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THE GLOBALIZATION OF HUMAN RIGHTS: CONSCIOUSNESS, LAW AND REALITY

Douglass Cassel*

AUTHOR'S PREFACE

¶ 1 Human rights have suffered sharp setbacks in the four years since the paper that follows was delivered in London in the summer of 2000. The terrorist attacks on the United States on September 11, 2001, and the Bush Administration's ensuing "war on terrorism," have led not only to a demotion of human rights on the list of American foreign policy priorities, but also to gross violations of human rights by Washington.[1] Among other recent assaults on the rule of law are the prolonged detentions of hundreds of prisoners without trial or due process of law at the United States Naval Base in Guantanamo Bay, Cuba.[2] Repressive regimes around the world have happily seized on American regression as precedent and pretext to trample on due process of law and to crack down on political dissent.[3]

¶ 2 The question is whether this is merely a temporary overreaction by a conservative administration, echoing the pattern of past American violations of civil liberties in times of war and emergency,[4] or is instead the first sign of a long-term reversal of the human rights gains of the twentieth century. One hopes that this, too, shall pass.

¶ 3 Because the question remains open, however, I thought it best to leave the following essay as it stands, in its pre-9/11 innocence. Time will tell whether Washington and other governments regain their senses and come back to an appreciation of the hard-won gains for human rights in the twentieth century.[5] For the reasons stated in the essay, I believe there is reason to remain guardedly optimistic.

I. Introduction

¶ 4 After overthrowing the elected government of Chile in 1973, General Augusto Pinochet set out on a rampage of torture, murder and disappearances of thousands of political opponents. What if he had done so a half century sooner?

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* Director, Center for International Human Rights, Clinical Professor of Law, Northwestern University School of Law.

[1] *See generally* Douglass Cassel, *International Human Rights and the United States Response to 11 September, in* LEGAL INSTRUMENTS IN THE FIGHTS AGAINST INTERNATIONAL TERRORISM A TRANSATLANTIC DIALOGUE 251-297 (C. Fijnaut et. al. eds., 2004).

[2] *See* Al Odah v. U.S., 321 F.3d 1134 (D.C. Cir. 2003), *cert. granted*, Rassul v. Bush, 124 S.Ct. 534 (2003).

[3] *See, e.g.,* LAWYERS COMMITTEE FOR HUMAN RIGHTS, ASSESSING THE NEW NORMAL: LIBERTY AND SECURITY FOR THE POST-SEPTEMBER 11 UNITED STATES, ch. 5 (2003), *available at* http://www.humanrightsfirst.org.

[4] *See, e.g.,* Geoffrey R. Stone, *Civil Liberties at Risk Again: A U.S. Tradition*, CHI. TRIB., Feb. 16, 2003, at C1.

[5] *See* Michael Ignatieff, *Is the Human Rights Era Ending?*, N.Y. TIMES, Feb. 5, 2002,at A25.

¶ 5 In 1923 the world had no torture treaty, no genocide convention, no Amnesty International, no BBC television. Spanish courts in the 1920's would not have indicted Pinochet for torturing Chileans in Chile. Britain would not have agreed to extradite him to Spain for trial, nor would the Law Lords have allowed it. Protests, if any, might not have been organized until the General was safely aboard a steamer back to South America.

¶ 6 His victims would thus have shared the fate of the Armenians slaughtered by the Turks in 1915. When reminded of that genocide two decades later, on the eve of launching another, Hitler would scoff, "Who now remembers the Armenians?"

¶ 7 Fortunately, the half-century since the fall of the Third Reich has witnessed nothing less than a revolution in global human rights consciousness, law and institutions. Atrocities are still committed, but we now have international legal tools to address them—if we have the will.

¶ 8 This paper assesses the rights revolution in historical context and asks, What drives it?

II. The Rights Revolution in Historical Context

A. Culture

¶ 9 Human rights embody core values. Among them are the dignity of all human beings, their equality of fundamental worth, and their need to live in community, with respect and empathy for others, but also with some measure of individual liberty. Historically, the West has no monopoly on these values.[6] In greater or lesser degree they have long been embraced by the world's major religious and philosophical traditions.[7] Most cultures in most eras, however, saw them more as duties than as rights, emphasized community more than individuality, and enforced them more by authoritarian compulsion or by social ethos than by law.

¶ 10 That was largely true of the West, too, until the last millennium. But at least since the sealing of the Magna Carta in 1215,[8] and arguably since the twelfth century in continental debates on canon law,[9] European civilization began to forge a distinctive path. Western moral theology, secular philosophy, and law—if not practice—gradually came to stress rights more than duties, the individual more than the community, and the rule of law more than that of brute

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[6] *See generally* Amartya Sen, *Human Rights and Western Values*, NEW REPUBLIC 33, July 14 and July 21, 1997.

[7] PAUL GORDON LAUREN, THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN 4-12 (1998) (hereinafter "Lauren").

[8] *See generally* J.C. Holt, MAGNA CARTA (2d ed. 1992).

[9] *See generally* BRIAN TIERNEY, THE IDEA OF NATURAL RIGHTS: STUDIES ON NATURAL RIGHTS, NATURAL LAW AND CHURCH LAW 1150-1625 (1997); Charles J. Reid, Jr., *Book Review: The Medieval Origins of the Western Natural Rights Tradition: The Achievement of Brian Tierney*, 83 CORNELL L. REV. 437 (1998); Kenneth Pennington, *Review Essay: The History of Rights in Modern Thought*, 47 EMORY L.J. 237 (1998); Charles J. Reid, Jr., *Legal History: "Am I, By Law, The Lord of the World?": How the Juristic Response to Frederick Barbarossa's Curiosity Helped Shape Western Constitutionalism*, 92 MICH. L. REV. 1646 (1994) (*reviewing* KENNETH PENNINGTON, THE PRINCE AND THE LAW, 1200-1600: SOVEREIGNTY AND RIGHTS IN THE WESTERN LEGAL TRADITION (1993)); Harold J. Berman, *Book Review*, 45 La. L. Rev. 1133 (1985) (*reviewing* BRIAN TIERNEY, RELIGION, LAW, AND THE GROWTH OF CONSTITUTIONAL THOUGHT 1150-1650 (1982)).

force. By the eighteenth century, these trends—and their cultural distinctiveness—were indisputable in much of Europe and North America.

