



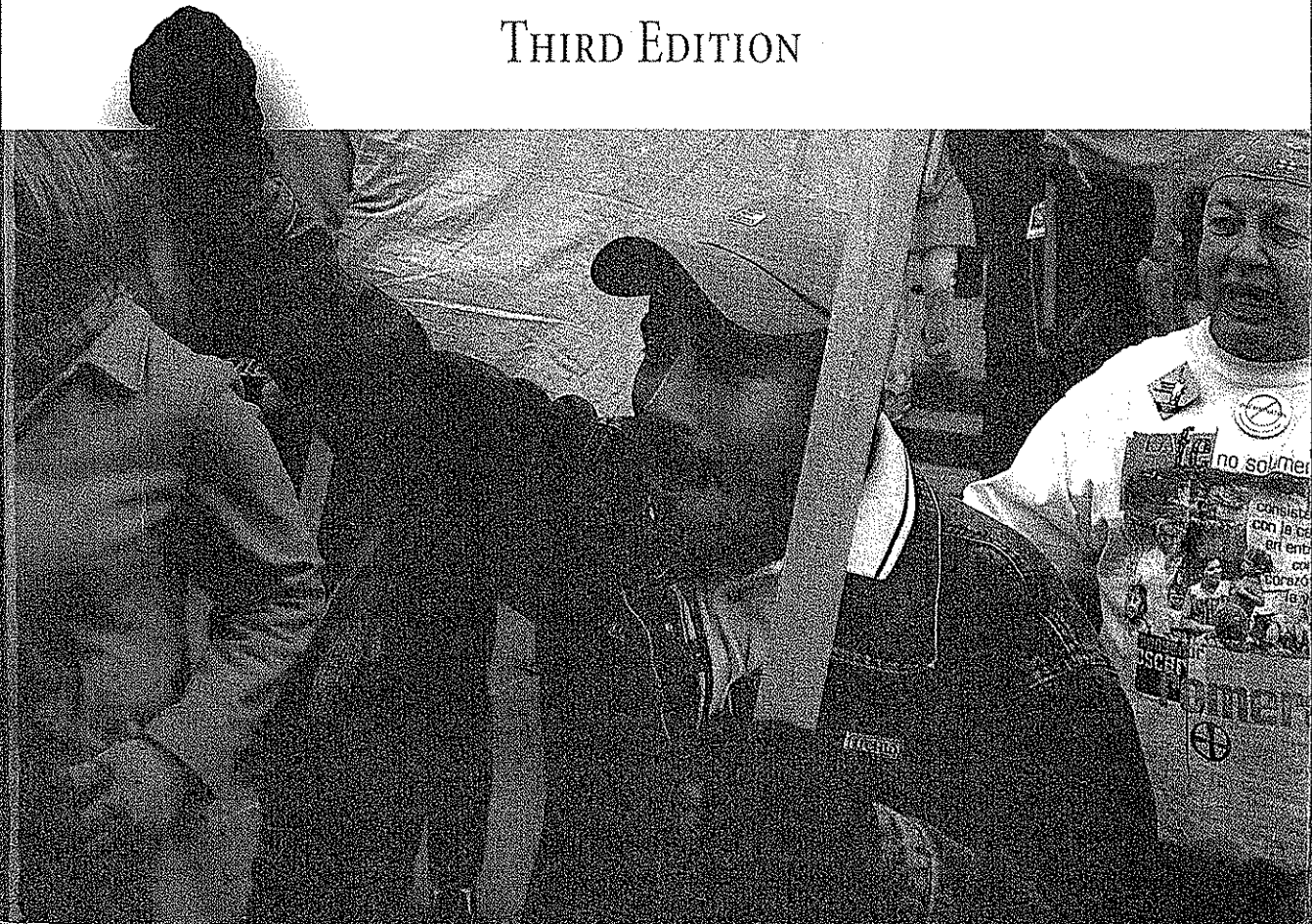
HUMAN RIGHTS IN THE WORLD COMMUNITY

Issues and Action

Edited by

Richard Pierre Claude and Burns H. Weston

THIRD EDITION



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What we must offer
is a vision of human rights
that is foreign to no one
and native to all.

—KOFI ANNAN

Chapter One

International Human Rights: Issues Overviews

THE idea of human rights has wings. It has found its way around the globe, and we are reminded often of its importance everywhere. On any given day, we are likely to be confronted by one or more news stories about individual heroics on behalf of human rights—at home and in every other reach of the world: Americans demanding better conditions for the homeless, adequate health insurance for all, and an end to torture on U.S. military bases near and far; Cuban citizens petitioning for free speech, fair elections, and the rule of democratic law; Brazilian and other indigenous peoples fighting to safeguard their native homelands against colonization and dispossession; Bulgarian women protesting international sex trafficking; Ukrainians standing up to corrupt autocracy in favor of political democracy; Indian and other children marching against abusive and exploitative child labor; Tibetan monks demonstrating against Chinese meddling with cherished customs; Burmese peasants challenging enslavement and forced labor by their military government to build a gas pipeline for a multinational corporation; Congolese women demanding an end to rape and other violence against women in war-torn central Africa; Sudanese minorities appealing—to anyone who will listen—for rescue from widespread atrocity in Darfur; and so forth. The fact that we increasingly classify such issues as human rights problems not only makes moral philosophers of us all but supports also the hunch that we are traversing a twenty-first century in which the idea of human rights shapes the aspirations of people no matter who or where they may be.

Even if human rights are on people's minds all over the world, however, the full realization of human rights worldwide is a distant dream. A truly just world order is not easily or quickly achieved. But the drive for social justice on a global scale, spurred by the experience of Nazi atrocity and ever more revealed in internationally defined human rights norms and procedures, persists nonetheless. As Adolfo Pérez Esquivel put it on receiving the Nobel Peace Prize as long ago as 1980, "The last few decades have seen a more extended and internationalized conscience in respect of human rights, such that we are confronted with and increasingly forced toward a deeper understanding of what the struggle for human rights means."¹

1. Adolfo Pérez Esquivel, "Afterword," in Paul Williams ed., *The International Bill of Rights* (Glen Ellen, Calif.: Entwistle Books, 1981), 105–8, at 105.

In this introductory chapter, we seek to provide a "deeper understanding of what the struggle for human rights means" by looking at the topic from four broad vantage points. First, we review human rights in the context of changing historical concepts and international law. Burns Weston, in the opening essay, explores the concept and content of human rights as the idea of human rights has evolved over the ages and especially since World War II. His underlying presupposition is that human rights, while having achieved widespread consensus about their meaning and application, are nonetheless not a corpus of fixed thought and action but, rather, a set of assumptions and choices that are open to constant rethinking because of ever evolving ideas, conditions, and needs. Second, and illustrating such rethinking, is an essay by Martha C. Nussbaum that introduces us to the "capabilities approach" to human rights, laying out a framework for understanding the Universal Declaration of Human Rights (UDHR)² in terms of the ways its provisions may be understood to enable people to achieve their individual promise and community-based potential. Her concern is to conceptualize and use human rights as a tool for empowerment, especially in the context of those "capabilities" that help to define what it means to be human.

Next, we look to the argument, prominent in the post-Cold War 1990s and early twenty-first century, between those who insist that local practices and traditions should determine the existence and scope of rights promised to individuals and groups versus those who contend that no amount of difference among diverse individuals and cultures should be allowed to obscure the essential universality of human rights. In his essay, "The Universality of Human Rights in a Multicultured World," Burns Weston asserts that proponents of the universality of human rights, a viewpoint to which he subscribes, cannot convincingly succeed without approaching cultural pluralism in a manner that is consistent with the core value of human rights: respect. To this end, he therefore posits a "methodology of respect" for the resolution of competing relativist-universalist claims. Finally, Rhoda Howard-Hassmann focuses on our rapidly changing global political economy captured by the term "globalization." In "The Second Great Transformation: Human Rights Leapfrogging in the Era of Globalization," she challenges us—as thinking, acting agents in world history—to consider the possible long-range human rights outcomes of globalization and particularly whether "The global human rights regime, and the global human rights process, can perhaps remedy some of the dangers of the global economic system."

All four of these readings are intended to provoke rather than soothe. The reader is urged to reflect, discuss, and debate after studying them critically and carefully, taking into account the questions posed at the end of each.

To deepen our understanding of the struggle for global justice, it is important to appreciate at the outset that international human rights bespeak, at bottom, a multidimensional program of legal and political struggle that takes human suffering seriously. As Weston's opening essay suggests, the term "international human rights," far from defining a static or monolithic state of affairs, is code language for a number of different—ever expanding, ever accelerating—initiatives: (a) an attack upon the concept of state sovereignty as traditionally conceived; (b) a goal-setting agenda for global policy; (c) a standard for assessing national behavior and therefore for judging political legitimacy; and (d) a spirited movement of concerned private individuals and groups that transcends political boundaries (an increasingly significant factor in international relations). Let us take an exploratory look at some aspects of these four meanings of international human rights.

2. Adopted Dec. 10, 1948, reprinted and referenced in Documentary Appendix A.

HUMAN RIGHTS AS A CHALLENGE TO STATE SOVEREIGNTY

International law, a complex process of authoritative and controlling decision operating across national and equivalent frontiers, exists, at a minimum, to maintain world order. To this end, by way of an interpenetrating medley of command and enforcement structures both internal and external to nation-states, classical international law has come to rely upon a variety of doctrines, principles, and rules to minimize interstate conflict and otherwise guarantee a world order system of separate territorial states.³

Many, if not most, of these doctrines, principles, and rules—and the institutions and procedures that apply them—have been altered in meaning, challenged in usage, and otherwise thrown into question by the field of international human rights. Consider, for example, the classical international law doctrine of state sovereignty and its corollary of nonintervention, the central props of our inherited state-centric system of world order. The values associated with this doctrine (a legal license to “do your own thing”) and corollary (an injunction to “mind your own business”) rest in uneasy balance with human rights concerns (which seem to tell us that “you are your brother’s and sister’s keeper”). The problem typically arises in the context of the question: Is it appropriate or inappropriate for one state to criticize or interdict the human rights performance of another?

