

# THE SOCIAL CONSTRUCTION OF INTERNATIONAL HUMAN RIGHTS

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## RESUMEN:

Este capítulo, revisado y actualizado a comienzos de 2011, analiza el modo en que los derechos humanos se han construido e integrado en la agenda política internacional desde mediados del siglo XX. Este análisis busca contextualizar algunos de los debates suscitados en el ámbito de los derechos humanos recientemente. Lo hace partiendo de la comprensión de la función de los derechos humanos como instrumentos para la defensa de la dignidad humana frente a las prácticas de los agentes que la amenazan. En este sentido es posible, a día de hoy y de cara al futuro, argumentar su plena validez basándose en su propia condición de construcción social, cuya naturaleza es contingente, y está vinculada a las formas en que se entiende la propia dignidad humana, y el papel del estado como principal garante y fuente de amenazas para los derechos humanos individuales.

## PALABRAS CLAVE:

Derechos humanos; estado; soberanía; dignidad humana; normas internacionales.

## ABSTRACT:

This chapter, revised and updated in early 2011, examines how human rights have been built and integrated into the international policy agenda since the mid-twentieth century. This analysis seeks to contextualize some of the recent discussions in the area of human rights. It proposes that one may understand the role of human rights as an instrument for defending human dignity against the practices and agents that threaten it. In this sense it is possible, now and in the future, to claim the complete validity of human rights based purely on their status as a social construct, whose nature is contingent, and is linked to the ways in which human dignity is understood, and the state's role as the main guarantor and source of threat to individual human rights.

## KEYWORDS:

Human rights; state; sovereignty; human dignity; international norms.

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We sincerely thank Mr. Jack Donnelly for this update.

Human rights has been an established subject of international relations for less than seventy years. With minor exceptions –most notably, nineteenth century efforts to end the slave trade and twentieth century work on eradicating slavery and protecting the rights of workers and ethnic minorities– human rights simply were not a subject of international relations before World War II. Even genocidal massacres, such as Russian pogroms against the Jews or the Turkish slaughter of Armenians, were met by little more than anguished statements of disapproval. Less egregious violations typically were not even considered a fit subject for diplomatic conversation.

This practice reflected a statist logic arising from the interaction of a realist notion of the national interest and a rigid legal positivist conception of sovereignty. To the realist, human rights are largely irrelevant to the national interest defined in terms of power. To the legal positivist, they present an archetypical example of actions solely within the domestic jurisdiction –and thus the sovereign prerogative– of states. Although this logic has suffered considerable erosion, it continues to shape dominant international human rights practices and provides a baseline for assessing change.

### **1. The global human rights regime<sup>1</sup>**

Despite the cautions and complaints of realists, states continue to pursue moral objectives in international relations. The result has been the development of a global human rights regime<sup>2</sup> that today significantly shapes the behavior of states and other international actors.

#### **1.1. From Hitler to the Universal Declaration**

World War II, beyond protecting material national interests and the statist ordering principles of sovereignty and territorial integrity, had significant moral overtones, especially on the American side. Beyond self-interested propaganda, there was a genuine belief that the war, particularly against Hitler's Germany, was a struggle not only against material danger but also against a moral evil that arose from the

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<sup>1</sup> My principal focus will be on multilateral instruments and institutions open to all states, with secondary attention to bilateral state policies and transnational actors. The best book-length introduction to this material is: FORSYTHE, David P., *Human Rights in International Relations*, Cambridge University Press, Cambridge, 2006 (Second edition). See also: DONNELLY, Jack, *International Human Rights*, Westview Press, Boulder, 2006 (Third edition). And STEINER, Henry J., ALSTON, Philip, and GOODMAN, Ryan (editors), *International Human Rights in Context: Law, Politics, Morals. Texts and Materials*. Oxford University Press, Oxford, 2008 (Third edition).

<sup>2</sup> Regional human rights regimes –which are especially important in Europe– will not be discussed. For information on these institutions, see: FORSYTHE, David P., *Human Rights in International Relations*, Cambridge University Press, Cambridge, 2006 (Second edition), chapter 4; and, at much greater length: SHELTON, Dinah, *Regional Protection of Human Rights*. Oxford University Press, Oxford, 2008.

<sup>2</sup> An international regime is conventionally defined as a set of principles, norms, rules, and decision-making procedures that states and other international actors accept as authoritative within an issue area.

systematic violation of human rights. For example, Franklin Roosevelt's January 1942 "Four Freedoms" speech explicitly linked the war effort to protecting freedoms of speech and of worship and freedoms from want and from fear. By June 1943, planners in the US State Department had drafted a charter for a postwar international organization that included an International Bill of Human Rights.

Human rights, however, remained a decidedly secondary concern in the wartime actions of the Allies. For example, the rail lines that kept the Nazi death camps functioning never were a major target of allied bombing. Only as victory was being achieved did human rights become a central concern.

Traditional international practice, however, lacked even the language with which to condemn the horrors of the Holocaust. Realist diplomacy could find no material national interest that was threatened. In fact, while German realists might have decried the diversion of strategic resources to the death camps, Allied realists could, with theoretical consistency, only see it as politically fortunate. Traditional international law was as much at a loss: massacring one's own citizens simply was not an established international offense. The German government may have been legally liable for their treatment of citizens in occupied territories, but in gassing German nationals it was simply exercising its sovereign rights.

The Nuremberg War Crimes Tribunal, despite the taint of *ex post facto* victors' justice, dramatically introduced the subject of gross violations of human rights into the mainstream of international relations. The charge of crimes against humanity held German soldiers and officials liable for offenses against individual citizens, not states, and individuals who often were nationals, not foreigners.

Of even greater long-run importance was the United Nations Charter. The exclusion of human rights from pre-war international relations is perhaps best illustrated by the fact that even the notoriously idealist Covenant of the League of Nations does not mention human rights. In sharp contrast, the Preamble and Article 1 of the UN Charter include promotion of respect for human rights and fundamental freedoms among the principal purposes of the Organization.

The United Nations moved rapidly and vigorously to formulate international human rights norms. The Convention on the Prevention and Punishment of the Crime of Genocide, a direct response to the Holocaust, was adopted by the UN General Assembly on December 9, 1948. The following day the Assembly adopted the Universal Declaration of Human Rights<sup>3</sup>. This was a decisive step in codifying the

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<sup>3</sup> MORSINK, Johannes, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*, University of Pennsylvania Press, Philadelphia, 1999, is the standard account of the develop-

emerging view that the way in which states treat their own citizens is not only a legitimate international concern but subject to international standards.

The initial momentum of the immediate postwar years, however, was not sustained. Work on a covenant to give greater legal force and specificity to the rights enumerated in the Universal Declaration became bogged down, and was largely abandoned by 1954. Most states were satisfied with an international human rights regime that included little more than a strong statement of norms. For apparently genuine moral reasons, they were no longer willing to leave human rights entirely beyond international purview. But they were unwilling to allow multilateral monitoring of national human rights practices, let alone international implementation or enforcement. For example, at its first session, in early 1947, the UN Commission on Human Rights resolved that it had “no power to take any action in regard to any complaints concerning human rights”<sup>4</sup>.