¶ 11 In the nineteenth and early twentieth centuries, the culture of individual rights under law began to spread. It first found formal expression in the constitutions of the newly independent, former European colonies of Latin America. Strands were later woven into movements to "modernize" such competing cultures as those of Japan, Turkey and China.

B. Early Treaties

¶ 12 Rights culture also found footholds in particular international rules and regimes. Early treaties protecting group rights resulted from efforts by European governments to ameliorate the causes of war. While the 1648 peace treaties of Westphalia are known mainly for establishing the principle of national sovereignty, they nonetheless recognized rights of free exercise of religion.[10] Three centuries later the lessons of World War I moved the League of Nations, even while rejecting a broad charter of rights, to recognize rights of ethnic minorities in its Charter and Minorities Treaties.[11]

¶ 13 Nineteenth and early twentieth century treaties resulted from campaigns by religious and secular non-governmental organizations ("NGO's") in the West. A broad-based abolitionist movement stimulated treaties outlawing slavery and the slave trade.[12] The founders of the Red Cross helped bring about treaties to humanize the law of war.[13] And the labor movement won treaties to protect women and child workers, as well as the establishment of the International Labor Organization in 1919.[14]

C. The Formal Revolution

¶ 14 Still, by the eve of World War II, the culture of rights and NGO advocacy of rights remained largely confined to the West. The principal exceptions were independence movements asserting rights of self-determination and racial equality (against the West). Legal protection of rights was left almost entirely to domestic law. International law recognized only some rights, for some persons, in some places. International enforcement mechanisms were even more limited.

¶ 15 Yet only half a century later, human rights consciousness is now global. Almost everywhere the language of rights is spoken by diplomatic, governing, policy and academic elites, activist NGO's, the press and, in many countries, sectors of growing middle classes. International law today formally recognizes almost all human rights, for almost all persons, in almost all places.

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[10] STEPHEN D. KRASNER, SOVEREIGNTY: ORGANIZED HYPOCRISY 77-81 (1999).
[11] LAUREN, *supra* note 7, at 98-99.
[12] *Id*. at 38-45; ADAM HOCHSCHILD, KING LEOPOLD'S GHOST (1998).
[13] LAUREN, *supra* note 7, at 58-62.
[14] *Id*. at 53-57, 75-76, 96-97.

¶ 16 And international human rights law is now implemented by a proliferation of global and regional institutions and mechanisms—reporting requirements, monitoring devices, public hearings, special mediators, investigative bodies, complaint procedures, international courts, admission requirements for international organizations, bilateral and multilateral diplomatic and economic sanctions, and even occasional military intervention.

¶ 17 The second half of the twentieth century, in short, witnessed global advances in human rights consciousness, law and institutions, so widespread and profound that they amount to a revolution.

D. Realities

¶ 18 The reality of rights is another matter. The last two decades have registered dramatic improvements in many parts of the world. Nonetheless the 1990's saw massive ethnic cleansing in the former Yugoslavia, genocide in Rwanda, indiscriminate shelling of civilians in Chechnya, unspeakable brutality in Sierra Leone, unchecked violence in Colombia and the Congo, continued systemic violence against women in many countries, and widespread poverty and growing economic inequality within and between nations. The rights revolution has yet to triumph on the ground.

E. The View from the Potomac and the Thames

¶ 19 Even citadels of rights culture, with comparatively good domestic rights records, are not paragons of performance. The United Kingdom has been shocked by scandals of convictions based on evidence falsified by police. In the United States poor defendants are sentenced to death after grossly inadequate representation by incompetent and underpaid lawyers.

¶ 20 With respect to international human rights law, despite their common rights traditions, the U.K. and U.S. are at radically different stages of development. The U.K. is party in a meaningful way to human rights treaties and courts. London yields to judgments of the European Court of Human Rights, even in controversial cases of public interest. Britain is subject as well to human rights rulings by the European Court of Justice. Although among the last Council of Europe members to do so, Britain recently made European human rights law enforceable in domestic courts.

¶ 21 The U.S., on the other hand, is not yet prepared to submit to international human rights law. We refuse to join widely accepted treaties on rights of women and children, on anti-personnel land mines, on an International Criminal Court, and on economic and social rights, as well as our regional human rights treaty. Although we have ratified treaties on genocide, torture, race discrimination, and civil and political rights, we attached debilitating reservations.[15] These provisos conform the application of treaty norms in the U.S. to our national preferences. They also make the treaties largely unenforceable in our domestic courts, while declining to accept even non-binding international complaint procedures, let alone the jurisdiction of international courts.

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[15] *See generally* David P. Stewart, *United States Ratification of the Covenant on Civil and Political Rights: The Significance of the Reservations, Understandings and Declarations*, 42 DEPAUL L. REV. 1183 (1993).

¶ 22 A majority of our Supreme Court appears to disregard international norms relevant to interpretation of our domestic human rights,[16] and joins our executive and legislative branches in declining to respect unanimous rulings on provisional measures by the World Court.[17]

¶ 23 In historical context, the differences between the U.K. and U.S. should not be overstated. They may reflect transitory extremes of power differentials. The British empire at its height was no more willing than today's superpower to submit to the collective preferences of weaker nations. As the rising future power of Europe and Asia constrains American unilateralism, the advantages of international law may be more fully appreciated by Washington.

¶ 24 Even now the U.K. and U.S. are united in post-Cold War foreign policies designed to promote human rights abroad. Without Anglo-American insistence, there might be no International Criminal Tribunals for Rwanda and the former Yugoslavia. While critics may question the consistency and priority of our human rights policies, there is broad agreement on their direction, if not on their weight relative to other foreign policy goals.

F. The Challenge Ahead

¶ 25 The main human rights challenge in the current century is to translate global consciousness, law and institutions into reality. The legacy of the second half of the 20th century is that we are better positioned to meet that challenge. We now have many of the necessary tools. But our capacity to wield them will be shaped in many ways—some positive, some negative—by overriding forces of economic and technological globalization, more powerful than any nation.