During the 1970s and 1980s, South African diplomats from Pretoria protested when the case of Nelson Mandela (a black political leader long imprisoned because of his opposition to that country’s practice of racial apartheid and discrimination) was publicized at the United Nations. They pointed to Article 2(7) of the UN Charter,⁴ which says that the United Nations may not intervene “in matters which are essentially within the domestic jurisdiction of any state.” Many countries use this ploy. The governments of China, Iran, Myanmar (Burma), Sudan, Syria, Zimbabwe, and others ritually call upon the doctrine of state sovereignty and the principle of nonintervention, particularly when they are on the defensive in respect of their international human rights obligations.⁵ Those governments that abuse human rights (or are accused of doing so) typically plead for restraint, asking outsiders to refrain from interfering, directly or indirectly, individually or collectively, with their internal or external affairs.

The tension between the claims of those who criticize human rights violations and those who protest such interference was the topic of extended analysis by the late legal scholar Sir Hersch Lauterpacht of the United Kingdom. A dominant trend of the last half of the twentieth century, he observed, was one that involved the sovereign state yielding to the “sovereignty of humankind.” In Lauterpacht’s words,

3. It is useful in the human rights context especially to consider a modern, process-oriented definition of international law: “a Hydra-headed [transnational] process of social decision, involving persons at all levels and from all walks of public and private life who, with authority derived both explicitly and implicitly from community consensus or expectation, and supported by formal and informal sanction, effect those codes or standards of everyday conduct by which we plan and go about our lives.” Burns H. Weston, “The Role of Law in Promoting Peace and Violence: A Matter of Definition, Social Values, and Individual Responsibility,” in W. Michael Reisman and Burns H. Weston, eds., *Toward World Order and Human Dignity: Essays in Honor of Myres S. McDougal* (New York: Free Press, 1976), 114–31, at 117.

4. The UN Charter is excerpted in Documentary Appendix A.

5. Similarly, the government of the United States has invoked, at least by implication, Article 2(7) in defense of its continued imposition of capital punishment despite widespread international abandonment and condemnation of the practice. It may be asked whether this invocation of the doctrine of state sovereignty might not be also an example of the invocation of the doctrine of cultural relativism which the United States generally has opposed.

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pendix A.

Insofar as the denial of fundamental human rights has been associated with the nation-state asserting the claim to ultimate reality and utterly subordinating the individual to a mystic and absolute personality of its own, the recognition of these rights is a brake upon exclusive and aggressive nationalism, which is the obstacle, both conscious and involuntary, to the idea of a world community under the rule of law.⁶

This claim is readily understood when we note some of the major historical trends upon which Lauterpacht relied.

With the inception of the modern state system in the mid-seventeenth century, the relation of citizen ("subject") to government was seen to fall within the exclusive jurisdiction of the territorial state, although absolute sovereignty was by no means an historical accident. Religious jealousies and rivalry between kingdoms made the 1600s a century fraught with war, including one of the most destructive civil and international wars in the annals of human history: the Thirty Years War (1618–48). This calamity led princes and potentates to decide that the cycle of violence had to be broken; the territorial integrity of kingdoms had to be insulated from interference from without.⁷

The sixteenth-century French social and political philosopher Jean Bodin (1530?–1596) is best remembered for giving the notion of state sovereignty its classic formulation: The sovereign prince exercises power simply and absolutely and cannot be subject to the commands of another, for it is the sovereign prince who makes the law for the subject. It is only by voluntary agreement that the sovereign can incur an obligation from abroad.

So conceived, the late seventeenth-century world of nation-states would provide each kingdom with a defense of absolute power to overcome the centrifugal forces of jealousy and threat from without. Of course, though this new safety barrier between nations served the cause of human rights by reducing arbitrary killings based on religious and political rivalries, it also was an arrangement that suited well the interests of European monarchs who sought to expand their power often at the expense—indeed the abuse—of their subjects.

Yet, just as the pre-seventeenth-century forces of political centrifugalism provided the counterpoint of sovereign absolutism, so also did the unchecked and commonly abusive displays of sovereign absolutism provoke their own counterpoint. As Weston points out in his opening essay, the philosophy of natural rights associated with John Locke and others began to take hold in much of Enlightenment Europe and America before the nineteenth century. Against unlimited claims of power in the guise of "the divine right of kings," philosophers began to speak of natural rights. In this spirit, Thomas Jefferson wrote from Paris to James Madison: "A bill of rights is what the people are entitled to against every government on earth."⁸ Jefferson's Lockean turn of mind made him realize that natural rights were of limited value if they were not reflected in the fundamental structure of a nation's laws. It was not until after World War II—after the rise and fall of Nazi Germany—that the doctrine of state sovereignty changed dramatically, taking its most radical turn since the Peace of Westphalia (1648) when the state system first emerged. In *Beyond Sovereignty*, Marvin Soroos notes that, in stark contrast to an earlier reverence for the state sovereignty doctrine that "discouraged outside efforts to intervene on behalf of populations victimized by

6. Hersch Lauterpacht, *International Law and Human Rights* (New York: Garland, 1973), 47.

7. James A. Caporoso, "Changes in the Westphalian Order: Territory, Public Authority, Sovereignty," in James A. Caporoso, ed., *Continuity and Change in the Westphalian Order* (Malden, Mass.: Blackwell, 2000), 1–28.

8. Thomas Jefferson, *Writings of Thomas Jefferson*, ed. Paul Leicester Ford, 10 vols. (New York: G.P. Putnam, 1892–99), 4: 477.

even the most cruel and tyrannical of rulers,"⁹ the defense of unrestricted sovereignty was increasingly challenged during the twentieth century, "especially in the aftermath of revelations of the horrors of the atrocities committed by the Nazis against the Jews during World War II, which led many commentators to conclude that state sovereignty was not an absolute principle, but rather was subject to certain limitations in regard to human rights."¹⁰

In short, as Weston makes clear, human rights came of age as a legitimate international concern with the close of World War II, the founding of the United Nations, and the adoption of the Universal Declaration of Human Rights by the UN General Assembly in 1948,¹¹ and as a consequence such weighty issues as the proper limits of state sovereignty came to occupy a central place on the agendas of most governments and international institutions. Since World War II and its immediate aftermath, individuals have become subjects of international concern, not only as the charges of a sovereign state, but directly and in their own right; and on this radical foundation the scaffolding of contemporary international human rights law and policy has been erected. It is a modern structure, cantilevered and often fundamentally at odds with the classical international law doctrine of state sovereignty. No longer can it be said, in the early twenty-first century, that the state may treat its own citizens however it may wish, unaccountable to the international community beyond. No longer can it be said internationally that "the king can do no wrong." Whatever perception may have prevailed when the Westphalian system first gave rise to the notion of state sovereignty in the mid-seventeenth century, today that notion clearly carries with it the obligation of a state to protect the welfare of its own people and to meet its obligations to the wider international community.

HUMAN RIGHTS AS AN AGENDA FOR PREFERRED WORLD POLICY

The field of international human rights has achieved the comprehensive and elevated global status of preferred world public policy. It supplies a framework for a world order of human dignity.

Such is the thesis, at any rate, of international human rights scholars Myres S. McDougal, Harold Lasswell, and Lung-chu Chen, who have led the way in urging others to facilitate the development of global policy with reference to the values that "are being ever more insistently expressed in the rising common demands . . . of people everywhere"¹² and that consequently supply the menu for global human rights study and action. Demands for *respect* (insisting, for example, on nondiscrimination), for *power* (reflected in appeals for wider political participation), and for *wealth* (including calls to accumulate and employ wealth for productive developmental purposes) are among the more obviously important value demands recognized. But also important and sometimes primary are those relating to *enlightenment* (involving the enjoyment of knowledge and information), *well-being* (embracing

9. Marvin S. Soroos, *Beyond Sovereignty: The Challenge of Global Policy* (Columbia: University of South Carolina Press, 1987), 230.

10. *Ibid.* See generally Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen*, 2nd ed. (Philadelphia: University of Pennsylvania Press, 2003).

11. See generally Aryeh Neier, *Taking Liberties: Four Decades in the Struggle for Rights* (New York: Public Affairs, 2003).