## 1.2. The International Human Rights Covenants

The early sixties witnessed a new wave of UN human rights activity, led by the newly independent states of Africa and Asia<sup>5</sup>. The International Convention on the Elimination of All Forms of Racial Discrimination, which addressed a topic of special concern to the Afro-Asian bloc, was adopted by the General Assembly in December 1965. Work also began anew on a comprehensive international human rights treaty. In December 1966, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were opened for signature and ratification. Along with the Universal Declaration they provided –and still provide– an authoritative statement of internationally recognized human rights. Table 1 summarizes the rights they recognize<sup>6</sup>.

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ment and substance of the Universal Declaration. On the development of international human rights more broadly, see: LAUREN, Paul Gordon, *The Evolution of International Human Rights: Visions Seen*, University of Pennsylvania Press, Philadelphia, 2011 (Third edition).

<sup>4</sup> UN Document E/259 (1947), paragraph 22.

<sup>5</sup> BURKE, Roland, *Decolonization and Human Rights*, University of Pennsylvania Press, Philadelphia, 2010, provides an excellent discussion of the place of decolonization in the development of the global human rights regime.

<sup>6</sup> These and many other international human rights treaties are readily accessible on the excellent website of the High-Commissioner for Human Rights <http://www2.ohchr.org/english/law/index.htm>.

**Table 1. Internationally Recognized Human Rights**

The following rights either are enumerated in both the Universal Declaration and at least one of the International Human Rights Covenants or have a full article in of these three instruments. The source of each right is indicated in parentheses, by document and article number. D: Universal Declaration of Human Rights E: International Covenant on Economic, Social, and Cultural Rights C: International Covenant on Civil and Political Rights			
Right	D	E	C
Equality of rights without discrimination.	D1, D2	E2, E3	C2, C3
Life.	D3	-	C6
Liberty and security of person.	D3	-	C9
Protection against slavery.	D4	-	C8
Protection against torture and cruel and inhuman punishment.	D5	-	C7
Recognition as a person before the law.	D6	-	C16
Equal protection of the law.	D7	-	C14, C26
Access to legal remedies for rights violations.	D8	-	C2
Protection against arbitrary arrest or detention.	D9	-	C9
Hearing before an independent and impartial judiciary.	D10	-	C14
Presumption of innocence.	D11	-	C14
Protection against ex post facto laws.	D11	-	C15
Protection of privacy, family, and home.	D12	-	C17
Freedom of movement and residence.	D13	-	C12
Seek asylum from persecution.		-	-
Nationality.	D15	-	-
Marry and found a family.	D16	E10	C23
Own property.	D17	-	-
Freedom of thought, conscience, and religion.	D18	-	C18
Freedom of opinion, expression, and the press.	D19	-	C19
Freedom of assembly and association.	D20	-	C21, C22
Political participation.		-	C25
Social security.	D22	E9	-
Work, under favorable conditions.	D23	E6, E7	-
Free trade unions.		E8	C22
Rest and leisure.	D24	E7	-
Food, clothing, and housing.	D25	E11	-
Health care and social services.	D25	E12	-
Special protections for children.	D25	E10	C24
Education.		E13, E14	-
Participation in cultural life.	D27	E15	-
A social and international order needed to realize rights.	D28	-	-

The following rights either are enumerated in both the Universal Declaration and at least one of the International Human Rights Covenants or have a full article in of these three instruments.  
The source of each right is indicated in parentheses, by document and article number.  
D: Universal Declaration of Human Rights  
E: International Covenant on Economic, Social, and Cultural Rights  
C: International Covenant on Civil and Political Rights

Right	D	E	C
Self-determination.		E1	C1
Protection against debtor's prison.	-	C11	
Protection against arbitrary expulsion of aliens.	-	C13	-
Protection against advocacy of racial or religious hatred.	-	C20	-
Protection of minority culture.	-	C27	-

Further progress, however, was slow and erratic. The 1968 –Teheran– World Conference on Human Rights, held to mark the twentieth anniversary of the Universal Declaration, was followed not by a new spurt of activity but by a decade-long lull. Part of this can be attributed, ironically, to the successful completion of the Covenants. While their comprehensiveness took much of the urgency out of additional normative work, it was to be nearly ten years before they received the necessary 35 ratifications to enter into force. The result was a frustrating delay in shifting from a near exclusive emphasis on standard setting to an emphasis on international implementation.

The letdown of the early seventies, however, also owes much to the persistence of a statist, sovereignty-respecting logic. This is most clear in the "implementation" machinery of the Covenants and the Racial Discrimination Convention: periodic reports by states to a committee of independent experts. These supervisory committees were not authorized to find violations of the treaty, call for changes in state practice, or seek remedy for victims<sup>7</sup>.

Human rights norms had become fully internationalized. Implementation and enforcement, however, remained almost completely national. States accepted an obligation to implement internationally recognized human rights. But they restricted international supervision of these obligations to nonintrusive international monitoring. The Covenants reaffirmed and helped to deepen the view that human rights were a fit subject for international discussion –but not coercive international action–.

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ALSTON, Philip y CRAWFORD, James (editors), *The Future of UN Human Rights Treaty Monitoring*. Cambridge University Press, Cambridge, 2000, is the standard account of multilateral treaty monitoring.

This assessment is perhaps a bit too harsh. Work on self-determination and apartheid intensified. In 1967, ECOSOC resolution 1235 authorized the Commission on Human Rights to discuss human rights publicly. In 1970, Resolution 1503 gave the Commission the authority to conduct confidential investigations of communications "*which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms*". But even if these new monitoring powers had been used in an aggressive, nonpartisan fashion –which they rarely were– they represented only incremental procedural developments. Only persuasive verbal action against human rights violators was authorized.

### 1.3. The Carter revival

The third wave of intensive international human rights activity came in the mid-seventies, triggered by four major events. Revulsion against the overthrow of the Allende government in Chile in September 1973 and the ensuing violent repression led to the creation of a UN working group on Chile. This was the first time that the practices of a gross human rights violator had been subjected to intensive, detailed investigation by the UN<sup>8</sup>. In 1975, the Helsinki Final Act formally introduced human rights onto the agenda of East-West relations. In 1976, the Covenants finally entered into force, providing a new, relatively nonpartisan monitoring forum in the Human Rights Committee created under the Civil and Political Covenant. And in 1977, Jimmy Carter became President of the United States. Carter's embrace of human rights as a priority for American foreign policy at least partly disentangled international human rights from the East-West politics of the Cold War and the North-South struggles over a new international economic order. This gave new momentum and legitimacy to the work of human rights advocates throughout the world.

In the Commission on Human Rights in particular, space opened for the emergence of a revitalized western bloc, led by countries such as Canada and the Netherlands. Important new treaties were formulated, including the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984), and the Convention on the Rights of the Child (1989). Building on the precedent of Chile, special representative and rapporteurs were appointed to study human rights situations in a growing and increasingly diverse range of countries, including Bolivia, El Salvador, Equatorial Guinea, Iran, and Afghanistan.

The Commission on Human Rights also began to consider human rights violations on a "global" or "thematic" basis. Rather than examine abuses in individual countries, particular types of violations were addressed globally, wherever

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<sup>8</sup> The Chile case was precedent setting because it dealt entirely with internal human rights practices, without any significant connection to race or self-determination –as was central to UN action on, for example, apartheid in South Africa or human rights practices in the Israeli-occupied Palestinian territories–.

they occurred. Most prominent was the Working Group on Enforced or Involuntary Disappearances, created in 1980 to help families and friends determine the whereabouts of disappeared persons, which handled over 19,000 cases in its first decade of work<sup>9</sup>. A Special Rapporteur on summary or arbitrary executions was appointed in 1982, followed in 1985 by a Special Rapporteur on torture.