¶ 26 This need not make us prisoners of determinism. The last century buried one ideology that pretended to reduce humanity to no more than a pawn of supposedly iron and objective laws of history. Let us not resurrect another. Neither class struggle nor globalization deprives us of opportunity—or responsibility—to make real the values of dignity, liberty, equality and mutual respect for members of the human family.

¶ 27 The question is whether we have the will, the vision, the determination and the intelligence to put to good use the tools bequeathed us by the rights revolution. To do so will often entail costs—in domestic political support, sovereignty, trade benefits, investment opportunities, tax revenue and, on occasion, the safety of our soldiers. Our recent record of willingness to make costly commitment in the service of human rights is mixed at best. Our future commitment may depend less on the further evolution of international human rights law and institutions, than on how our democratic polities choose to answer a basic question, one first posed at the dawn of the Judaeo-Christian tradition: Are we our brothers' keeper?[18]

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[16] *See, e.g.*, Stanford v. Kentucky, 492 U.S. 361 (1989). Compare the majority's opinion at 370 note 1 with Justice Brennan's dissent at 382, 390 note 10.
[17] Breard v. Greene, 523 U.S. 371 (1998); Germany v. U.S., 526 U.S. 111 (1999).
[18] *Genesis* 4:9; *see also* LAUREN, *supra* note 7, at 4, 5-6.

III. Before the Revolution

¶ 28 Before World War II the notion of *rights*, let alone *human rights*, was foreign to most of the world. As early as 1912 elites in China could call for "equalization of human rights,"[19] but the vast majority even of educated Chinese had no concept of what this meant.

¶ 29 Even in the West, barely a handful of NGO's identified themselves as "human rights" groups; few if any groups elsewhere embraced the term. While independence movements in Asia and Africa organized for rights, their emphasis was specifically on rights of self-determination and racial equality.

¶ 30 Otherwise human rights consciousness before World War II was confined to a small intellectual elite concentrated in Europe and the Americas. They drafted international bills of human rights and lobbied for their adoption, but their time had not yet come.[20]

¶ 31 Nor did pre-war international law—subject to discrete exceptions mentioned above -- address human rights. In 1905 a leading international law treatise declared that the very core of domestic sovereignty embraced a nation's authority to "treat its subjects according to [its] discretion."[21]

¶ 32 The incompatibility of this doctrine with principles of humanity was exposed by Nazi atrocities. As early as 1933 a Jew fired from his job complained to the League of Nations. Unlike most German Jews, because he happened to live in Upper Silesia, he was covered by a treaty. The minority clauses of the German-Polish Convention on Upper Silesia guaranteed equal treatment in employment without regard to race, language or religion. Even so, Germany insisted before the League that the "Jewish question" fell exclusively within its domestic jurisdiction.[22]

¶ 33 As a matter of international law at the time, but for the happenstance that the victim resided in Upper Silesia, Germany would have been right: discrimination against its own citizens was its own business.

¶ 34 Even the Final Solution, Hermann Goering would later claim at Nuremberg, "was our right! We were a sovereign State and that was strictly our business."[23] He was wrong: The Holocaust, whose death trains crossed national borders to reach death camps in Poland, was an international affair.

¶ 35 But what if Germany had slaughtered only German Jews, and only in Germany? Under the positive international law of the day, Goering would have been right: how a country treated its own citizens within its own borders was generally a matter exclusively within its domestic jurisdiction.

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[19] LAUREN, *supra* note 7, at 82.
[20] *See generally* Jan Herman Burgers, *The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century*, 14 HUM. RTS. Q. 447 (1992); LAUREN, *supra* note 7, at 105-123.
[21] 1 L. OPPENHEIM, INTERNATIONAL LAW: A TREATISE 124 (1905).
[22] *See* LAUREN, *supra* note 7, at 130-135.
[23] *Id*. at 202-203 (case of Franz Bernheim).

¶ 36 This pre-war rule, centuries old, was tacitly confirmed at Nuremberg. The original English text of the 1945 London Charter for the Nuremberg Tribunal authorized prosecutions for crimes against humanity "committed against any civilian population, before or during the war; ..."[24] This would have permitted trials for atrocities against Jews in Germany before 1939. However, the prosecutors later adopted a Protocol limiting trials of crimes against humanity to those committed "in execution of or in connection with" war crimes or crimes against peace.[25] The Tribunal's judgment confirmed that although persecutions of Jews in Germany before 1939 were "established beyond all doubt, . . . it has not been satisfactorily proved that they were done in execution of, or in connection with" a war crime or crime against peace.[26] Thus no one was convicted at Nuremberg for outrages against German Jews before the war.

¶ 37 Relegating peacetime human rights to exclusive domestic jurisdiction reflected the realities of the day. None of the prosecuting powers at Nuremberg had an interest in international scrutiny of its own human rights practices. Stalin had murderous purges to conceal. Britain and France had colonies, where rights of self-determination and equality were trampled.

¶ 38 And the US still had large pockets of legalized racial segregation. At the Versailles peace conference in 1919, President Woodrow Wilson had gaveled down a proposal, supported by a majority of delegates, to insert a provision on racial equality in the Covenant of the League of Nations. When a French lawyer objected to this usurpation, Wilson responded that there were "too serious objections on the part of some of us."[27]

¶ 39 Prior to World War II, then, human rights simply could not come under the umbrella of international law. If they had, the major powers would have found themselves on the Ten Most Wanted list of violators. As late as the 1930's, the world was not ready for international human rights law.

IV. The Revolution

A. Consciousness

¶ 40 The post-war human rights revolution, first and foremost, is one of consciousness. Half a century after the defeat of the Nazis, human rights stories run in the media almost daily, almost everywhere. Hundreds of NGO's from all over the world regularly flock to United

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[24]M. CHERIF BASSIOUNI, CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW 582-584 (1992) (*reprinting* London Charter).