12. Myres S. McDougal, Harold Lasswell, and Lung-chu Chen, *Human Rights and World Public Order: The Basic Policies of an International Law of Human Dignity* (New Haven, Conn.: Yale University Press, 1980), 90.

assurances of individual and group health and survival), *skills* (for example, seeking to optimize talents and to overcome handicaps), *affection* (including the freedom to give and receive loyalty to groups of one's choice), and *rectitude* (requiring, optimally, a public order in which one can act responsibly for the common interest). Human rights, conceived in terms of these eight values, involve the underlying concerns of a world public order of human dignity, and they delineate the focus for intellectual inquiry and appraisal in the field we have come to call human rights. According to McDougal and his colleagues, we live in an era characterized by "an overriding insistence, transcending all cultures and climes, upon the greater production and wider distribution of all basic values, accompanied by increasing recognition that a world public order of human dignity can tolerate wide differences in the specific practices by which values are shaped and shared, so long as all demands are effectively appraised and accommodated in terms of common interest."¹³

Complementing the eight values underlying the human rights world of McDougal, Lasswell, and Chen is a more reductive model that concentrates on three sets of values. Described by Weston in his essay in this chapter and referred to throughout this book, the model invokes the notion of three accumulating "generations" of human rights elaborated by French human rights specialist Karel Vasak¹⁴ and tracking the French revolutionary slogan: *liberté, égalité, et fraternité*. The civil and political rights of pre-nineteenth-century origin belong to the first (*liberté*) generation. The economic, social, and cultural rights surfacing largely in the last one hundred years comprise the second (*égalité*) generation. The third generation of rights, which is currently emerging from both the rise and decline of the nation-state in the dawning of the twenty-first century, parallels the notion of *fraternité* (and *sororité*). The notion is born of the kinship and indispensable solidarity of men and women everywhere—for example, claims of right to political and economic self-determination; claims of right to the "common heritage of [hu]mankind"; claims of right to a clean and healthy global environment; and claims of right to national and international peace. Of course, the three-generations perspective is not meant to undermine the holistic nature of the human rights agenda. Nor is it meant to suggest that one set of rights is more important than the other or to deny that all human rights are inextricably interconnected and interdependent. Rather, the generational categories simply draw attention to the sequence whereby the agenda has evolved and to the range and scope of human needs that are linked to human rights.

The connections among law, politics, and values implied by the global human rights agenda relative to human needs have stimulated considerable scholarly analysis by such philosophers as Martha C. Nussbaum, Henry Shue, and Amartya Sen, and such social scientists as Michael Freeman, Adamantia Pollis, and Peter Schwab.¹⁵ Johan Galtung and Anders Helge Wirak also have elaborated a model of human values linked to human needs

13. *Ibid.*, 6. See also Jonathan Glover, *Humanity: A Moral History of the Twentieth Century* (New Haven, Conn.: Yale University Press, 1999).

14. Karel Vasak, "A 30-Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights," *UNESCO Courier* (Nov. 1977): 29–32. See the related analysis by Stephen P. Marks: "The Peace-Human Rights-Development Dialectic," *Bulletin of Peace Proposals* 4 (1980): 339–47; "Emerging Human Rights: A New Generation for the 1980s?" *Rutgers Law Review* 33 (1981): 435–52.

15. See Martha C. Nussbaum, *Sex and Social Justice* (New York: Oxford University Press, 1999); Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy* (Princeton, N.J.: Princeton University Press, 1996); Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Oxford University Press, 1981), and "Justice Across Borders," in Pablo De Greiff and Ciaran Cronin, eds., *Global Justice and Transnational Politics* (Cambridge, Mass.: MIT Press, 2002), 37–52; Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Cambridge: Polity Press, 2002); Adamantia Pollis and Peter Schwab, eds., *Human Rights: Cultural and Ideological Perspectives* (New York: Praeger, 1979).

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and concepts of rights that is particularly useful in the analysis of economic and political development.¹⁶ Their model is set out in the introduction to Chapter 3 of this text, where it helps guide our thoughts about basic human needs relative to second- and third-generation human rights, with special attention to issues vital to developing countries, the particular focus of the annual United Nations *Human Development Report*. The official responsible for the UN Report, Sakiko Fukuda-Parr, noted that "while human rights are rooted in the concept of human dignity, human development is rooted in the concept of 'capability and function'—the valuable things that a person can do."

This practical action-based perspective focuses on what people are able to do to improve their lot under diverse conditions. The special concern of the second essay in this chapter is to introduce us to Nussbaum's "capabilities approach" to human rights, which is helpful in assessing development efforts, welfare, and quality of life issues. The utility of the "capabilities approach" becomes evident when we look at a political system such as that under Taliban-ruled Afghanistan where women had a nominal right of freedom of movement, without having the right in the sense of capability; for example they were routinely threatened with violence should they leave the home unaccompanied by a man, a circumstance said to be justified by local culture.

Not everyone agrees on the importance of cultural difference in relation to global human rights standards. Adamantia Pollis and Peter Schwab, for example, have forcefully argued that efforts to paper over differences from society to society with rhetoric about universal human rights is bound to generate skepticism and frustration. In "Human Rights: A Western Construct with Limited Applicability," they rely on theories of cultural relativism to assert that

The cultural patterns, ideological underpinnings and developmental goals of non-Western and socialist states are markedly at variance with the prescriptions of the Universal Declaration of Human Rights. Efforts to improve the Declaration as it currently stands not only reflect a moral chauvinism and ethnocentric bias but are also bound to fail.¹⁷

An unintended political result of reliance upon cultural relativism, however, is that the notions associated with it can easily give comfort to tyrants who justify abusive practices by virtue of historical sanction in local custom: for example, amputation of limbs as punishment for crime in some countries or the cruel practice of "female genital mutilation" in others. The complex problems of universal versus local standards of civility have been carefully explored by researchers associated with the Sudanese legal scholar Abdullahi Ahmed An-Na'im in *Human Rights in Cross Cultural Perspectives*.¹⁸ They seek to explore human rights issues in anthropological terms through multiple viewpoints, both cross-cultural and indigenous, in a quest for consensus. An-Na'im acknowledges that universalizing western concepts can serve (and historically in his native Africa has served) as a tool for colonial

16. Johan Galtung and Anders Helge Wirak, "Human Needs and Human Rights—A Theoretical Approach," *Bulletin of Peace Proposals* 1 (1977): 251-58.

17. Adamantia Pollis and Peter Schwab, "Human Rights: A Western Construct with Limited Applicability" in *Human Rights: Cultural and Ideological Perspectives*, note 15, at 14. Cf. Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Era of Globalization* (Berkeley: University of California Press, 2004).

18. Abdullahi Ahmed An-Na'im, ed., *Human Rights in Cross Cultural Perspectives: A Quest for Consensus* (Philadelphia: University of Pennsylvania Press, 1991). See also Abdullahi An-Na'im and Francis M. Deng, eds., *Human Rights in Africa: Cross Cultural Perspectives* (Washington, D.C.: Brookings Institution, 1990). Cf. Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002).

penetration. He acknowledges as well that cultural relativism has been used by some African, Asian, and Latin American rulers to justify their domination and abuse of the people. The comparable conclusion has been offered by the Japanese scholar Yoshikazu Sakamoto: "Both Western universalism and non-Western specificity are capable of being distorted in such a way as to prevent international application of human rights."¹⁹

In his essay on this topic presented in this chapter as Reading 3, Burns Weston addresses these issues with special attention to theories of justice in the cross-cultural setting. He asserts both that cultural diversity does not alone convincingly serve as justification for failure or refusal to honor internationally defined human rights and that the international law of human rights as ordinarily espoused does not alone convincingly serve as justification for failure or refusal to honor cultural diversity. In "The Universality of Human Rights in a Multicultural World: Toward Respectful Decision-Making," he relies on the "policy-oriented approach" of McDougal, Lasswell, and Chen and the "veil of ignorance" perspective of John Rawls to provide a framework within which to accept or reject cultural claims favoring exemptions from universal standards.²⁰ Weston's objective is to lay out the elements of a methodology that treats diverse cultural claims respectfully and demonstrates that cross-cultural decision-making bearing on human rights issues—the relativist-universalist debate in this instance—can by no means be a "simpleminded affair." Dialogue across cultures and societies is an essential component of any international project and brings to life every single major human rights covenant, convention, and declaration containing a nondiscrimination clause, including Article 3 of the UN Charter on which this positive law and norm is premised. Article 3 states that a major purpose of the organization is to achieve and promote respect for human rights and fundamental freedoms for all without discrimination as to race, sex, language, and religion. Indeed, abhorrence of all kinds of unfair and unequal treatment of people pervades the entire field of the international law of human rights—a leitmotif—and sets up important barriers to claiming that culturally based customs justify discrimination irrelevant to merit and need.

HUMAN RIGHTS AS A STANDARD FOR ASSESSING NATIONAL BEHAVIOR

In an essay surveying positive international human rights law, Theo C. van Boven, former Director of the UN Division of Human Rights, correctly notes that the mandate extended to the UN Commission on Human Rights in 1946 to prepare an "international bill of rights" was inspired by, among other things, "the desire to establish a comprehensive system for the promotion and protection of human rights."²¹ The resulting 1948 UDHR, the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR),²² and 1966

19. Yoshikazu Sakamoto, "Human Rights Are Universal," *UNESCO Courier* 6 (Aug.–Sept. 1982): 19–22. This issue is extensively analyzed by Alison Dundes Renteln, *International Human Rights: Universalism Versus Relativism* (Newbury Park, Calif.: Sage, 1990). See also Joanne R. Bauer and Daniel A. Bell, *The East Asia Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999).

20. For related and contrasting views, see John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971). Cf. William F. Schultz, *In Our Own Interest: How Defending Human Rights Benefits Us All* (Boston: Beacon Press, 2002); Alan Dershowitz, *Rights from Wrongs: The Origin of Human Rights in the Experience of Injustice* (New York: Basic Books, 2004).

21. Theo C. van Boven, "Survey of the Positive Law of Human Rights," in Karel Vasak, ed., *The International Dimensions of Human Rights*, 2 vols., rev. and ed. Philip Alston (Westport, Conn.: Greenwood Press for UNESCO, 1982), 1: 85–110, at 87.

22. Concluded Dec. 19, 1966, reprinted and referenced in Documentary Appendix A.

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International Covenant on Civil and Political Rights (ICCPR),²³ which together have come to be called the international bill of rights, went a long way toward this end.