No less important during the Carter era was the introduction of human rights into the mainstream of bilateral foreign policy. During the height of the Cold War, human rights were largely restricted to multilateral international arenas. The language of human rights was most striking for its absence in bilateral relations, even when dealing with central human rights issues. For example, the United States regularly used the language of freedom and democracy, not human rights, and the Soviets typically spoke of particular abuses, such as racism, colonialism, and unemployment, rather than human rights in general.

In 1973, the US Congress began to link foreign aid to the human rights performance of recipients. Tentative efforts in this direction were taken about the same time in the aid policies of the Nordic countries. But human rights really entered the mainstream of foreign policy with Carter's prominent public human rights diplomacy.

This new bilateral emphasis on human rights occasionally was formally codified, as in the Dutch White Paper of 1979. More often, there was a less formal, yet surprisingly rapid and clear, change. By the mid-eighties, debate in most Western countries focused less on whether human rights should be an active concern of foreign policy than on which rights should be pursued where. Even the Reagan Administration, which in 1981 explicitly announced its intention to replace Carter's emphasis on human rights with an emphasis on international terrorism, increasingly came to justify its policies in human rights terms.

The mid-seventies also saw a major upsurge in international human rights activity by nongovernmental organizations (NGO), symbolized by the award of the Nobel Peace prize to Amnesty International in 1977. These groups, in addition to their advocacy for victims of human rights abuses, have been important actors in changing bilateral and multilateral international human rights policies. For example, international campaigns against torture by Amnesty in the seventies and eighties played an important role in the drafting of the 1984 Convention Against Torture. At the national level, the Dutch section of Amnesty was involved in draft-

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<sup>9</sup> GUEST, Iain, *Behind the Disappearances: Argentina's Dirty War Against Human Rights and the United Nations*, University of Pennsylvania Press, Philadelphia, 1990, provides a thorough but highly readable account of the international politics of disappearances that captures well the flavor of international human rights politics in this era.

ing the government's human rights White Paper. In the United States, several human rights NGO were important players in the struggles over Central American policy in the eighties.

#### 1.4. The post-Cold War era

The next –and so far last– spurt of growth in the global human rights regime occurred with the end of the Cold War, which altered both national and international contexts in ways that facilitated both improved national human rights performance and more aggressive international promotion. With anti-communism largely removed from American and other Western foreign policy agendas, Cold War allies found it much harder to justify their human rights violations –to both domestic and international audiences–. The United States was much less willing to turn a blind eye. And national actors seized on this new context to press for improved human rights practices in country after country in all regions of the world. These national changes varied from region to region and country to country, but by the mid-nineties the overall global human rights record had improved noticeably.

Changes in the global human rights regime both reflected and helped to deepen these changes. Within the United Nations system, existing procedures were used somewhat more aggressively and a High-Commissioner for Human Rights was created in 1993 and by the end of the decade had emerged as a major international advocate. In bilateral foreign policy, human rights became increasingly entrenched as a nonpartisan concern of an ever-growing number of states<sup>10</sup>. And human rights NGO increased in both number and influence in most regions of the world<sup>11</sup>.

The biggest progressive changes, however, concerned humanitarian intervention against genocide and individual international criminal liability for a limited range of severe and systematic violations. A series of high profile interventions in Liberia, Sierra Leone, Bosnia, Kosovo, and East Timor – plus the reaction against the tragic failure to act aggressively in Rwanda – created a legal right to armed intervention against genocide and a general pattern of supporting political practice<sup>12</sup>.

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<sup>10</sup> For broader overviews of human rights in foreign policy, see: FORSYTHE, David P. (editor), *Human Rights and Comparative Foreign Policy*, United Nations University Press, Tokyo, 2000; LIANG-FENTON, Debra, (editor), *Implementing U. S. Human Rights Policy: Agendas, Policies, and Practices*, United States Institute of Peace Press, Washington, D. C., 2004; and BRYSK, Alison, *Global Good Samaritans: Human Rights as Foreign Policy*, Oxford University Press, Oxford, 2009.

<sup>11</sup> BAEHR, Peter R., *Non-Governmental Human Rights Organizations in International Relations*, Palgrave Macmillan, New York, 2009, provides an up-to-date overview of the place of NGOs in the international politics of human rights.

<sup>12</sup> HOLZGREF, J. L. and KEOHANE, Robert O. (editors), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. Cambridge University Press, Cambridge, 2003, provides a good overview. SCHNABEL, Albrecht, and THAKUR, Ramesh (editors) *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship*, United Nations

–During the Cold War, humanitarian intervention was legally prohibited and the only prominent instances involved politically motivated interventions by neighbors, such as India in East Pakistan –Bangladesh– and Vietnam in Cambodia–. Ad hoc tribunals for the former Yugoslavia and Rwanda began to establish mechanisms of international legal accountability for the most egregious violations, laying the ground for the 1998 Rome Statute and the creation of an International Criminal Court in 2002.

By some accounts, especially in the United States, the 2001 terrorist attacks on the U.S. “changed everything” and ushered in a new era. Such an assessment, whatever its accuracy in the case of American national and foreign policy, simply does not fit what has occurred in the past decade in the global human rights regime<sup>13</sup>.

The norms of the global human rights regime have continued to be elaborated and extended, with major new treaties on disappearances (2006) and persons with disabilities (2007) and an historic declaration on the rights of indigenous peoples (2007). And American efforts to justify torture and extrajudicial detention have been almost universally rejected. The multilateral institutional machinery has been modestly strengthened, with the replacement in 2006 of the Commission on Human Rights –which had become dysfunctionally politicized– by a new UN Human Rights Council<sup>14</sup>. The existing mechanisms of thematic and country rapporteurs and experts continue to provide a considerable degree of focused international scrutiny and the budget of the High Commissioner has increased steadily and substantially since 9/11<sup>15</sup>.

Transnational human rights advocacy continues undiminished. If anything, it has increased in reach and effectiveness. Likewise, human rights remains an important issue in bilateral foreign policy –despite striking but largely isolated instances of “war of terror”– justified support for repressive regimes, perhaps most notably U.S. support for Pakistan.

Most importantly, the broad pattern of national practice shows no post-9/11

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University Press, Tokyo, 2000, is a superb and comprehensive collection of essays on the decisive Kosovo intervention.

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For a recent sampling of relatively moderate views on the issue of continuity and change since 9/11 see: GOODHART, Michael and MIHR, Anja (editors), *Human Rights in the 21st Century: Continuity and Change since 9/11*, Palgrave Macmillan, Houndmills, Basingstoke, 2011.

<sup>14</sup> Comprehensive information on activities of the Council is available at [www2.ohchr.org/english/bodies/hrcouncil](http://www2.ohchr.org/english/bodies/hrcouncil).