[25]*Id*. at 585-86 (*reprinting* Protocol to Agreement and Charter, London, 6 Oct. 1945). The Protocol replaced the semicolon following the phrase "before or during the war" with a comma, so that the phrase was modified by the later phrase "in execution of or in connection with any crime within the jurisdiction of the Tribunal, ..." Other than crimes against humanity, thus limited by the change in punctuation, the only other crimes within the Tribunal's jurisdiction were war crimes and crimes against peace.

[26]The Nuremberg Trial, 6 F.R.D. 69, 131 (1946); *Judicial Decisions: International Military Tribunal (Nuremberg), Judgment and Sentences*, 41 AM. J. INT'L L. 172 (1947).

[27]LAUREN, *supra* note 7, at 100.

Nations human rights conferences. Mexico alone, which fifteen years ago had only a handful of human rights NGO's, now has scores. Law school courses on human rights, commonplace in the U.S. and Europe, have spread throughout law faculties in Latin America and begun to reach Africa and Asia as well.

¶ 41 Major religions, formerly alienated from or hostile to human rights, have undergone conversions. Pope John XXIII's 1963 encyclical, *Pacem in Terris*, embraced much of the Universal Declaration of Human Rights. The protestant World Council of Churches has explicitly campaigned for international human rights since the 1970's.[28] Buddhist priests are now persecuted by Myanmar's military junta for advocating human rights.[29] And in the largest Muslim nation—Indonesia—the preamble to a law establishing a Human Rights Court recites that "Human rights are basic rights bestowed by God on human beings . . .. "[30]

¶ 42 Meanwhile Amnesty International and other NGO's publish annual assessments of human rights in nearly every country, along with countless special reports and daily press releases. It has become virtually impossible to discuss world affairs in diplomatic circles, the press, parliaments, universities and, increasingly, even on the streets, without referring to their human rights aspects.

¶ 43 Some go so far as to call human rights the new "secular religion" of the 20th century.[31] While that may be an exaggeration, human rights has become embedded in how educated citizens in most countries understand the world. It is a primary lens through which they view the relations of peoples to governments, individuals to societies, and minorities to majorities.

B. International Law

¶ 44 The triumph of rights consciousness has both contributed to and been stimulated by an explosion in international human rights law. The rubicon was crossed in 1945. Early drafts of the United Nations Charter, prepared in 1944 by the major allied powers at Dumbarton Oaks in Washington, hardly mentioned human rights.[32] But scores of NGO's at the U.N.'s founding conference at San Francisco demanded that the allies fulfill their highly publicized wartime commitments to human rights. The State Department, hoping to avoid a repetition of the Senate rejection of the League of Nations, invited some forty-two U.S. NGO's to the conference as "consultants."[33] When these religious, labor, civil rights, peace, world affairs and professional

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[28] *Id*. at 272.
[29] U.S. DEP'T STATE, 1999 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: BURMA, at 2, *available at* http://www.state.gov.
[30] Law 26/2000 Establishing the Ad Hoc Human Rights Court, at prmbl. § A (Indon.) (adopted by the People's Representative Assembly Nov. 6, 2000).
[31] John Witte, Jr., *Law, Religion, and Human Rights*, 28 COLUM. HUM. RTS. L. REV. 1, 10 n. 26 (1996) (*citing* JACQUES MARITAIN, MAN AND THE STATE 110-11 (1951)).
[32] LAUREN, *supra* note 7, at 166-71.
[33] *Id*. at 182.

groups met with the chief U.S. government delegate, according to State Department notes, "Human rights was the topic of discussion."[34]

¶ 45 The British Foreign Office was similarly pressed. A formal Memorandum from London's Council of Christians and Jews, whose members included, among others, the Archbishops of Canterbury and of Westminster, the Chief Rabbi and the moderator of the Church of Scotland, urged that human rights be deemed essential and given prominence by the British delegation.[35]

¶ 46 The NGO's fell short of their goal of including an international bill of human rights in the U.N. Charter. But working together with Latin American and Asian nations, they succeeded in internationalizing human rights. Unlike the Dumbarton Oaks draft—and far beyond anything in pre-war international law—the final Charter declares that the U.N.'s purposes include "international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; . . . "[36] Further, "the United Nations shall promote: . . . universal respect for, and observance of, human rights and fundamental freedoms . . . "[37] And, "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement" of those purposes.[38]

¶ 47 Couched in diplomatic ambiguity, the Charter lacked juridical precision. But the main hurdle was cleared: by law, human rights were now a legitimate international concern.

¶ 48 There was one catch. Governments stipulated that nothing in the Charter "shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . . "[39] But this defense was weak: It did not specify what matters were "essentially within the domestic jurisdiction." And with human rights written all over the rest of the U.N. Charter, it was difficult any longer to contend that they were essentially domestic.

¶ 49 Later developments in U.N. law and practice would consolidate this first step, making clear that gross violations of human rights are not within domestic sovereignty. Although recalcitrant nations even now yelp "national sovereignty" and "domestic jurisdiction" when called to international account, their legal argument is no longer credible. No government believes it, except perhaps the one attempting to resurrect it as a defense. In international law, human rights have won the war against exclusive domestic sovereignty.

¶ 50 If the first step was to internationalize rights, the second was to develop the first, officially adopted international bill of rights. This was done in two stages. In 1948, following two years of work by the Human Rights Commission chaired by Eleanor Roosevelt, the U.N.

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[34] *Id*. at 183.
[35] *Id*. at 181-182.
[36] U.N. CHARTER art. 1.
[37] *Id*. at art. 55, para. c.
[38] *Id*. at art. 56.
[39] *Id*. at art. 2.7.

General Assembly adopted the Universal Declaration of Human Rights. The final vote was forty-eight in favor, none opposed and eight abstentions (the Soviet bloc plus Saudi Arabia and South Africa). Although not legally binding—Mrs. Roosevelt was instructed by the State Department to so state on behalf of the U.S.—the Declaration proclaimed "a common standard of achievement for all peoples and all nations." Those standards include not only a full basket of the familiar civil and political rights, but also a healthy bushel of economic, social and cultural rights.