But these trailblazing instruments were clearly only the beginning, not the end, of international human rights law-making in the United Nations and elsewhere. Supplementing the Universal Declaration and the two covenants, in the years preceding and since, have been literally scores of other human rights conventions (treaties) and law-making declarations less well known to the general public but nonetheless representative, in their totality, of what is considered the international "corpus juris of social justice."²⁴ These include, *but are not limited to*, treaties that fall into the following four categories of human rights instruments:²⁵

1. General conventions, which concern all or a large portion of human rights and adopted at the global or regional level.
2. Topically specific conventions, which are intended to guard against particular human rights abuses, e.g., genocide, war crimes, and crimes against humanity, slavery, traffic in persons, forced labor, and torture.
3. Conventions on group protection, which correspond to the special needs of distinct groups, such as children, indigenous peoples, migrants, refugees, stateless persons, women, workers, and combatants, prisoners, and civilians in time of armed conflict.
4. Conventions prohibiting discrimination, based on race or sex, and in education, employment, and occupation.

In van Boven's words, "International human rights law," since World War II especially, "has been developing in an unprecedented way and has become a very substantive part of international law as a whole."²⁶

Proof that international human rights law "has become a very substantive part of international law as a whole," serving as a standard against which to measure national behavior, is found, of course, in the human rights protestations of states, international governmental institutions, transnational professional associations, corporations, trade unions, churches, nongovernmental organizations (NGOs), and others who variously respond to distress signals from abroad on the basis of these instruments. Mindful that human rights assessments can be politically as well as juridically significant because they can appreciably enhance or detract from the legitimacy upon which governments depend to retain and exercise power, all of these actors believe themselves to be, particularly in this age of relatively easy access to the Internet and other sophisticated communications technologies, more or less free to

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endix A.

23. Concluded Dec. 19, 1966, reprinted and referenced in Documentary Appendix A.

24. Van Boven, "Survey of the Positive Law," note 21, at 88.

25. Starting with the American Declaration on the Rights and Duties of Man (March 30-May 2, 1948), referenced in Documentary Appendix B, and shortly thereafter the UDHR, a lengthy list of declarations and resolutions has shaped and defined the content of fundamental rights. While declarations and resolutions, adopted by such international organizations as the United Nations or the Organization of American States (OAS), do not always give rise to "rights" in the positive law sense that treaties are said to do, they invariably contain "rights" in the aspirational sense that are expected to be respected globally and consequently afford a basis for evolving standards of *customary* international human rights law. For convenient sources of international human rights instruments, including declarations and resolutions as well as treaties, see Documentary Appendixes A and B. See also United Nations, Office of the High Commissioner for Human Rights, *International Human Rights Instruments* (New York: United Nations Publications, 2004) (hereafter *UN Instruments*), Available on the UN Web site: <http://www.unhchr.ch/html/intinst.htm> and on CD-ROM, *Human Rights: A Compilation of International Instruments*, UN Sales # E.03.XIV.6. Additionally, see Burns H. Weston and Jonathan C. Carlson, eds., *International Law and World Order: Basic Documents*, 5 vols. (Ardsley, N.Y.: Transnational Publishers, 1994-), esp. vol. 3.

26. Van Boven, "Survey of the Positive Law of Human Rights," note 21, at 87.

criticize governments for their human rights failings and to use state assent to treaties and other sources of international human rights law as the warrant of their disapproval.

Fault-finding, however, can be a dangerous enterprise, marred by dogmatism and self-righteousness and consequently capable of exacerbating international tensions in the most severe ways. International human rights law, therefore, ought not to be invoked for the imposition of one set of values to the detriment of others. With the advent of improved international communications, global politics is a highly pluralized debate, and that debate includes the issue of how, in a world of diverse cultures, basic demands for human dignity can be satisfied while simultaneously accommodating widely differing views of what human dignity means. It is well to be skeptical of the popular wisdom that internationally prescribed human rights are common to all cultural traditions and adaptable to a great variety of social systems and structures.²⁷ As Michael Freeman reminds us, human rights universalism has to compete with "the view that there are different cultural interpretations of human rights."²⁸

Still, while no political regime is without its shortcomings where human rights performance is concerned, neither is any political regime today inclined to disavow intentionally prescribed human rights standards—at least not publicly—as if to confirm La Rochefoucauld's wise observation that "hypocrisy is the homage which vice pays to virtue." Even though the human rights achievements of different political regimes vary and even though they do not yet represent the realization of a comprehensive conception of human dignity, the human rights standards that have been adopted internationally have become a major feature of the world's political landscape. These standards, representing the most inclusive recognition of rights possible within the political, ideological, and cultural constraints of our current global system, reflect a consensus among states as to the existence of certain minimal individual and group rights within their respective jurisdictions, rights that member states of the UN have agreed to recognize, promote, and protect, and for which, therefore, the states are properly held accountable. Today, the legitimacy of political regimes—hence their capacity to rule non-coercively—is judged less by the old standards of divine right, revolutionary heritage, national destiny, or charismatic authority, and more by new standards informed and refined by the language of international human rights.

HUMAN RIGHTS AS A POPULIST WORLDWIDE MOVEMENT INFLUENCING INTERNATIONAL RELATIONS

In concluding that international human rights law has been generated largely in response to "political or social concerns of a widely-felt character," Theo van Boven cites the work of many NGOs.²⁹ The persistent pressure of Amnesty International on the UN General Assembly to adopt a Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment, for example, or of the American Jewish Committee to win the General Assembly's acceptance of a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, for another, lends credence to the

27. See Jack Donnelly, *Universal Human Rights*, 2nd ed. (Ithaca, N.Y.: Cornell University Press, 2002); Rhoda E. Howard and Jack Donnelly, "Human Dignity, Human Rights, and Political Regimes," *APSR* 80 (Sept. 1986): 801–18. For a vigorous reply to the authors' thesis that internationally defined human rights require the existence of a liberal regime, followed by a spirited rejoinder by the authors, see Neil Mitchell, "Liberalism, Human Rights and Human Dignity," *APSR* 81 (Sept. 1987): 921–27.

28. Freeman, *Human Rights*, note 15, at 103.

29. Van Boven, "Survey of the Positive Law of Human Rights," note 21, at 88.

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University Press, 2002); Political Regimes," *APSR* tionally defined human nder by the authors, see pt. 1987): 921–27.

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conclusion that international human rights law has been greatly advanced by global popular support. In van Boven's words, "one of the specific traits of international human rights law is that this branch of international law extends well beyond the domain of international judicial decisions and intergovernmental practice."³⁰ It is directly influenced and advanced by an international movement; and as states and the United Nations fall short in the defense of human rights, as James Avery Joyce has written, "it is the non-governmental groups who are steadily forming a global if not yet systematized movement of investigation, protest and reform."³¹ Such groups, in no way bound by the norms of nonintervention applicable to states, maximize the free flow of information across borders, spreading the word on human rights violators. While governments dally with "quiet diplomacy," non-governmental human rights groups turn up the volume on complaints to "mobilize shame" in the relationship of offender states to the world community and to enlist world public opinion against egregious rights violations.³² Such human rights interest groups have proliferated and continue to do so.

In the decades since 1945, the cold war, nationalism, and power politics have largely undermined any expectation that states would police each other, and that the United Nations would somehow enforce and protect internationally defined human rights. But NGOs have begun to fill the gap. Claude E. Welch, Jr., who has written extensively about NGOs, reports that the number of "conventional" NGOs, which stood at 973 in 1956, has roughly doubled each decade since.³³ International groups such as Amnesty International and strictly national groups such as the Cambodian Health and Human Rights Network or the Ethiopian Professionals Action Group, for example, use the politics of information gathering and advocacy to maximize the free flow of information across borders, spreading the word on human rights violations around the globe. All of these organizations greatly increase the numbers of people worldwide who are engaged in human rights activities. The international law of human rights has, in other words, an attentive global constituency.

These human rights interest groups are also diverse. They include trade unions and business organizations, professional societies, single-issue and policy reform groups, political organizations, and ethnic, ideological, and religious entities. A minority deal exclusively in the human rights field. Most are human rights "part-timers," special purpose groups that make human rights activities a significant but not exclusive part of their concerns: trade unions and political parties as well as religious organizations (such as the Simon Weisenthal Center, the Human Rights Office of the National Council of Churches in Korea, Pax Romana, the International Movement of Catholic Lawyers, the Society of Friends, the International Human Rights Program of the Disciples of Christ, and so forth). Indeed, the humanitarian concerns of various churches, including Bahá'í, Buddhist, Hindu, and Muslim groups, have drawn their faithful into promoting human rights through action as well as through education. As one observer of the international human rights movement, José Zalaquett, has remarked, "a union, by virtue of its own nature, will have the central objective to advance the interest and labor rights of its members; a political party will aspire, by definition, to

30. *Ibid.*, 110.

31. James Avery Joyce, *The New Politics of Human Rights* (New York: St. Martin's Press, 1978), chap. 3, "Mobilization of Shame," 79. See also Robert F. Drinan, S.J., *The Mobilization of Shame: A World View of Human Rights* (New Haven, Conn.: Yale University Press, 2001); Claude E. Welch, Jr., ed., *NGOs and Human Rights: Promise and Performance* (Philadelphia: University of Pennsylvania Press, 2002).