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See <http://www2.ohchr.org/english/bodies/chr/special/index.htm>.

reversal. This is true both globally and regionally, and for most –but not all– rights<sup>16</sup>. Although the progress of the nineties has not been sustained, it is hard to attribute that to the war on terror; the late nineties already saw much less progress than the early nineties. There are roughly as many countries with improved human rights performance since 9/11 as countries that have seen their record deteriorate.

In other words, the post-Cold War era as a whole has seen a substantial increase in the range and effectiveness of international and very clear improvements in the average level of national practice, not only globally but in every region –except Western Europe, where the high level of Cold War era performance has been sustained–. Looking back to the early days of the global human rights regime in the mid-forties the progress has been impressive. And there is no reason not to expect further, largely incremental but nonetheless significant, progress in both the global regime and national practice –as suggested, perhaps, but the Arab Spring of 2011–.

## **2. Right, wrong, and international human rights**

This global human rights regime rests on a distinctive moral and political vision. Internationally recognized human rights represent a distinctive strategy for responding to a relatively narrow yet very important set of rights and wrongs. Were my inclinations more postmodern, I might describe this endeavor as an analysis of the discourse of human rights, or even a deconstruction of international human rights.

### **2.1. Right, rectitude, and entitlement**

To understand the particular character of human rights we must start with the fact that "right" in English has two principal moral and political senses: rectitude and entitlement<sup>17</sup>.

The sense of rectitude is most general. In this sense we speak of "*the right thing to do*" and say of something that it is right –or wrong–. The focus is on the righteousness of the required action, and the duty-bearer's obligation to do "what is right."

Entitlement is a narrower sense of "right." Rather than speaking of some-

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For extensive statistical support for this claim, see: DONNELLY, Jack, "International Human Rights Since 9/11: More Continuity than Change", in GOODHART, Michael and MIHR, Anja (editors), *Human Rights in the 21st Century: Continuity and Change since 9/11*, Palgrave Macmillan, Houndmills, Basingstoke, 2011.

<sup>17</sup> For more extended discussions of some of the conceptual issues raised in the following paragraphs, see: DONNELLY, Jack, *Universal Human Rights in Theory and Practice*, Cornell University Press, Ithaca, 2003 (Second edition), chapter 1.

thing being right, we typically talk of someone having a right. When one has a right, she is specially entitled to something, and therefore armed with claims that have a special force. The focus is on the relationship between right-holder and duty-bearer.

If Anne has a right to x with respect to Bob, it is not simply desirable, good, or even merely right that Anne enjoy x. She is entitled to it. Should Bob fail to discharge his obligations, besides acting improperly and harming Anne, he violates her rights. This makes him subject to remedial claims and sanctions that she largely controls.

Anne is not merely a beneficiary of Bob's obligation. She may assert her right to x, in order to try to assure that Bob discharges his obligation. If he fails to do so, she may press further claims against Bob –or excuse him–, largely at her own discretion. She is actively in charge of the relationship, as suggested by the language of "exercising" rights. Rights empower, in addition to benefitting, those who hold them.

Rights, in the sense of entitlement, are a special subclass of right. Rights thus are related only to a subset of human wrongs. Human rights –the rights one has simply because one is a human being– are a subset of rights. They thus deal with an even narrower range of human wrongs.

We do not have rights –let alone human rights– to all things that are good. We do not even have human rights to all important good things. Many notable rights –in the sense of rectitude– and wrongs –for example, charity, compassion, and the support of loving family and friends– simply are not matters of "human rights" –entitlement–. Parents or partners that abuse the trust of children and partners wreak havoc with millions of lives every day. But not only do we not have human rights to compassionate, supportive, and loving parents and partners, to recognize such rights would radically transform these relationships –in a way that I think most people would find destructive–.

The emphasis on human rights in contemporary international relations thus implies selecting certain types of rights and wrongs for special emphasis, and thereby indirectly de-emphasizing or devaluing others. It also means selecting a particular mechanism –rights, entitlement– for advancing those rights –in the sense of rectitude– and remedying those wrongs.

Human rights are not just abstract values, but a set of particular social practices to realize those values. Underlying values and aspirations, or the substan-

tive object of any particular human right, should not be confused with that right itself, let alone with the broader idea or practice of human rights. Even where "the same" values are pursued, their grounds and the means to realize them may differ dramatically.

For example, protection against arbitrary execution is internationally recognized today as a human right. But the fact that people are not executed arbitrarily may reflect nothing more than a government's lack of desire or capacity. Even if people are actively protected against arbitrary execution, that protection may have nothing to do with a right –title– not to be executed. For example, a divine injunction to rulers need not endow subjects with any rights. And even if one has a right not to be arbitrarily executed, that right need not be a human right. It might, for example, rest entirely on custom or statute.

Such distinctions are not mere scholastic niceties. When subjects lack a right –title–, they are protected differently. There is an important difference between denying something to someone that it would be right for her to enjoy in a just world, and denying her something she is entitled –has a right– to enjoy. Violations of rights are a particular kind of injustice, with a distinctive force and remedial logic. Furthermore, whether the right is merely a legal right, contingently granted by the state, or a human right will dramatically alter the relationship between states and subjects, and the character of the injury suffered.

## 2.2. The historical particularity of human rights

Human rights are typically understood, following the manifest, literal sense of the term, as the rights that one has simply because one is human. They are universal rights: every human being has them. They are equal rights: one either is a human being –and thus has these rights equally– or not. And they are inalienable rights: one cannot stop being a human being, and thus cannot stop having these rights.

As I have argued in more detail elsewhere<sup>18</sup>, human rights, thus understood, rest on and seek to realize a particular conception of human nature, dignity, well-being, or flourishing. Human beings are seen as equal and autonomous individuals rather than bearers of ascriptively defined social roles. Individuals are also members of families and communities, workers, church-goers, citizens, and occupants of numerous other social roles. A human rights conception, however, insists that essential to their dignity, and to a life worthy of a human being, is the simple fact that they are human beings. This gives them an irreducible worth that entitles them to equal concern and respect from the state and the opportunity to make fundamental choices about what constitutes the good life –for them–, who they as-

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<sup>18</sup> *Ibidem*, chapters 2-5.

sociate with, and how.

Although treaties and international declarations rarely point to their philosophical foundations, leading international human rights instruments do reflect something very much like this understanding. For example, the Universal Declaration of Human Rights begins by recognizing "*the inherent dignity and the equal and inalienable rights of all members of the human family*" and the International Human Rights Covenants explicitly claim that the rights they recognize "*derive from the inherent dignity of the human person*". Perhaps the clearest statement, however, comes in the second preamulatory paragraph of the Vienna Declaration and Programme of Action adopted in June 1993 at the Second World Conference on Human Rights.

*"Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms."*

Such a conception of human dignity, well-being, or flourishing is, in a broad cross-cultural and historical perspective, extremely unusual<sup>19</sup>. Many cultures and societies across time and space have shared values such as equity, fairness, compassion, and respect for one's fellows. Very few, however, have sought to realize these values through equal and inalienable universal rights.

In most pre-modern societies, both western and non-western, persons were seen not as equal and autonomous individuals endowed with natural and inalienable rights but as differentiated occupants of traditional social roles defined by characteristics such as birth, sex, age, and occupation. For example, ancient Greeks distinguished between Hellenes and barbarians –non-Greeks–, who were seen as congenitally inferior. The Romans recognized rights based on birth, citizenship, and achievement, not mere humanity. And Christians, despite a religious emphasis on the equality of all believers, often treated Jews, infidels, and heretics as less than fully human. The idea that shared humanity provided all individuals with basic social and political rights simply cannot be found in the mainstream of classical or medieval Western political theory, let alone practice.