¶ 51 As Professor Mary Ann Glendon argues persuasively, the vision of the Declaration, reflecting diverse cultural input in its drafting, is not one of radical individualism and self-interest, but a balance of individual rights within and duties toward the community.[40] This is evident in its very first article: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood."

¶ 52 And in its next to last: "Everyone has duties to the community in which alone the free and full development of his personality is possible."[41]

¶ 53 Universal acceptance by states of the full panoply of rights in the Declaration was reiterated—not without debate and struggle—in U.N. conferences in Teheran in 1968 and Vienna in 1993. The Vienna Conference, attended by one-hundred-and-seventy-one states, labored mightily to produce the following compromise language:

> [a]ll human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While 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.[42]

¶ 54 Many governments, of course, do not really believe that all rights stand on equal and indivisible footing. The Chinese have no more use for civil and political rights than do the Americans for economic welfare and social rights. But the price of consensus was that each had to accept the other's favored rights, if it wished to secure full recognition for its own. For such states, the indivisibility of rights is a mere diplomatic fiction.

¶ 55 Other states and most NGO's, however, take seriously the interdependence and equal importance of basic rights. Many recall that the economic and social collapse of the Weimar Republic led to the civil and political calamity of the Third Reich.

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[40] MARY ANN GLENDON, A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (2001).

[41] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at Art. 29(1) (1948).

[42] United Nations, World Conference on Human Rights, the Vienna Declaration and Programme of Action, at 30, para. 5, U.N. Doc. A/CONF. 157/23 (1993).

¶ 56 This same dichotomy was faced at the next stage, when the agreed norms were codified in legally binding form. Thanks to the arrival of a large bloc of newly independent African and Asian states, the U.N. in 1966 finally overcame a Cold War stand-off and converted the aspirations of the 1948 Universal Declaration into two treaties.[43] One, the International Covenant on Civil and Political Rights, now has one-hundred-and-forty-seven states parties (but not yet China). The other, the International Covenant on Economic, Social and Cultural Rights, similarly has one-hundred-and-forty-five states parties (but not the U.S.). Together with the Universal Declaration and the first Optional Protocol to the Civil and Political Covenant (which allows complaints by individuals to the Human Rights Committee), these instruments are known collectively as the International Bill of Human Rights. Most rights they secure are now widely recognized as having attained the status of customary international law, binding even on states not party to the Covenants.

¶ 57 The Universal Declaration and Covenants are only the core of what is now an extensive corpus of international human rights law, which includes scores of global and regional treaties and declarations. Among the more important and widely ratified U.N. treaties are those on rights of children (191 states parties), women (170) and refugees (137), and those that ban racial discrimination (160), genocide (133) and torture (127).[44] The International Labor Organization has adopted major treaties on the right to collective bargaining (151 states parties) and banning forced labor (160) and employment discrimination (154).[45] The International Committee of the Red Cross sponsored the 1949 Geneva Conventions (189 states parties) and the 1977 protocols on international (158) and non-international (150) armed conflict, requiring respect for basic human rights in wartime.[46] At the regional level, treaties with relatively comprehensive coverage of mainly civil and political rights have been adopted in Europe, the Americas and Africa. In addition to all this "hard" law, there is a growing body of formally non-binding international instruments—such as U.N. minimum standards for prisons—widely followed as benchmarks.

¶ 58 In short, the revolution of the second half of the 20th century has done most of the work of defining and codifying substantive norms. While new norms continue to be drafted—important work is ongoing, for example, on indigenous rights, rights of the disabled, and violence against women—much attention of NGO's and states has already properly shifted to matters of implementation and effectiveness.

C. Implementation

¶ 59 International human rights law is implemented on both national and international planes.

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[43] LAUREN, *supra* note 7, at 248-257.
[44] For ratification numbers, see http://www.unhchr.ch (consulted Jan. 19, 2002).
[45] *Id*.
[46] UNESCO, HUMAN RIGHTS: MAJOR INTERNATIONAL INSTRUMENTS, Status at 31 May 2001, at 20 (2001).

1. *National*

¶ 60 In the long run, if international norms are to be respected, they must be implemented by national institutions, which are more pervasive and potentially more effective.

¶ 61 National court systems ideally have adequate resources and jurisdiction, unimpeded by barriers of sovereignty, to cover the full national territory. They can call on police and other national or local authorities with undoubted legal authority and duty to investigate cases. And once they rule, they can count on police, or if necessary in rare cases the military, to enforce their writ and judgments.

¶ 62 Where there is a culture of the rule of law, national courts also enjoy a presumption of support and respect by their polities and governments for their legitimacy as institutions and for the need to comply with their judgments, even when one disagrees with them.

¶ 63 At present, these ideal conditions are approached in only a minority of nations, mostly in the North Atlantic community. Until they are achieved elsewhere, we cannot count on effective national implementation.

¶ 64 Even where met, these conditions are merely necessary, not sufficient. Judges must also be aware of international norms and authorized to apply them. Judges at present fit this description in some countries, but not in most, including the U.S.

¶ 65 Even in some hypothetical future in which all these conditions are met in most countries, one might advocate a supportive role for international institutions analogous to that of the U.S. Supreme Court: to provide jurisprudential guidance for national courts, to resolve conflicting interpretations and to correct important deviations. That happy future, however, is nowhere in sight. In the meantime, vigorous international institutions, working in tandem with incipient national mechanisms, are needed if international norms are to gain wider respect in practice.

¶ 66 Fortunately, there have been positive recent developments on the national plane. Human rights ombudsmen and commissions, with a degree of institutional independence from government, spread from Spain throughout Latin America during the 1980's and 1990's. They have now recently spread throughout Africa and Asia as well. National courts in Latin America and Africa have begun to incorporate international human rights norms in their jurisprudence (a practice already commonplace in Europe). Recent constitutions in Eastern Europe and Asia incorporate the Universal Declaration of Human Rights. Such formal penetration of international human rights law into national laws and institutions, sometimes encouraged by the World Bank and other foreign institutions, but which then gains a momentum of its own, is likely to continue.[47]

2. *International*

¶ 67 Still, national institutions in most countries are not yet ready to carry the load, and probably will need strong support from international institutions for decades to come.