32. For pertinent discussion, see Reading 31 by Richard Pierre Claude in Chapter 8 of this volume.

33. Welch, *NGOs and Human Rights*, note 31, at 1 (quoting from the Union of International Associations, *Yearbook of International Organizations 1996–97*, available at <http://www.uia.org/uiastats>).

political power; any given church will not regard the task of defending and promoting human rights as necessarily its exclusive or central programme."³⁴

In fact, however, numerous trade unions and political parties and church groups do have goals and programs that touch significantly upon human rights concerns as a matter of routine. As Zalaquett himself observes, many such organizations, with memberships and affiliations crossing national frontiers, have in recent years reformulated existing projects or started new ones using the language of human rights or invoking international standards. Many of these and equivalent transnational groups, such as the American Association for the Advancement of Science, have incorporated human rights objectives into their scheme of goals, and many have institutionalized these interests by setting up human rights offices to monitor the problems of their counterparts, confreres, or co-religionists in distant lands.³⁵

This proliferation and diversification of human rights groups lends support, logically, to a new perspective on international relations. This new viewpoint emphasizes the significance of nonstate actors and rejects the conventional wisdom of international law and relations defined exclusively or nearly exclusively by the behavior of states and of international organizations composed of states. Modern communication and transportation technologies have made the classical notion of world politics obsolete. Territorial boundaries, however much bolstered by doctrines of sovereignty, are no longer impregnable—indeed, they are downright porous. Drugs, pollutants, illegal aliens, and terrorists manage to get through these boundaries, to be sure; but so too, and more importantly in the long run, does information. No longer does the world consist of independent sovereign states, impenetrable to anything but the influence of other states in direct proportion to the size and resources of such other states (what British international relations theorist John W. Burton has called "billiard-ball-like states").³⁶

Many view some features of the new international relations format as favorable to international human rights. According to Abid Hussain of India, former Special Rapporteur of the UN Commission on Human Rights on the Promotion and Protection of the Right to Freedom of Opinion and Expression, global communication via the Internet has been beneficial for human rights, transforming "the lives of people, including those who have previously been ignored by societies or disinherited of their rights."³⁷ By delivering cheap access to information, and by providing forums for debate in countries where the media are monopolized, the Internet offers the disenfranchised an opportunity to participate in solutions to their own misery. The Internet can be used to mobilize people locally. For example, electronic mail campaigns against corruption influenced Korea's 1999 elections and played a key role in publicizing the scandals that ultimately deposed President Joseph Estrada of the Philippines in 2000. E-mail and the Internet can also surmount international barriers.

34. José Zalaquett, *The Human Rights Issue and the Human Rights Movement* (Geneva: Commission of the Churches on International Affairs, World Council of Churches, 1981), 30–31. See also Pontifical Commission, "Justicia et Pax," *The Church and Human Rights*, Working Paper 1 (Vatican City, 1975); Lutheran World Federation, *Theological Perspectives on Human Rights: Report of an LWF Consultation on Human Rights* (Geneva: Lutheran World Federation, 1977).

35. See, e.g., Richard Pierre Claude, *Science in the Service of Human Rights* (Philadelphia: University of Pennsylvania Press, 2002), chap. 10, "Emerging Governance Among Transnational Organizations," 178–96.

36. In Michael Banks, "The International Relations Discipline: Asset or Liability for Conflict Resolution?" in Edward A. Azar and John W. Burton, eds., *International Conflict Resolution: Theory and Practice* (Boulder, Colo.: Lynne Rienner, 1986), 5–27, at 18–19. See also R. J. Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986).

37. Steven Hick, Edward F. Halpin, and Eric Hoskins, eds., *Human Rights and the Internet* (New York: St. Martin's Press, 2000), x.

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NGOs, working within and outside countries with tyrannical regimes, can use communications technology to bypass government control and communicate directly with ordinary citizens to send data on human rights violations to concerned NGOs overseas. Where governments exert tight control over Internet use by their own citizens, as in Vietnam or Burma, web sites communicate with expatriate communities, sympathetic foreign audiences, and also with internal groups who are able to access the Internet illegally by dialing out of the country using mobile telephony. The United Nations Human Development Report estimates that in 2005 one billion people have access to the Internet, although distribution shows the North greatly advantaged over the South.³⁸ The *Report* comments: "Connecting a major portion of the population will be a challenge in developing regions. But the digital divide need not be permanent if technological adaptations and institutional innovations expand access."³⁹

Twenty-first-century conditions have rushed us into a new, more interconnected world of far reaching rapid change that scholars and activists call "globalization," a term that refers to, inter alia, the interaction of information technology and the global economy.⁴⁰ Globalization spans not only the growing interdependence of economic relations—trade, investment, finance, and the organization of production globally—but also social and political interactions among organizations and individuals across the world. As the modern Internet and the worldwide web proved popular by the turn of the century, it became tempting, especially for those who overlooked the "digital divide," to see technological developments as the key to understanding the meaning of change in our time and to deciphering its historical direction as both benign and inevitable.⁴¹ Rhoda E. Howard-Hassmann gives pause to such optimism in her contribution to this volume (Reading 4): "The Second Great Transformation: Human Rights Leapfrogging in the Era of Globalization." She brings insight and prudent scepticism to these issues in a wide ranging exercise in "scenario analysis" that helps readers envision alternative futures, both benign and adverse for the prospect of human rights in the context of globalization. A grand speculative inquiry addressed to the future, her essay is concerned with our shrinking world, ever more interdependent environmentally,

38. United Nations, "Today's Technological Transformation—Creating the Network Age," in *Human Development Report, 2001* (New York: Oxford University Press for the United Nations Development Programme, 2001), chap. 2, 35.

39. Responding to fears that the Internet will not serve less developed countries, OneWorld, an NGO, and the Dutch development aid agency, Hivos, have joined forces to help organizations based in developing countries to use the Internet for sustainable development and human rights. The initiative includes helping hundreds of South-based NGOs to go online, connect to sources of support and training, and to build online gateways promoting regional perspectives from civil society in Africa, Latin America, and South Asia. In a comparable initiative, in 2004, the University Human Rights Network headquartered in São Paulo, Brazil, began publishing *SUR*, an international journal on human rights designed to promote scholarly interchange in the Southern Hemisphere and to do so by making it fully available in English, Spanish, and Portuguese on the Internet at <http://www.Surjournal.org>. From the extreme top of the home page, select "English | Español | Português."

40. The literature on "globalization" is vast. It is also contentious and multidisciplinary. See, e.g., Zbigniew Brzezinski, *The Choice: Global Domination or Global Leadership* (New York: Basic Books: 2004); Steve Chan and James R. Scarritt, *Coping with Globalization: Cross-National Patterns in Domestic Governance and Policy Performance* (Portland, Ore.: Frank Cass, 2002); Ian Clark, *Globalization and International Relations Theory* (Oxford: Oxford University Press, 1999); Pablo De Greiff and Ciaran Cronin, eds., *Global Justice and Transnational Politics* (Cambridge, Mass.: MIT Press, 2002); Richard A. Falk, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World* (New York: Routledge, 2000) and *Predatory Globalization: A Critique* (New York: Polity Press, 1999); Carol C. Gould, *Globalizing and Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004); Mahmood Monshipouri, Neil Englehart, Andrew J. Nathan, and Kavita Philip, eds., *Constructing Human Rights in the Age of Globalization* (Armonk, N.Y.: M.E. Sharpe, 2003).

41. See Hick, Halpin, and Hoskins, *Human Rights and the Internet*, note 37.

economically, politically, culturally, and socially. Her thesis—that the effects of globalization, so understood, may take on positive or negative connotations depending upon what we make of them—challenges us to take responsibility for whether our growing interconnectivity will nurture a global community committed to humane governance and shared human rights for all or whether, instead, it will produce an Orwellian scenario of centralized control of the levers of technology by self-serving elites tied to a nightmare process of enriching the North while impoverishing the South. Of course, there are alternative futures in between, beneficial, adverse, and mixed. The question is: have we the imagination and will to choose and shape wisely?

In Howard-Hassmann's view, globalization is inevitable, neither good nor bad in and of itself, but good or bad or in between depending upon how we respond to it. If globalization is to be directed toward positive ends, we have at hand, she argues, a powerful tool in contemporary international human rights law. Astutely applied to policy processes in a globe webbed by networks of interconnected and interconnecting state and nonstate actors, the human rights cause can benefit greatly. In the context of politics as an integrated process operating in a single community, states constitute an important subsystem in the global social community. But they are by no means the only, or even the principal, actors. Nonstate actors, such as human rights NGOs, have significant influences on the international scene. If gross violations of human rights in one part of the globe drive refugees in unmanageable numbers elsewhere in search of asylum, human rights groups, sometimes more reliably than governments, may send the early warning signals. Church groups may supply essential sanctuary despite government apathy or hostility. Private organizations and research institutions may supply the most reliable accounts of the social costs of these and similar events. And all those involved will have the capacity to allocate blame and urge responsibility for the displaced.

The idea of human rights, then, has talons as well as wings. It increasingly shapes the aspirations of people around the globe. However, new issues linked to globalization raise questions about whether human rights can not only shape aspirations of people world wide but also fulfill them.

In 2000, heads of state and government gathered in New York to mark the dawn of the new millennium by reaffirming faith in the goals of the UN Charter and to resolve that the evolving processes of globalization should become a positive force for everyone.⁴² In 2004, following up on the Millennium Declaration, the World Commission on the Social Dimension of Globalization, an independent creation of the International Labor Organization (ILO), issued an in-depth assessment of globalization and reported, *inter alia*, that, in the long run, globalization harbors, potentially, an ever-widening commitment to shared humane values that "can be channeled to build enlightened and democratic governance in the interests of all."⁴³ However, in the short run, the Report warned, while established and emerging market economies are clearly creating unprecedented wealth as a result of their new interconnectedness, "too few countries and peoples are sharing in [the] benefits" and "the revolution in global communications heightens awareness of [the] disparities." All of which leaves us, at the very least, with a wide range of issues at the global level that need urgently to be addressed. Whether or not international human rights law and policy can succeed at playing a constructive and moderating role when facing these issues cannot yet be told. But taking into account the ensuing contributions of Weston, Nussbaum, and Howard-Hassmann is a good place to begin.