In pre-modern Western political thought, rulers were seen to have obliga-

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<sup>19</sup> See: *Íbid*, chapter 5. For ease of exposition, and to further emphasize the contingency of human rights ideas, the examples used below will be almost entirely western.

tions to rule wisely and for the common good. These duties, however, arose from divine commandment, natural law, tradition, or contingent political arrangements. They did not rest on the rights of all human beings to be ruled justly. In a well-ordered society, the people were to be beneficiaries of the political obligations of the rulers. But they had no –natural or human– rights that could be exercised against unjust rulers. The reigning idea was natural right –in the sense of rectitude– not natural rights –entitlements–.

Human rights –equal and inalienable rights, held by all human beings simply because they are human, and exercisable against the state and society– are a distinctive, historically unusual set of social values and practices. The universality of human rights is a moral claim about the proper way to organize social and political relations in the contemporary world, not an historical or anthropological fact. Human rights are an eminently contestable basis for ordering social and political life. They are, however, as we saw above, the predominant model of social and political organization endorsed by contemporary international society.

### **2.3. A (very) brief history of human rights**

The idea of natural or human rights permanently entered the mainstream of political theory and practice in seventeenth century Europe, in response to the social disruptions and transformations of modernity. Political and economic centralization and the growing penetration of the market created –relatively– autonomous individuals and families in place of members of traditional local communities occupying ascriptive roles. These new modern individuals and families were left –relatively– alone to face both the growing coercive powers of ever more intrusive states and the new indignities of free market capitalism. These same forces also supported the political rise of the middle classes, who found in natural rights a powerful argument against aristocratic privilege.

The substance of the human rights advanced by these newly emergent social actors was no less historically contingent. Consider, for example, John Locke's *Second Treatise of Government* (1688), which presented the first fully developed natural rights theory fundamentally consistent with later human rights ideas. Locke's list of natural rights to life, liberty, and estates strikes most late-twentieth-century readers as far too narrow. Furthermore, despite the apparent universalism of the language of natural rights, Locke develops a theory for the protection of the rights of propertied European males. Women, along with "savages," servants, and wage laborers of either sex, were not recognized as right holders.

The history of human rights struggles in the following three centuries can be seen as leading to a gradual expansion of recognized subjects of human rights, toward the ideal of full and equal inclusion of all members of the species. Gender, race, property, and religion have been formally eliminated as legitimate grounds

for denying the enjoyment of natural or human rights in almost all realms of public life in almost all Western countries –and most other countries as well–. In effect, racist, bourgeois, Christian patriarchs found the same natural rights arguments they had used against aristocratic privilege turned against them in a struggle to incorporate new social groups into the realm of equal citizens entitled to participate in public and private life as autonomous subjects and agents.

Property restrictions on the enjoyment of natural rights were often defended by arguing that those without property lacked the leisure required to develop their rational capacities sufficiently to be full participants in political society. The rise of mass literacy seriously undercut such arguments. Mass electoral politics, in which participation was conceived more as authorizing and reviewing the actions of others than as direct political decision making, also reduced the plausibility of such arguments. The common claim that the unpropertied lacked a sufficient "stake" in society to be allowed full political participation fell to changing conceptions of political membership, beginning with the American and French revolutions, the rise of popular armies, and growing nationalist sentiments. Legal discrimination based on an alleged lack of independence of the unpropertied gave way to social and economic changes associated with industrialization, particularly the increasingly impersonal relations between workers and employers and the general depersonalization of relations in urban setting. And the implicit assumption of the coincidence of wealth and virtue was eroded by general processes of social levelling and mobility.

Women and non-whites were until well into the twentieth century widely seen in the West as irreparably deficient in their rational or moral capabilities, and thus incapable of exercising human rights. But these racial and gender distinctions were at least in principle subject to principled and empirical counter-arguments. Movements against slavery, for women's suffrage, and against discrimination based on race and sex had by the mid-twentieth century substantially transformed dominant Western political ideas and practices. A similar process led to the elimination of formal disabilities against Jews, some Christian sects, pagans, and atheists, which were the norm in eighteenth century Europe. The logic was essentially the same: although different, adherents of different, even despised, religions were nonetheless fully human and thus entitled to the same rights as other human beings.

With an expanded range of subjects recognized to hold natural rights, the substance of those rights underwent parallel revisions. For example, the political left argued that existing private property rights were incompatible with true liberty, equality, and security for working men –and later, women–. Through intense and often violent political struggles, this led to the rise of social insurance schemes, regulations on working conditions, and an extended range of recognized economic, social, and cultural rights, culminating in the welfare state societies of late twentieth-century.

eth century Europe.

Our experience with modern states and markets has produced further changes in human rights ideas and practices. As the coercive capacity and penetration of the state grew, protecting space for autonomous public and private action became a growing priority. New legal rights have thus been recognized and a greater emphasis has been placed on an expanded understanding of such rights as freedom of religion, expression, association, and assembly. As modern markets have transformed families and communities, new mechanisms for assuring subsistence and social welfare have been developed. Major changes in economic and social rights have also come from our growing understanding of the destructive unintended consequences of private property rights and a growing appreciation of alternative, rights-based means for realizing economic security and participation in a world of industrial capitalism.

The International Human Rights Covenants can be seen as completing and codifying this expansion of the subjects of human rights by extending them globally. They also codify an evolved shared understanding of the principal systematic public threats to human dignity in the contemporary world and the practices necessary to counter them. To oversimplify only slightly, they set out as a hegemonic political model something very much like the liberal democratic welfare state of Western Europe, in which all adult nationals are incorporated as full legal and political equals able to claim, by rights, an extensive array of social welfare services, social and economic opportunities, and civil and political liberties<sup>20</sup>.

Contemporary liberals may be tempted to see in this history a gradual unfolding of the inherent logic of natural rights. With the benefit of hindsight, it may even be illuminating to talk of a purification of practice to more closely approximate the underlying moral ideal of fully equal and autonomous human beings regulating their public lives through the mechanism of equal and inalienable natural rights. But we must be wary of Whiggish self-satisfaction and comfortable teleological views of moral progress.

There is nothing natural, let alone inevitable, about ordering social and political life around the idea of human rights. Furthermore, the particular list of rights that we take as authoritative today reflects a contingent response to historically specific conditions. For example, Article 11 of the International Covenant on Civil and Political Rights states that "*no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation*", a clear response to the –historically very unusual– practice of debtor prisons. Contemporary conceptions of human rights

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<sup>20</sup> See: *Ibid*, chapters 2-3.

reflect a long process of social and political struggle that might easily have turned out differently. And our list of authoritatively recognized human rights may change in response to changes in our understanding of human dignity, the emergence of new threats, and social learning concerning the institutions, practices, and values necessary to realize that dignity.

The historical contingency of international human rights norms, however, does not make them any less authoritative. Neither arbitrary –although certain conventional– nor capable of being changed merely through acts of the will, they are deeply rooted social constructions that shape our lives. The vision of human dignity they reflect and seek to implement is predominant in contemporary international society and accepted by almost all states as authoritative –whatever their deviations from these norms in practice–. Human rights have become a central, perhaps even defining, element of the social and political reality of the late twentieth century world.