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[47] *See generally* Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599 (1997); Douglass Cassel, *Does International Human Rights Law Make a Difference?*, 2 CHI. J. INT'L L. 121 (2001).

International institutions are both regional and global. At present, in terms of their effectiveness, the world can be divided, with only slight exaggeration, in two parts: Western and Central Europe, and everywhere else.

a) Regional

¶ 68 Uniquely, Europe has three important regional human rights systems: the relatively comprehensive system of the Council of Europe, the European Union on discrete issues such as employment discrimination, and the Organization for Security and Cooperation in Europe, whose recent focus has been on democratic elections and rights of ethnic minorities.

¶ 69 Member states of the Council of Europe must join a number of treaties, including the European Convention on Human Rights. They must also submit to the binding jurisdiction of the European Court of Human Rights in Strasbourg, where for the first time in history individuals sue their governments before an international tribunal. Litigants must first exhaust national remedies, which encourages national implementation without imposing undue burden, since national courts in the region function within a legal framework and culture of rule of law.

¶ 70 Once the European Court rules, it may order "just satisfaction." Compliance with its judgment is legally required and can be expected in practice in nearly all cases. Although formally its rulings are limited to the case at hand, offending national laws are generally reformed. In case of delay, the Committee of Ministers of the Council of Europe keeps the matter on its docket, pestering the government until it complies.

¶ 71 In practice these formalities work remarkably well, if not perfectly, because of hospitable local conditions: societies and governments committed to the rule of law, with rights cultures, independent judiciaries, mutual resolve to submit to their regional referee and the economic resources to make it work, all in a broader context of regional integration. Even so, the system did not spring full-blown overnight, but took decades of tending and experience to generate the comfort levels necessary for proud nations and governments to submit to Strasbourg.

¶ 72 Where these preconditions are absent, the formal system does not prevail of its own weight. Thus the Council of Europe has trouble curbing torture in Turkey, has yet to reform Russia, and has had to bar Belgrade from joining the Council.

¶ 73 The dependence of formal structures on underlying realities is also apparent in the experience of the Inter-American Human Rights system, whose formal structure is modeled on the original, two-tiered system of the Council of Europe. The Inter-American Commission on Human Rights receives and resolves individual complaints in the first instance, and may then take them before the Inter-American Court of Human Rights for formally binding judgments. But the formalities struggle against rocky realities. Caught between an unwilling superpower in the north, and weak or authoritarian governments in the south, the Inter-American system lacks

the political backing and economic resources to cope with patterns of gross violations of human rights left unremedied by dysfunctional national judicial systems.[48]

¶ 74 Although the commission and court have managed to advance even in the face of such difficulties, they meet infrequently, commission resolutions are often disregarded, and the court renders few judgments. When the Fujimori regime in Peru defied the court in several cases, the system got little diplomatic support from the Organization of American States and regained its footing only after Fujimori was ousted.[49] Its future progress will depend less on the acuity of commissioners and judges, than on developments—forward or backward—in underlying hemispheric conditions.

¶ 75 The far weaker regional system in Africa has even further to go before it will make a positive difference. Asia is not yet ready even to create a formal regional or sub-regional system, much less to make it work.

b) Global

¶ 76 At the global level the U.N. has developed a wide array of human rights institutions and mechanisms. But most, weighted down by the lowest common denominator of disparate national and regional human rights commitments, are weak and generally ineffective. This is evidenced by their very proliferation: each new mechanism is proposed in the well-meaning hope that it might succeed where others have failed. This hope is rarely fulfilled.

¶ 77 U.N. mechanisms fall into four general categories. Some are overtly political, like the U.N. Human Rights Commission, whose fifty-three members are instructed by their governments. The Commission adopts resolutions publicly criticizing countries. It may also assign special rapporteurs to visit a country and publish annual reports on its human rights performance, in hopes of stimulating improvement. Targeted countries rarely bow to such irritants. Powerful violators—China or Saudi Arabia, for example—are in any event immune from U.N. political scolding.

¶ 78 Other mechanisms are quasi-judicial. Six major U.N. human rights treaties—the two major Covenants plus the treaties on women's and children's rights and on torture and race discrimination—have monitoring committees of independent experts who receive and comment on public compliance reports by governments. Several also administer optional individual complaint procedures, which states may choose to accept. Complaint procedures, however, are typically protracted, conducted behind closed doors, lack investigative resources, and culminate in the committee's non-binding "observations." The worst violators decline to accept the procedures at all, and many who do participate decline in the end to comply. While these procedures have made a difference in individual cases—even saving the lives of death row inmates—their overall impact is marginal.

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[48] *See generally* Thomas Buergenthal & Douglass Cassel, *The Future of the Inter-American Human Rights System, in* EL FUTURO DEL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS 539 (Juan Mendez & Francisco Cox eds., 1998)

[49] Douglass Cassel, *Peru Withdraws from the Court: Will the Inter-American Human Rights System Meet the Challenge?*, 20 HUM. RTS. L. J. 167 (1999); Cassel, *supra* note 47, at 128, n.24.

¶ 79 A third category involves diplomatic or bureaucratic activities by U.N. officials, ranging from public pronouncements and high-level visits by the High Commissioner for Human Rights, currently former Irish President Mary Robinson, to workshops by low-level functionaries. They provide a useful infrastructure, but rarely achieve significant breakthrough's.

¶ 80 Fourth and final are human rights interventions by the Security Council. The Council's occasional successes in military interventions are tempered by more frequent failures. While the interventions in Haiti and East Timor succeeded in their initial goals, the botched efforts in Srbrenica, Rwanda, Congo and Sierra Leone illustrate the perils of peacekeeping missions that offer too little, too late.

¶ 81 The Council has also created *ad hoc* International Criminal Tribunals for the former Yugoslavia and Rwanda, and fostered mixed tribunals of national and international judges in Cambodia and Sierra Leone and in U.N. transitional administrations in Kosovo and East Timor. These tribunals, however, stand out as partial exceptions to the U.N.'s inability to bring to justice the likes of Pol Pot and Saddam Hussein. The general rule has been impunity for war criminals.