42. United Nations Millennium Declaration (Sept. 8, 2000), referenced in Documentary Appendix B.

43. Report of the World Commission on the Social Dimension of Globalization, *A Fair Globalization: Creating Opportunities for All* (Geneva: International Labor Organization, 2004), x.

I. BURNS H. WESTON, *Human Rights: Concept and Content*

It is a common observation that human beings everywhere demand the realization of diverse values or capabilities to ensure their individual and collective well-being. It also is a common observation that this demand is often painfully frustrated by social as well as natural forces, resulting in exploitation, oppression, persecution, and other forms of deprivation. Deeply rooted in these twin observations are the beginnings of what today are called "human rights" and the national and international legal processes that are associated with them.

HISTORICAL DEVELOPMENT

The expression "human rights" is relatively new, having come into everyday parlance only since World War II, the founding of the United Nations in 1945, and the adoption by the UN General Assembly of the Universal Declaration of Human Rights in 1948.¹ It replaced the phrase "natural rights," which fell into disfavour in part because the concept of natural law (to which it was intimately linked) had become a matter of great controversy; and it replaced as well the later phrase "the rights of Man," which was not universally understood to include the rights of women.

ORIGINS IN ANCIENT GREECE AND ROME

Most students of human rights trace the origins of the concept to ancient Greece and Rome, where it was closely tied to the doctrines of the Stoics, who held that human conduct should be judged according to, and brought into harmony with, the law of nature. A classic example of this view is given in Sophocles' play *Antigone*, in which the title character, upon being reproached by King Creon for defying his command not to bury her slain brother, asserted that she acted in accordance with the immutable laws of the gods.

In part because Stoicism played a key role in

its formation and spread, Roman law similarly allowed for the existence of a natural law and with it—pursuant to the *jus gentium* ("law of nations")—certain universal rights that extended beyond the rights of citizenship. According to the Roman jurist Ulpian, for example, natural law was that which nature, not the state, assures to all human beings, Roman citizens or not.

It was not until after the Middle Ages, however, that natural law became associated with natural rights. In Greco-Roman and medieval times, doctrines of natural law concerned mainly the duties, rather than the rights, of "Man." Moreover, as evidenced in the writings of Aristotle and St. Thomas Aquinas, these doctrines recognized the legitimacy of slavery and serfdom and, in so doing, excluded perhaps the most important ideas of human rights as they are understood today—freedom (or liberty) and equality.

For the idea of human rights qua natural rights to gain general recognition, therefore, certain basic societal changes were necessary, changes of the sort that took place gradually, beginning with the decline of European feudalism from about the thirteenth century and continuing through the Renaissance to the Peace of Westphalia (1648). During this period, resistance to religious intolerance and political and economic bondage; the evident failure of rulers to meet their obligations under natural law; and the unprecedented commitment to individual expression and worldly experience that was characteristic of the Renaissance all combined to shift the conception of natural law from *duties* to *rights*. The teachings of Aquinas and Hugo Grotius on the European continent, and the Magna Carta (1215), the Petition of Right of 1628, and the English Bill of Rights (1689) in England, were proof of this change. Each testified to the increasingly popular view that human beings are endowed with certain eternal and inalienable rights that never were renounced when humankind "contracted" to enter the social from the primitive state and never diminished by the claim of the "divine right of kings."

Reprinted with changes from Burns H. Weston, "Human Rights," in *Encyclopædia Britannica*, 15th rev. ed. (2005), available from *Encyclopædia Britannica Online* at <http://www.britannica.com/eb/article?tocId=219350>. Copyright © 2005 Encyclopædia Britannica, Inc. Reprinted by permission.

1. Adopted Dec. 10, 1948, reprinted and referenced in Documentary Appendix A.

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NATURAL LAW TRANSFORMED INTO NATURAL RIGHTS

The modern conception of natural law as meaning or implying natural rights was elaborated primarily by thinkers of the seventeenth and eighteenth centuries. The intellectual—and especially the scientific—achievements of the seventeenth century (including the materialism of Hobbes, the rationalism of Descartes and Leibniz, the pantheism of Spinoza, and the empiricism of Bacon and Locke) encouraged a belief in natural law and universal order; and during the eighteenth century, the so-called Age of Enlightenment, a growing confidence in human reason and in the perfectibility of human affairs led to the more comprehensive expression of this belief. Particularly important were the writings of John Locke, arguably the most important natural-law theorist of modern times, and the works of the eighteenth-century philosophes centred mainly in Paris, including Montesquieu, Voltaire, and Jean-Jacques Rousseau. Locke argued in detail, mainly in writings associated with the English Revolution of 1688 (the "Glorious Revolution"), that certain rights self-evidently pertain to individuals as human beings (because these rights existed in "the state of nature" before humankind entered civil society); that chief among them are the rights to life, liberty (freedom from arbitrary rule), and property; that, upon entering civil society, humankind surrendered to the state—pursuant to a "social contract"—only the right to enforce these natural rights and not the rights themselves; and that the state's failure to secure these rights gives rise to a right to responsible, popular revolution. The philosophers, building on Locke and others and embracing many and varied currents of thought with a common supreme faith in reason, vigorously attacked religious and scientific dogmatism, intolerance, censorship, and social and economic restraints. They sought to discover and act upon universally valid principles governing nature, humanity, and society, including the inalienable "rights of Man," which they treated as a fundamental ethical and social gospel.

Not surprisingly, this liberal intellectual ferment exerted a profound influence in the Western world of the late eighteenth and early nineteenth centuries. Together with the Revolution of 1688 in England and the resulting Bill of Rights, it provided the rationale for the wave of revolutionary agitation that swept the West, most

notably in North America and France. Thomas Jefferson, who had studied Locke and Montesquieu, gave poetic eloquence to the plain prose of the seventeenth century in the Declaration of Independence, proclaimed by the 13 American colonies on July 4, 1776: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness." Similarly, the marquis de Lafayette, who won the close friendship of George Washington and who shared the hardships of the U.S. War of Independence, imitated the pronouncements of the English and American revolutions in the Declaration of the Rights of Man and of the Citizen of August 26, 1789, proclaiming that "men are born and remain free and equal in rights" and that "the aim of every political association is the preservation of the natural and imprescriptible rights of man."

In sum, the idea of human rights, though known by another name, played a key role in late eighteenth- and early nineteenth-century struggles against political absolutism. It was, indeed, the failure of rulers to respect the principles of freedom and equality that was responsible for this development.

"NONSENSE UPON STILTS": THE CRITICS OF NATURAL RIGHTS

The idea of human rights as natural rights was not without its detractors, however. In the first place, because it was frequently associated with religious orthodoxy, the doctrine of natural rights became less attractive to philosophical and political liberals. Additionally, because they were conceived in essentially absolutist terms, natural rights were increasingly considered to conflict with one another. Most importantly, the doctrine of natural rights came under powerful philosophical and political attack from both the right and the left.

In England, for example, conservative political thinkers such as Edmund Burke and David Hume united with liberals such as Jeremy Bentham to condemn the doctrine, the former out of fear that public affirmation of natural rights would lead to social upheaval, the latter out of concern lest declarations and proclamations of natural rights substitute for effective legislation. In his *Reflections on the Revolution in France* (1790),

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Burke—a believer in natural law who nonethe- less denied that the "rights of Man" could be derived from it—criticized the drafters of the Declaration of the Rights of Man and of the Citizen for proclaiming the "monstrous fiction" of human equality, which, he argued, serves but to inspire "false ideas and vain expectations in men destined to travel in the obscure walk of laborious life." Bentham, one of the founders of Utilitarianism, was no less scornful. "Rights," he wrote, "is the child of law; from real law come real rights; but from imaginary laws, from 'law of nature,' come imaginary rights. . . . Natural rights is simple nonsense; natural and imprescriptible rights (an American phrase) . . . [is] rhetorical nonsense, nonsense upon stilts." Agreeing with Bentham, Hume insisted that natural law and natural rights are unreal meta-physical phenomena.

This assault upon natural law and natural rights intensified and broadened during the nineteenth and early twentieth centuries. John Stuart Mill, despite his vigorous defense of liberty, proclaimed that rights ultimately are founded on utility. The German jurist Friedrich Karl von Savigny, England's Sir Henry Maine, and other "historicalist" legal thinkers emphasized that rights are a function of cultural and environmental variables unique to particular communities. The English jurist John Austin argued that the only law is "the command of the sovereign" (a phrase of Hobbes). And the logical positivists of the early twentieth century insisted that the only truth is that which can be established by verifiable experience and that therefore ethical pronouncements are not cognitively significant. By World War I, there were scarcely any theorists who would defend the "rights of Man" along the lines of natural law. Indeed, under the influence of nineteenth-century German Idealism and parallel expressions of rising European nationalism, there were some—the Marxists, for example—who, though not rejecting individual rights altogether, maintained that rights, from whatever source derived, belong to communities or whole societies and nations preeminently.