### **3. States and international human rights**

If human rights are held universally –that is, equally and by all– one might imagine that they hold universally against all other individuals and groups. Such a conception is inherently plausible. It is in many ways morally attractive. But it is not the contemporary international understanding. Internationally recognized human rights, although held equally by all human beings, are held with respect to, and exercised against, the sovereign territorial state.

The Covenants and other international human rights treaties establish rights for all individuals. The obligations they create, however, are only for states. And states have international human rights obligations only to their own nationals –and foreign nationals in their territory or otherwise subject to their jurisdiction or control–. Contemporary international –and regional– human rights regimes are supervisory mechanisms that monitor relations between states and citizens. They are not alternatives to a fundamentally statist conception of human rights. Even in the strong European regional human rights regime, the European Court of Human Rights regulates relations between states and their nationals or residents.

The centrality of states in the contemporary construction of international human rights is also clear in the substance of recognized rights. Some, most notably rights of political participation, are typically restricted to citizens. Other rights apply only to residents. For example, states have international human rights obligations to provide education and social insurance only to residents. The remaining internationally recognized human rights, such as freedom of speech and protection against torture, apply to foreign nationals only while they are subject to the juris-

diction of the state.

Foreign states simply have no internationally recognized human rights obligation to protect foreign nationals abroad from, for example, torture. They are not even at liberty to use more than persuasive means on behalf of torture victims. Current norms of state sovereignty still prohibit states from acting coercively abroad to remedy torture and most other violations of human rights.

This focus on state-citizen relations is also embedded in our ordinary language. A person beaten by the police has her human rights violated. But it is an ordinary crime, not a human rights violation, to receive an otherwise identical beating at the hands of a thief or an irascible neighbor. Internationally, we distinguish human rights violations from war crimes. Even when comparable suffering is inflicted on innocent civilians, we draw a sharp categorical distinction based on whether the perpetrator is –an agent of– one's own or a foreign government.

Although neither necessary nor inevitable, this state-centric conception of human rights has deep historical roots. The idea of human rights first appears in, and remains deeply enmeshed with, liberal social contract theory, the only major tradition of social and political theory that begins with individuals endowed with equal and inalienable rights. And the contractarian notion of the state as an instrument for the protection, implementation, and effective realization of natural rights is strikingly similar to the conception of the state in international human rights instruments. Both share the view that the legitimacy of the state is to be measured largely by its performance in implementing human rights.

The restriction of international human rights obligations to nationals, residents, and visitors also reflects the central role of the sovereign state in modern politics. Since at least the sixteenth century, –dynastic, and later territorial or nation– states have struggled, with considerable success, to consolidate their internal authority over competing local powers. Simultaneously, sovereign states in the early modern era struggled, with even greater success, to free themselves from imperial and papal authority. And their late modern successors have jealously, zealously, and largely successfully fought attempts to reinstitute supranational authority.

With power and authority thus doubly concentrated, the modern state has emerged as both the principal threat to the enjoyment of human rights and the essential institution for their effective implementation and enforcement. Both sides of this relationship between the state and human rights require emphasis.

The immense power and reach of the modern state makes controlling it central to the realization of any plausible conception of human dignity. The human rights strategy of control has had two principal dimensions. Negatively, it prohibits a wide range of state interferences in the personal, social, and political lives of citizens, acting both individually and collectively. But beyond carving out zones of state exclusion, human rights place the people above and in positive control of their government. Political authority is vested in a free citizenry endowed with extensive rights of political participation –rights to vote, freedom of association, free speech, etc...–.

The state, however, precisely because of its political dominance in the contemporary world, is the central institution available for effectively implementing internationally recognized human rights. "Failed states" such as Somalia suggests that one of the few things as frightening in the contemporary world as an efficiently repressive state is no state at all. Human rights are thus not only concerned with preventing state-based wrongs. They also require the state to provide certain goods, services, opportunities, and protections.

Although obvious for most economic and social rights, the essential positive role of the state is no less central to many civil and political rights. For example, the effective implementation of rights to nondiscrimination often requires extensive positive actions to realize the underlying value of equality. Even procedural rights such as due process entail considerable positive endeavors with respect to police, courts, and administrative procedures. And rights that guarantee political participation are not merely instrumentally valuable in controlling the state, but good in themselves. The state is thus required not merely to refrain from certain harmful actions, but to create a political environment that fosters the development of active, engaged, autonomous citizens.

Other strategies have been tried or proposed for controlling the destructive capacities of the state and harnessing its constructive powers for realizing important human values and goods. For example, the virtue or wisdom of leaders, party members, or clerics, the expertise of technocrats, and the special skills and social position of the military have seemed to many to be attractive alternatives to human rights as bases of political order and legitimacy. But the human rights approach has proved more effective than any alternative yet tried – or at least that is how I read the remarkably consistent collapse of dictatorships of the left and right alike over the last dozen years in Latin America, Central and Eastern Europe, Africa, and Asia.

These alternative strategies treat people largely as objects rather than as agents. They rest on an inegalitarian and paternalistic view of the average person

as someone to be provided for, a passive recipient of benefits, rather than a creative agent with a right to shape his or her life. Thus even if we overlook their naively benign view of power and the state, they grossly undervalue both autonomy and participation. By contrast, a human rights conception rests on a distinctive linkage of equality and autonomy, summarized in the notion of –individual and collective– self-determination, that has extremely deep contemporary resonance.

Nonetheless, it would be a limiting and potentially dangerous delusion to see current human rights ideas and practices as fixed, let alone the final and perfect unfolding of a comprehensive, timeless vision of human rights and wrongs. We must remain open to alternative strategies and practices for realizing human dignity. One way to think about the subject of this volume is as an inquiry into the adequacy of singling out this particular class of human rights and wrongs in international relations. In what space remains to me, I will speculate on changes likely over the next couple decades, again with special attention to the central role of the state in the contemporary international human rights regime.

#### **4. The decline of the state?**

Having sketched how we got to where we are now, I want to conclude with some speculation about the future. The most likely path, it seems to me, is continued incremental changes, on a more or less punctuated basis, as over the past several decades. It is worth, however, considering the possibility of more radical changes. In this section I consider the possibility of the decline of the state. The next section considers changing conceptions of human dignity.

Article 28 of the Universal Declaration of Human Rights reads “*Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized*”. Very little attention has been given to changes in the international order that would foster realization of internationally recognized human rights. The centrality of the state as the bearer of duties correlative to internationally recognized human rights reflects not only its dominant place as an agent for delivering goods, services, opportunities, and protections but also its continuing role as the focal point of visions of political loyalty and community. Neither, in my view, is likely to change significantly over the next few decades.

##### **4.1. Changing conceptions of political community**

As noted above, the idea that the obligations of human rights are universal is inherently plausible and has considerable moral appeal. But without the development of a sense of cosmopolitan, or at least regional, moral community, state-centric conceptions of human rights obligations are likely to persist. And I see little evidence of such normative change.

Even some of the examples of “progressive” change cited above have their dark side when considered from the perspective of changing conceptions of community. In Rwanda, Somalia, and the former Yugoslavia, relatively cosmopolitan international responses were necessitated by the politicization of narrow ethnic loyalties. More generally, the post-Cold War era has seen a major resurgence in nationalism. This at least partially counterbalances greater willingness to respond to certain kinds of suffering by foreigners.