¶ 82 Even where tribunals exist, their success depends on uncertain political will by U.N. member states, especially major powers, to arrest those they indict. The Yugoslavia tribunal did eventually get hold of former Yugoslav President Slobodan Milosevic. Still, its record remains marred by the failure to date of NATO or U.N. forces to arrest other "big fish"—notably former Bosnian Serb political and military leaders Radovan Karadzic and Ratko Mladic.

¶ 83 On balance, though, the record of these tribunals provides an encouraging demonstration of the feasibility of international criminal justice. The top former leaders of the genocidal regime in Rwanda are now in custody of the international tribunal. In Yugoslavia some fifty indictees—more than half of the publicly known total, including some generals—have been captured. Time seems to be on the side of justice.

¶ 84 Moreover, with its treaty now ratified by forty-eight of the sixty required nations (as of mid-January 2002), the permanent International Criminal Court (ICC) to try genocide, serious war crimes and crimes against humanity will likely to come into being in 2002. Although its design was weakened by compromises made to secure support by states, the ICC deserves a chance, and is in any event an important if flawed first step toward permanent international criminal institutions.[50]

D. Effectiveness

¶ 85 Outside Europe, then, the landscape of international implementation appears to be littered with weak and mostly ineffective institutions.

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[50] *See generally* Douglass Cassel, *The Rome Treaty for an International Criminal Court: A Flawed But Essential First Step*, 6 BROWN J. WORLD AFF'S. 41 (1999).

¶ 86 Yet to so conclude would be unduly gloomy and misleading. One must take account of historical perspective. A few decades ago there were virtually no international human rights institutions. Even a decade ago, at the close of the Cold War, there were no international criminal courts, no High Commissioner and few national ombudsmen. International protection of human rights is still in its gangly adolescence and sprouting up rapidly. It is far too early to pass judgment on its musculature at maturity.

¶ 87 Even today, the seemingly weak array of international institutions is more meaningful than might appear. The whole turns out to be more than the sum of the parts. One reason is that the various mechanisms are rarely used singly, but are deployed in combination, not only with other international institutions but also with pressure from NGO's, the press and public opinion. Violators are put in the spotlight. In a world most of whose governments are now elected by voters,[51] and where human rights consciousness is widespread, this public visibility, in turn, brings a degree of pressure from other governments, parliaments and intergovernmental bodies. All this, in turn, may lend leverage and legitimacy to a regime's domestic political opponents and civil society critics. Even if human rights enforcement usually has no elephant gun, it often wields a shotgun.

¶ 88 This phenomenon has spread even to the courts: witness civil suits against foreign torturers in the U.S., the extradition case against General Pinochet in London, criminal cases against Latin American human rights violators in Italy and Spain, and Belgium's exercise of universal jurisdiction against alleged foreign war criminals.[52] This form of external pressure already affects the travel plans of current and former dictators around the world; in the next generation it may affect their behavior as well.

¶ 89 The formal array of international institutions is also sometimes backed up by powerful external economic leverage. In the post-Cold War era the U.S. on occasion used trade leverage to support human rights. A key factor in blocking the failed attempt by Guatemalan President Serrano to overthrow his country's constitutional order in 1993 may have been President Clinton's public threat to revoke trade preferences. Following the threat, Guatemalan business leaders reportedly pressed the army to side against the coup.

¶ 90 In recent years the World Bank and other international financial institutions have sometimes intervened at key moments, citing if not "human rights," then "transparency" or other conceptual cousins as justifications to suspend flows of funds. I happened to be in Santiago in 2000 when a Chilean court ruled that General Pinochet's immunity did not shield him from prosecution for disappearances. When I asked a Chilean lawyer about the risk of a military coup in response, his answer was, "They don't dare. We couldn't afford the repercussions from the World Bank." Whether or not this remark was true, the mere perception that international financial institutions might react, by itself, concentrates the minds of power elites.

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[51] *See* Freedom House, *Democracy's Century: A Survey of Global Political Change in the 20th Century* (1999), *at* http://www.freedomhouse.org) (119 democracies as of the year 2000).

[52] Belgium's use of universal jurisdiction against a Congolese official is currently under challenge before the World Court. Arrest Warrant of 11 April 2000 (Congo v. Belg.), 2002 I.C.J. 121 (Feb. 14, 2002).

¶ 91 It also illustrates one of the most important and least appreciated factors in human rights enforcement: the role of uncertainty. Governments often fight energetically to oppose the slightest slap on the wrist for human rights violations. Their efforts are out of all proportion to any visible consequences at stake, as, for example, when the U.N. Human Rights Commission considers whether to upgrade its "special expert" assigned to a country to a "special rapporteur." What drives such resistance cannot be any immediate cost-benefit calculus, but is more likely an investment in risk management. Just as individuals try to maintain reputations and credit ratings, because one never knows when one might need a friend or a loan, so too with countries. Having a human rights rap across the knuckles may not smart today, but governments cannot be sure that such seeming trifles may not come back to sting them at some unknown future moment.

¶ 92 The uncertainty is compounded by the long memory, ubiquitous presence and vocal insistence of human rights NGO's. A regime can no longer count on today's foibles being forgotten tomorrow. General Pinochet, for example, did not expect the sins of his middle age to cost him so dearly in his dotage. And the reports and web pages of Amnesty International and other NGO's, conveniently indexed by country, lie there in perpetual ambush of unsuspecting governments. Better simply to avoid getting on the list in the first instance.

¶ 93 The risk to governments is further compounded by the constantly changing rules of the game. Standards are constantly ratcheted up, and ingenious new traps and penalties devised. The only certainty may be that whatever the costs to a government of human rights violations today, they may be higher tomorrow. Human rights enforcement is not so much a moving target as a moving marksman.

¶ 94 Another underrated factor is human rights socialization of diplomats and officials of the offending and other governments. Often educated abroad and regularly interacting in international settings, diplomats are especially susceptible to the cultural pull of human rights. Like other cosmopolitan elites, they find it discomfiting, if not distasteful, to defend or be seen to defend torture. They would prefer not to deviate from the social norms of the Embassy circuit. The foreign ministry often proves to be something of a human rights advocate within government. While internal security ministers may return to the company of their colonels, foreign ministers must face their peers in Geneva.