THE PERSISTENCE OF THE NOTION

Although the heyday of natural rights proved short, the idea of rights nonetheless endured. The

abolition of slavery, the implementation of factory legislation, the rise of popular education and trade unionism, the universal suffrage movement—these and other examples of nineteenth-century reformist impulses afford ample evidence that the idea was not to be extinguished, even if its a priori derivation had become a matter of general skepticism. But it was not until the rise and fall of Nazi Germany that the idea of human rights truly came into its own. Many of the gruesome atrocities committed by the Nazi regime had been officially authorized by Nazi laws and decrees, and this fact convinced many that law and morality cannot be grounded in any purely Idealist or Utilitarian or other consequentialist doctrine. Certain actions, according to this view, are absolutely wrong, no matter what the circumstances; human beings are entitled to simple respect, at least.

Today, the vast majority of legal scholars and philosophers—particularly in the liberal West—agree that every human being has, at least in theory, some basic rights. Indeed, except for some essentially isolated late nineteenth-century and early twentieth-century demonstrations of international humanitarian concern to be noted below, the last half of the twentieth century may fairly be said to mark the birth of the international as well as the universal recognition of human rights. In the charter establishing the United Nations, for example, all member states pledged themselves to take joint and separate action for the achievement of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." In the Universal Declaration of Human Rights, representatives from many cultures endorsed the rights therein set forth "as a common standard of achievement for all peoples and all nations." And in 1976, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, each approved by the UN General Assembly in 1966, entered into force and effect.²

DEFINING HUMAN RIGHTS

To say that there is widespread acceptance of the principle of human rights is not to say that there is complete agreement about the nature

2. Each of these documents is reprinted and referenced in Documentary Appendix A.

and scope of such rights—which is to say, their definition. Among the basic questions that have yet to receive conclusive answers are the following: whether human rights are to be viewed as divine, moral, or legal entitlements; whether they are to be validated by intuition, culture, custom, social contract, principles of distributive justice, or as prerequisites for happiness; whether they are to be understood as irrevocable or partially revocable; and whether they are to be broad or limited in number and content.

THE NATURE OF HUMAN RIGHTS: COMMONLY ACCEPTED POSTULATES

Despite this lack of consensus, a number of widely accepted (and interrelated) postulates can assist in the task of defining human rights. Five in particular stand out, though not even these are without controversy.

First, regardless of their ultimate origin or justification, human rights are understood to represent both individual and group demands for political power, wealth, enlightenment, and other cherished values or capabilities, the most fundamental of which is respect and its constituent elements of reciprocal tolerance and mutual forbearance in the pursuit of all other such values or capabilities. Consequently, human rights imply both claims against persons and institutions impeding the realization of these values or capabilities, and standards for judging the legitimacy of laws and traditions. At bottom, human rights qualify state sovereignty and power, sometimes expanding the latter even while circumscribing the former (as in the case of certain economic and social rights, for example; see *Égalité* below).

Second, human rights are commonly assumed to refer, in some vague sense, to “fundamental,” as distinct from “nonessential,” claims or “goods.” In fact, some theorists go so far as to limit human rights to a single core right or two—for example, the right to life or the right to equal freedom of opportunity. The tendency is to emphasize “basic needs” and to rule out “mere wants.”

Third, reflecting varying environmental circumstances, differing worldviews, and incapable interdependencies within and between different value or capability systems, human rights refer to a wide continuum of claims,

ranging from the most justiciable to the most aspirational. Human rights partake of both the legal and the moral orders, sometimes indistinguishably. They are expressive of both the “is” and the “ought” in human affairs.

Fourth, most assertions of human rights—though arguably not all—are qualified by the limitation that the rights of individuals or groups in particular instances are restricted as much as is necessary to secure the comparable rights of others and the aggregate common interest. Given this limitation, which connects rights to duties, human rights are sometimes designated *prima facie* rights, so that ordinarily it makes little or no sense to think or talk of them in absolutist terms.

Finally, if a right is determined to be a human right, it is understood to be quintessentially general or universal in character, in some sense equally possessed by all human beings everywhere, including in certain instances even the unborn. In stark contrast to the divine right of kings and other such conceptions of privilege, human rights extend in theory to every person on Earth, without discriminations irrelevant to merit or need, simply for being human.

In several critical respects, however, all these postulates raise more questions than they answer. Granted that human rights qualify state power, do they also qualify private power? If so, when and how? What does it mean to say that a right is fundamental, and according to what standards of importance or urgency is it so judged? What is the value of embracing nonjusticiable rights as part of the jurisprudence of human rights? Does it harbor more than rhetorical significance? If so, how? When and according to what criteria does the right of one person or group of people give way to the right of another? What happens when individual and group rights collide? How are universal human rights determined? Are they a function of culture or ideology, or are they determined according to some transnational consensus of merit or value? If the latter, is the consensus regional or global? How exactly would such a consensus be ascertained, and how would it be reconciled with the right of nations and peoples to self-determination? Is the existence of universal human rights incompatible with the notion of national sovereignty? Should supranational norms, institutions, and procedures have the power to nullify local, regional, and national laws

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on capital punishment, corporal punishment of children, "honor killing," veil wearing, female genital cutting, male circumcision, the claimed right to bear arms, and other practices? How would such a situation comport with Western conceptions of democracy and representative government?

In other words, though accurate, the five foregoing postulates are fraught with questions about the content and legitimate scope of human rights and about the priorities, if any, that exist among them. Like the issue of the origin and justification of human rights, all five are controversial.

THE CONTENT OF HUMAN RIGHTS: THREE "GENERATIONS" OF RIGHTS

Like all normative traditions, the human rights tradition is a product of its time. Therefore, to understand better the debate over the content and legitimate scope of human rights and the priorities claimed among them, it is useful to note the dominant schools of thought and action that have informed the human rights tradition since the beginning of modern times.

Particularly helpful in this regard is the notion of three "generations" of human rights advanced by the French jurist Karel Vasak. Inspired by the three themes of the French Revolution, they are: the first generation of civil and political rights (*liberté*); the second generation of economic, social, and cultural rights (*égalité*); and the third generation of solidarity rights (*fraternité*). Vasak's model is, of course, a simplified expression of an extremely complex historical record, and is not intended to suggest a linear process in which each generation gives birth to the next and then dies away. Nor is it to imply that one generation is more important than another. The three generations are understood to be cumulative, overlapping, and, it is important to note, interdependent and interpenetrating.

Liberté: Civil and Political Rights

The first generation of civil and political rights derives primarily from the seventeenth- and eighteenth-century reformist theories noted above (i.e., those associated with the English, American, and French revolutions). Infused with the political philosophy of liberal individualism and the related economic and social doctrine of

laissez-faire, the first generation conceives of human rights more in negative terms ("freedoms from") than positive ones ("rights to"); it favors the abstention over the intervention of government in the quest for human dignity. Belonging to this first generation, thus, are rights such as those set forth in Articles 2–21 of the Universal Declaration of Human Rights, including freedom from gender, racial, and equivalent forms of discrimination; the right to life, liberty, and security of the person; freedom from slavery or involuntary servitude; freedom from torture and from cruel, inhuman, or degrading treatment or punishment; freedom from arbitrary arrest, detention, or exile; the right to a fair and public trial; freedom from interference in privacy and correspondence; freedom of movement and residence; the right to asylum from persecution; freedom of thought, conscience, and religion; freedom of opinion and expression; freedom of peaceful assembly and association; and the right to participate in government, directly or through free elections. Also included are the right to own property and the right not to be deprived of it arbitrarily—rights that were fundamental to the interests fought for in the American and French revolutions and to the rise of capitalism.

Yet it would be wrong to assert that these and other first-generation rights correspond completely to the idea of "negative" as opposed to "positive" rights. The right to security of the person, to a fair and public trial, to asylum from persecution, and to free elections, for example, manifestly cannot be assured without some affirmative government action. What is constant in this first-generation conception is the notion of liberty, a shield that safeguards the individual—alone and in association with others—against the abuse of political authority. This is the core value. Featured in the constitution of almost every country in the world and dominating the majority of international declarations and covenants adopted since World War II, this essentially Western liberal conception of human rights is sometimes romanticized as a triumph of the individualism of Thomas Hobbes and John Locke over Hegelian statism.

Égalité: Economic, Social, and Cultural Rights

The second generation of economic, social, and cultural rights originated primarily in the socialist tradition, which was foreshadowed among

adherents of the Saint-Simonian movement of early nineteenth-century France and variously promoted by revolutionary struggles and welfare movements that have taken place since. In large part, it is a response to the abuses of capitalist development and its underlying and essentially uncritical conception of individual liberty, which tolerated, and even legitimized, the exploitation of working classes and colonial peoples. Historically, it is a counterpoint to the first generation of civil and political rights, conceiving of human rights more in positive terms ("rights to") than in negative ones ("freedoms from") and requiring more the intervention than the abstention of the state for the purpose of assuring the equitable production and distribution of the values or capabilities involved. Illustrative are some of the rights set forth in Articles 22–27 of the Universal Declaration of Human Rights, such as the right to social security; the right to work and to protection against unemployment; the right to rest and leisure, including periodic holidays with pay; the right to a standard of living adequate for the health and well-being of self and family; the right to education; and the right to the protection of one's scientific, literary, and artistic production.