Ethnic cleansing represents a vision of the nation state in which peoples not territory define the central locus of political loyalty, obligation, and organization. Religious fundamentalism suggests replacing current territorial conceptions of community with an ecclesiastical rather than a global conception. “Traditional community values,” in their current Asian and North American incarnations alike, appeal to a community defined by a previous historical experience. At least some prominent competitors to secular territorial states are hardly attractive from a human rights perspective.

We must also note that few states are regularly willing to accept significant costs to pursue international human rights objectives. Consider, for example, the United States, which in recent years has been unwilling to impose economic sanctions on China for human rights violations, but made apparently credible threats to impose sanctions over CD pirating. A focus on narrowly defined national interests remains, and is likely to remain, predominant even as we witness the rise in salience of more cosmopolitan values.

We are witnessing a subtle, although important, transformation of the character of the state and its rights and responsibilities, rather than its demise or replacement by other actors in the field of human rights. Only in rare instances are states, separately or collectively, willing to intervene with force in response to even egregious human rights violations. But many states are no longer willing to stand by idly, even silently, in the face of systematic human rights violations and brutality. There thus are substantially greater political costs to human rights violations today than two or three decades ago.

Consider, for example, the surprisingly strong international reaction against Russian behavior in Chechnya, which is almost universally recognized as part of their territory. International interest in and pressure on Burma, which is not significantly more repressive than ten or twenty years ago, is far greater today than in the past. And even China has been forced to change its tune, arguing for its practices as culturally appropriate implementations of international human rights standards, where during the Cold War era it rejected the very language of human rights, and even punished its domestic use.

In the contemporary world we are taking more seriously the idea that states can be held morally and politically liable at the international level for how they treat their own citizens on their own territory. But sovereign states remain the central mechanism by which contemporary international society seeks to implement internationally recognized human rights, as is underscored by the very modest incremental growth in the scope and powers of multilateral human rights institutions in recent years.

Verbal and persuasive policies have become both legitimate and common in contemporary international society. Coercive international implementation of human rights norms, however, remains illegitimate in most circumstances. The major treaties authorize multilateral implementation action that is, as we have seen, almost entirely verbal. Human rights NGOs, by their very nature, can engage only in persuasive political action. Coercive bilateral intervention on behalf of internationally recognized human rights remains impermissible. And few states are willing to take more than symbolic foreign policy actions in the face of most human rights violations short of genocide.

All of this, in my view, points to the persisting centrality of feelings of national political loyalty and the continuing weakness of perceptions of cosmopolitan political solidarity. And even where, as in Western Europe, some real sense of supranational political community does seem to be emerging, states remain the central element in the mix of actors with human rights obligations. We must not confuse the increasing constraints under which states discharge their international human rights obligations with a serious challenge to the state as the principal protector of internationally recognized human rights.

#### **4.2. Global economic interdependence**

If states are to be displaced as the central duty bearers of internationally recognized human rights, other social actors must emerge to perform that role. International organizations are unlikely challengers, precisely because these organizations are the creations of states, which continue to manage them. Rather than look for direct threats from above, I would suggest looking instead to the more insidious erosions rooted in economic interdependence. Over the next few decades, however, the human rights implications appear to me to be more troubling than encouraging.

The globalization of production is weakening state-centric schemes for implementing economic, social, and cultural rights, most dramatically in the wealthier countries of the northern hemisphere. It does not, however, seem to be creating viable alternative mechanisms. Semi-permanent unemployment, attributable in part to the development of increasingly global mechanisms of production and

exchange, has already led to a modest shrinking of the welfare state in many countries in Western Europe. And in the United States, the loss of manufacturing jobs, a dramatic decline in the real value of the minimum wage, and the explosive growth of health care costs has made the coverage of the Western world's most inadequate welfare state even more incomplete and inequitable.

One might argue that the new international division of labor has simultaneously increased the enjoyment of many economic, social, and cultural rights in the newly industrializing countries. But we must be careful not to confuse growth with economic and social rights, especially in countries where the economic growth has been less dramatic and sustained. Human rights are about assuring minimum distributions of goods, services, opportunities, and protections to all, something that is by no means assured by economic growth—for example, an increase in the aggregate sum of goods and services available within a society—. Furthermore, we must not forget those countries, especially in Africa, that remain largely untouched by the new international division of labor.

Markets simply cannot do the job alone. The shortcomings of socialist command economies proved to be immense. But these failed experiments were efforts to overcome the undeniable inequities in market systems of distribution. And the real success stories of "free markets" over the long run actually show the virtues of substantial redistributive interventions by liberal democratic and social democratic welfare states. Yet it is precisely such states that have been weakened by the globalization of production. And economic interdependence does not seem to be spawning a plausible alternative provider of internationally recognized economic, social, and cultural rights.

There is no logical reason that corporations, for example, could not be considered direct duty-bearers of obligations correlative to human rights. In some countries, such as Japan, Korea, and Singapore, the state has supported, encouraged, and even mandated employment and labor practices that result in delivering through private firms many social welfare services that in the West are provided directly by the state. If the globalization of production continues apace, it is not implausible to imagine an attempt to extend such a strategy to the international level. But whatever the shortcomings of states in providing for economic and social rights, they pale before those of Multinational Companies, which are shadowy, often distant, private entities over which individual citizens lack even the limited control provided by electoral participation.

We seem to be squeezed between persisting national loyalties and declining national capabilities. And to the extent that political loyalties in the age of the welfare state have come to rest on the ability of the state to deliver rising standards

of living and high levels of performance in implementing economic, social, and cultural rights, a very likely outcome is a rise in political alienation, polarization, and disorder at all levels of politics –which brings us back to the discussion of the preceding subsection–. A weakening of state loyalties may contribute to the development of stronger cosmopolitan sensibilities. But a no less plausible alternative, especially in the medium run, is the rise of nativist and nationalist sentiments that seek to blame others for our setbacks and for disturbing changes in general.

The shortcomings of state-centric systems of delivering internationally recognized human rights are manifest to those of us who have lived through them. But not all changes would seem to be progressive. States at least have devised relatively effective mechanisms to harness national economic actors and redistribute resources. Without the development of parallel mechanisms at the international level, the human rights implications of growing economic interdependence are not at all promising.

### **5. New conceptions of human dignity?**

Perhaps the most profound transformations in currently dominant conceptions of human rights would arise from basic changes in underlying understandings of human nature, dignity, well-being, or flourishing. I will argue, however, that the ideal of equal and autonomous individuals pursuing, within certain limits, their own conceptions of the good life, remains deeply entrenched as a regulative political ideal in contemporary international society. Controversy rages, and will continue, over the precise implications of these core values, but the basic contours of the contemporary construction of human rights seems firmly rooted and likely to persist for many decades.

As I noted above, a central achievement of the human rights movement has been to discredit moral or political doctrines based on fundamental inequalities between human beings. Social orders based on fixed status hierarchies have been largely replaced –in theory at least, and in most countries to a considerable degree in practice as well– by orders based on the fundamental equality of all citizens. Although many liberal advocates of human rights have emphasized individual liberties, it is the radical political egalitarianism of human rights that have had their most profound implications, both nationally and internationally.

