought to be an illegitimate concern of foreign policy.

A. THE REALIST ARGUMENT

Realists see international politics as a struggle between self-aggrandizing states in an environment of anarchy. Faced with a world of (potential or real) enemies and no government to turn to for protection, a concern for power must override just about everything else. To act in any other way—for example, to pursue justice or act out of compassion—would leave one's state open to, even invite, attack. Foreign policy, to use Hans Morgenthau's famous formulation, is