But in the same way that all the rights embraced by the first generation of civil and political rights cannot properly be designated "negative rights," so all the rights embraced by the second generation of economic, social, and cultural rights cannot properly be labeled "positive rights." For example, the right to free choice of employment, the right to form and to join trade unions, and the right to participate freely in the cultural life of the community (Articles 23 and 27) do not inherently require affirmative state action to ensure their enjoyment. Nevertheless, most of the second-generation rights do necessitate state intervention because they subsume demands more for material than for intangible goods according to some criterion of distributive justice. Second-generation rights are, fundamentally, claims to social equality. However, partly because of the comparatively late arrival of socialist-communist and compatible "Third World" influence in international affairs, the internationalization of these rights has been relatively slow in coming, and with free-market capitalism in ascendancy under the banner of globalization at the turn of the twenty-first century, it is not likely that these rights will come of age any time soon. On the other hand, as the social inequities

created by unregulated national and transnational capitalism become more and more evident over time and are not accounted for by explanations based on gender or race, it is probable that the demand for second-generation rights will grow and mature, and in some instances even lead to violence. This tendency is apparent already in the evolving European Union and in wider efforts to regulate intergovernmental financial institutions and transnational corporations to protect the public interest.

Fraternité: Solidarity Rights

Finally, the third generation of solidarity rights, while drawing upon and reconceptualizing the demands associated with the first two generations of rights, is best understood as a product of both the rise and the decline of the nation-state in the last half of the twentieth century. Fore-shadowed in Article 28 of the Universal Declaration of Human Rights, which proclaims that "everyone is entitled to a social and international order in which the rights set forth in this declaration can be fully realized," this generation appears so far to embrace six claimed rights. Three of these rights reflect the emergence of Third World nationalism and its "revolution of rising expectations" (i.e., its demand for a global redistribution of power, wealth, and other important values or capabilities): the right to political, economic, social, and cultural self-determination; the right to economic and social development; and the right to participate in and benefit from "the common heritage of mankind" (shared Earth and space resources, scientific, technical, and other information and progress, and cultural traditions, sites, and monuments). The other three third-generation rights—the right to peace, the right to a healthy and sustainable environment, and the right to humanitarian disaster relief—suggest the impotence or inefficiency of the nation-state in certain critical respects.

All six of these rights tend to be posed as collective rights, requiring the concerted efforts of all social forces, to a substantial degree on a planetary scale. However, each of them also manifests an individual dimension. For example, while it may be said to be the collective right of all countries and peoples (especially developing countries and non-self-governing peoples) to secure a "new international economic order" that would eliminate obstacles to their economic and

national and transnational and more and more evident accounted for by explanation or race, it is probable second-generation rights and in some instances his tendency is apparent of European Union and late intergovernmental and transnational corporate interest.

ration of solidarity rights, and reconceptualizing the first two generations understood as a product of decline of the nation-state twentieth century. Fore- of the Universal Declaration, which proclaims that a social and international rights set forth in this realized," this generation race six claimed rights. effect the emergence of and its "revolution of its demand for a global wealth, and other imperatives): the right to political, cultural self-determination; and social development; participate in and benefit from of mankind" (shared Earth scientific, technical, and progress, and cultural treatments). The other three—the right to peace, the sustainable environment, humanitarian disaster relief—or inefficiency of the critical respects. tend to be posed as collective; the concerted efforts of substantial degree on a plan; each of them also manifestation. For example, be the collective right of es (especially developing self-governing peoples) to "national economic order" that leads to their economic and

social development, so also may it be said to be the individual right of every person to benefit from a developmental policy that is based on the satisfaction of material and nonmaterial human needs. It is important to note too that the majority of these solidarity rights are more aspirational than justiciable in character, and that their status as international human rights norms remains ambiguous.

Thus, at various stages of modern history, the content of human rights has been broadly defined not with any expectation that the rights associated with one generation would or should become outdated upon the ascendancy of another, but expansively or supplementally. The history of the content of human rights reflects evolving perceptions of which values or capabilities stand, at different times, most in need of responsible attention and, simultaneously, humankind's recurring demands for continuity and stability.

LEGITIMACY AND PRIORITY: LIBERTÉ VERSUS ÉGALITÉ

The fact that the content of human rights has been broadly defined should not be taken to imply that the three generations of rights are equally acceptable to everyone. Nor should it suggest that they or their separate elements have been greeted with equal urgency. The debate about the nature and content of human rights reflects, after all, a struggle for power and for favoured conceptions of the "good society."

First-generation proponents, for example, are inclined to exclude second- and third-generation rights from their definition of human rights altogether or, at best, to regard them as "derivative." In part this is because of the complexities involved in putting these rights into operation. The suggestion that first-generation rights are more feasible because they stress the absence over the presence of government is somehow transformed into a prerequisite of a comprehensive definition of human rights, such that aspirational claims to entitlement are deemed not to be rights at all. The most compelling explanation, however, has more to do with ideology or politics. Persuaded that egalitarian claims against the rich, particularly where collectively espoused, are unworkable without a severe decline in liberty and equality, first-generation proponents, inspired by the natural law and laissez-faire traditions, are partial to the view that human rights

are inherently independent of organized society and are individualistic.

Conversely, second- and third-generation defenders often look upon first-generation rights, at least as commonly practiced, as insufficiently attentive to material—especially "basic"—human needs and, indeed, as instruments in service to unjust social orders, hence constituting a "bourgeois illusion." Accordingly, if they do not place first-generation rights outside their definition of human rights, they tend to assign such rights a low status and to treat them as long-term goals that will come to pass only after the imperatives of economic and social development have been met, to be realized gradually and fully achieved only sometime vaguely in the future.

This liberty-equity and individualist-collectivist debate was especially evident during the period of the Cold War, reflecting the extreme tensions that then existed between Liberal and Marxist conceptions of sovereign public order. Although Western social democrats during this period, particularly in Scandinavia, occupied a position midway between the two sides, pursuing both liberty and equity—in many respects successfully—it remains true that the different conceptions of rights contain the potential for challenging the legitimacy and supremacy not only of one another, but, more importantly, of the sociopolitical systems with which they are most intimately associated.

THE RELEVANCE OF CUSTOM AND TRADITION

With the end of the Cold War, however, the debate took on a more North-South character and was supplemented by a cultural-relativist critique that eschews the universality of human rights doctrines, principles, and rules on the grounds that they were Western in origin and therefore of limited relevance in non-Western settings. The viewpoint underlying this assertion—that the scope of human rights in any given society is fundamentally determined by local, national, or regional customs and traditions—may seem problematic, especially when one considers that the idea of human rights and many of its precepts are found in all the great philosophical and religious traditions. Nevertheless, the historical development of human rights demonstrates that it cannot be wholly mistaken. Nor is it surprising that it should emerge soon after the end of the Cold War. First prominently

expressed at an Asian preparatory meeting to the second UN World Conference on Human Rights convened in Vienna in June 1993, it reflects the end of a bipolar system of alliances that had discouraged independent foreign policies and minimized cultural and political differences in favour of undivided Cold War loyalties. Against the backdrop of increasing human rights interventionism on the part of the UN and by regional organizations and deputized coalitions of states (as in Bosnia and Herzegovina, Somalia, Liberia, Rwanda, Haiti, and Serbia, including Kosovo, for example), the viewpoint serves as well as a functional equivalent of the doctrine of respect for national sovereignty and territorial integrity, which had been declining in influence not only in the human rights context but as well in the contexts of national security, economics, and the environment. As a consequence, there remains sharp disagreement about the legitimate scope of human rights and about the priorities that are claimed among them.

INHERENT RISKS IN THE DEBATE

On final analysis, however, this legitimacy-priority debate can be dangerously misleading. Although useful for pointing out how notions of liberty and individualism have been used to rationalize the abuses of capitalism and Western expansionism and how notions of equality, collectivism, and culture have been alibis for authoritarian governance, in the end it risks obscuring at least three essential truths that must be taken into account if the contemporary worldwide human rights movement is to be objectively understood.

First, one-sided characterizations of legitimacy and priority are very likely, at least over the long term, to undermine the political credibility of their proponents and the defensibility of the rights they regard as preeminently important. In an increasingly interdependent global community, any human rights orientation that does not support the widest possible shaping and sharing of values or capabilities among all human beings is likely to provoke widespread skepticism. The last half of the twentieth century is replete with examples.

Second, such characterizations do not accurately reflect reality. In the real world, virtually

all societies, whether individualistic or collectivist in essential character, consent to, and even promote, a mixture of all basic values or capabilities. President Franklin Delano Roosevelt's Four Freedoms (freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear) is an early case in point. A more recent demonstration is found in the Declaration and Programme of Action of the Vienna conference mentioned above, adopted by representatives of 171 states. It proclaims that, "[w]hile the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms."

Finally, none of the international human rights instruments currently in force or proposed says anything about the legitimacy or priority of the rights it addresses, save possibly in the case of rights that by international covenant are stipulated to be "nonderogable" and therefore, arguably, more fundamental than others (e.g., freedom from arbitrary or unlawful deprivation of life, freedom from torture and from inhuman or degrading treatment and punishment, freedom from slavery, and freedom from imprisonment for debt). To be sure, some disagreements about legitimacy and priority can derive from differences of definition (e.g., what is "torture" or "inhuman treatment" to one may not be so to another, as in the case of punishment by caning or by death). Similarly, disagreements also can arise when treating the problem of implementation. For instance, some insist first on certain civil and political guarantees, whereas others defer initially to conditions of material well-being. Such disagreements, however, reflect differences in political agendas and have little if any conceptual utility. As confirmed by numerous resolutions of the UN General Assembly and reaffirmed in the Vienna Declaration and Programme of Action,³ there is a growing consensus that all human rights form an indivisible whole and that the protection of human rights is not and should not be a matter of purely national jurisdiction. The extent to which the international community actually protects the human rights it prescribes, on the other hand, is a different matter.⁴

3. Adopted June 25, 1993, referenced in Documentary Appendix B.

4. This discussion is continued in Reading 23 by Burns Weston in Chapter 5 of this volume.