One of the most troubling changes of the post-Cold War world has been the resurgence of claims of group superiority. Genocidal violence in Bosnia, Croatia, and Rwanda are just the most prominent examples of a resurgence of politicized arguments of ethnic purity and superiority. Politically active religious fundamentalism not only imposes a narrow vision of the good life but also draws fundamental distinctions between citizens on the basis of their religion. The resurgence of nativist political movements and racist politics in North America and Europe raises

similar concerns. And most of these movements are associated with a social vision committed to the subordination of women.

But the strong international reactions against contemporary manifestations of ethnic privilege, xenophobic nationalism, and politicized religious fundamentalism –in Rwanda and Burundi, the former Yugoslavia, Sudan, Algeria, Israel, and the former Soviet Union– suggest that such arguments have little appeal beyond those who see themselves as specially chosen. Unlike the status hierarchies of past eras, today it is rare for either those who are to be subordinated or those who look on from the outside to acquiesce in attempts to assert such claims of superiority. This, I would suggest, indicates the continuing, and even deepening, commitment to the basic moral equality of all human beings that provides the core of the vision of human dignity underlying internationally recognized human rights.

Arguments of irreducible qualitative differences between groups of human beings would also seem to be incompatible with the kind of –relatively– open, inclusive, and tolerant international society to which we have been moving over the past century. Although cosmopolitan conceptions of world order have not penetrated very deeply, one of the great achievements of the spread of –originally–Western–international society has been the entrenchment of doctrines of the equality of states and the self-determination of peoples. These doctrines rest on an at least grudging recognition that the differences between us and others do not justify their formal subordination. Taking them seriously radically reshaped the map of the world during the era of decolonization. And it has subtly but significantly altered the character of international politics in our era.

This may reflect only a weak and negative notion of equality. It is, however, real and, I would argue, of immense importance. And the deepening penetration of international human rights into post-Cold War international politics suggests that we are at least beginning to take seriously the irreducible equality of individuals, even if it remains in practice subordinated to the equality of states.

The core human rights commitment to individual equality leads "naturally" to an emphasis on individual autonomy. If one is equal to others, they have no right to force you to comply with their ideas of what is right and proper –or, more precisely, they may not force on your ideas of right that treat you as less than an equal moral agent–. In fact, it is difficult to separate the "natural" moral equality of individuals from the autonomy of these equal persons.

Without implying license to act simply as one chooses, this suggests fundamental limits on what society may legitimately require or prohibit from its mem-

bers. The nature of those limits, of course, are appropriately central matters of moral and political conflict. The values of the Universal Declaration and Covenants, however, seem to continue to shape the range of arguments that receive considerable international endorsement.

Consider, for example, questions of sexual decency, a hot button issue in recent "Asian values" critiques of the West and international human rights standards<sup>21</sup>. In most Western countries, freedom of speech is seen to permit the graphic depiction of virtually any sex act –so long as it does not involve and is not shown to children–. Some Asian countries prohibit and even severely punish those who produce or distribute such material. This dispute, however, is over the limits of autonomy, or the range of a particular right, rather than a fundamental rejection of human rights or the idea of personal autonomy.

Furthermore, this controversy rages internally within many countries at least as strongly. Every country criminalizes some forms of pornography, and virtually every country permits some depictions of sexual behavior that another country –and not just Taliban Afghanistan– has within living memory banned as pornographic. Wherever one draws the line, it leaves intact both the basic internationally recognized human right to freedom of speech and the underlying value of personal autonomy.

Arguments about the allegedly excessive individualism of human rights have a similarly narrow scope. The basic moral equality of all human beings, once accepted, logically requires that each person be specially recognized as an individual. Some degree of individualism is inescapable when our moral and political starting point is the equality of each and every human being.

This, of course, leaves open the question of the relative weights to be assigned to the individual and the groups of which she is a member. For example, should traditional notions of "family values" and gender roles be emphasized in the interest of children and society or should families be conceived in more individualistic and egalitarian terms? What is the proper balance between rewarding individual economic initiative and redistributive taxation in the interest of social harmony and support for disadvantaged individuals and groups? At what point should the words or behaviors of deviant or dissident individuals be forced to give way the interests or desires of society?

Questions such as these are vital issues of political controversy in virtually

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<sup>21</sup> For a balanced assessment of such arguments, see: LANGLOIS, Anthony J., *The Politics of Justice and Human Rights*, Cambridge University Press, Cambridge, 2001.

all societies. Exactly where the lines are drawn differ considerably –although I would suggest that the differences are less than most authoritarian governments would have us believe–. But the only answers that today receive widespread international endorsement –in fairly stark contrast to just twenty years ago– are those that leave a considerable space for the equal and autonomous individual.

Much the same is true of arguments over the use of –human– rights to protect individual equality and autonomy. Whatever the theoretical attractions of technocratic management, or some other system of rule by the enlightened, all our previous political experience suggests that the best mechanism is empowering these equal and autonomous individuals with human rights. Once again, this leaves us considerable space for political controversy. But for our purposes here, it is the bounded nature of that space that requires emphasis.

The common complaint that Westerners in general, and Americans in particular, have gone "rights crazy" merits serious consideration. We must guard against what might be called the imperialism of rights, the view that all important human goods should be recognized as and implemented through the mechanism of –human– rights. As noted above, many important wrongs and harms do not now, and I would argue should not come to be seen to, involve violations of –human– rights. But the Universal Declaration of Human Rights, the normative core of the current international human rights regime, would seem largely immune from such arguments.

Few governments today repudiate rights to life, liberty, security of the person, equality before the law, a fair trial, political participation, social security, work, rest, leisure, education, and an adequate standard of living; to freedom of thought, conscience, religion, opinion, expression, assembly, association, and movement; and to protections against discrimination, slavery, and torture. And when they do, as in, for example, Iran's persecution of Bahai's as apostates, these states receive little international support and considerable international criticism. There simply is not much international appeal today, as opposed to thirty years ago, to arguments that the list of internationally recognized human rights is either too long or systematically misguided.

This is not to deny that intense controversy continues to rage over the implications of the rather general rights specified in the Universal Declaration. For example, few countries in the world understand freedom of the press as broadly, and few developed countries construe the right to social security as narrowly, as the United States. But these are relatively modest variations in implementing internationally recognized human rights. And the general formulations of the principal international instruments set authoritative limits on the range of permissible

variation.

There are few political issues more important than establishing the exact extent of the political space allowed to autonomous individuals in the exercise of their rights. Dominant understandings have changed over time, and will continue to change. My reading of current international political controversies over human rights, however, suggests that they continue to take place largely within a space delimited by a basic moral commitment to the idea that all human beings, simply because they are human, have the equal and inalienable individual rights recognized in the Universal Declaration and Covenants.

There is much of moral importance in international relations that falls outside the domain of human rights. Questions of international distributive justice, whether understood in cosmopolitan or statist terms, come most prominently to mind. Nonetheless, the increasing prominence of human rights in international relations over the past three-quarters of a century, and the past three decades in particular, has given at least some questions of right and wrong an unprecedented place on international agendas. For all the shortcomings of this particular construction of right and wrong in international relations, I find the rise and persistence of human rights as a regulative international political ideal an unusually promising sign for the future.

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