¶ 95 All these factors combine to elevate the international costs of gross violations of human rights and to create incentives to conform to international norms, and thus to lend bite to otherwise toothless international agencies.

¶ 96 But only up to a point. International human rights institutions and incentives are overcome in a range of circumstances—when governments perceive important interests at stake, when their leaders are zealous or believe their political fortunes on the line, or when a country's economic, military or diplomatic power shields it from international sanction. No fear of special rapporteurs, diplomatic embarrassment or international repercussions could dissuade the Chinese from reclaiming Tien An Men, the Russians from reclaiming Chechnya, or the Junta from retaining Myanmar in a stranglehold. If international human rights institutions are indeed more than meets the eye, that is no cause for complacency.

E. Reality

¶ 97 The failures of the rights revolution on the ground are well known and sobering. That genocide could be allowed to ravage Rwanda in our time speaks volumes. But one must not lose sight of the good news. Recent decades have seen dramatic improvement in human rights in most of Latin America, much of central and eastern Europe, South Africa, South Korea and much of southeast Asia.

¶ 98 In terms of economic and social rights, the picture is similar. In the last two decades life expectancy in the developing world rose from fifty-five to sixty-five years. Adult literacy increased from forty-eight percent to seventy-two percent. Infant mortality declined from one-hundred-and-ten to sixty-four per one-thousand live births. Access of rural populations to safe drinking water increased from thirteen percent to seventy-one percent.[53]

¶ 99 Yet more than a billion people in developing countries still lack access to safe drinking water, and well over two billion to adequate sanitation. One in five people worldwide live on less than a dollar a day.[54] There has also been a "sharp rise in inequality" of income among households in the last decade. Inequality has also increased between countries; in the 1990's, average annual income per person *fell* in some fifty countries.[55]

¶ 100 The lesson is a double one: progress is possible and has in fact been achieved for hundreds of millions, but the rights revolution still has far to go before its values of dignity, security, equality and liberty are realized for most people.

V. Driving Forces

¶ 101 What drives the revolution? Why did international human rights consciousness, laws and institutions—if not actual respect for rights—develop so swiftly in the last half century?

¶ 102 At the outset, let us dispel a possible misconception. Despite our historical claims to copyright on the concept of rights, and our comparatively good domestic records, the revolution is by no means an Anglo-American state enterprise. If left to the good graces of Washington and London, the revolution would be delayed at the least. Our governments proposed a U.N. Charter that scarcely mentioned human rights. They led others in downgrading the Universal Declaration from a treaty to a mere statement of aspiration.

¶ 103 Since then, as noted earlier, British and American paths diverged. Whereas London joined the European Convention, the Eisenhower administration promised Senator Bricker not to ratify any human rights treaties. Washington kept the U.N. human rights covenants in the deep freeze for the first two decades of the Cold War.

¶ 104 During the Cold War US foreign policy on human rights was almost single-mindedly selective. While pouncing on Soviet-bloc violations, we acquiesced (or worse) in

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[53] *Human Development Report*, U.N. Development Programme, at 4 (2000), *available at* http://www.stone.undp.org/hdr/reports/global/2000/en/.
[54] *Id*.
[55] *Id*. at 6.

atrocities by anti-communist regimes ranging from Chile and Guatemala to Zaire and Indonesia. Eventually Jimmy Carter pressured right-wing Latin American governments to ratify human rights treaties, but offered his own Senate escape clauses in the form of reservations, and even then could not secure U.S. ratifications.

¶ 105 Since the Cold War the U.S. has more consistently advocated human rights abroad. Along with the U.K., we have been leading advocates of international criminal courts for Yugoslavia, Rwanda, Iraq, Cambodia and Sierra Leone. But we balk at a permanent international criminal court, because it does not offer an ironclad guarantee that no American soldier or official could ever be prosecuted. Fortunately the European Union and other democracies are prepared to carry on without us.

¶ 106 What, then, drives the revolution?

A. Atrocities.

¶ 107 First, it is atrocity-driven. The graphic exposure of the Holocaust in 1945 so shocked public opinion, and so muted government resistance, as finally to overcome the doctrine of exclusive domestic jurisdiction over human rights. Hitler proved that humanity could not entrust its deepest values to national governments alone.

¶ 108 Subsequent outrages continue to propel the revolution. In the 1970's U.N. human rights mechanisms were created largely in response to *apartheid* in South Africa and to General Pinochet in Chile. In the 1990's international criminal courts were responses to ethnic cleansing in Yugoslavia and genocide in Rwanda. Later momentum was fueled by outrages in Kosovo, East Timor and Sierra Leone.

1. NGO's.

¶ 109 Second, the revolution is NGO-driven.[56] Without constant advocacy and agitation by NGO's, human rights treaties would not be drafted or ratified, enforcement mechanisms not created or used, and violators not continually exposed. Just as NGO's were instrumental in placing human rights provisions in the U.N. Charter in 1945, so they were key to mobilizing support among government delegations for a relatively stronger ICC in 1998. To view international human rights law as an autonomous set of norms and institutions, independent of the role of NGO's in creating and using them, would be foolish formalism.

B. Decolonizing and Democratizing States.

¶ 110 The revolution has also been driven by shifting coalitions of states. From Versailles through the 1970's, non-western states were its most energetic advocates. Japan pressed unsuccessfully to include provisions against race discrimination in the Covenant of the League of

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[56] *See generally* WILLIAM KOREY, NGOS AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A CURIOUS GRAPEVINE (1998).

Nations. China pushed unsuccessfully for human rights provisions in the draft U.N. Charter at Dumbarton Oaks in 1944.[57] But in San Francisco the following year, allied with India and the large bloc of Latin American states as well as NGO's, the Chinese position prevailed, resulting in a U.N. Charter promising human rights for all "without discrimination."

¶ 111 The first human rights initiatives were brought before the U.N. General Assembly not by western states, but by Egypt, India and Panama, challenging racial and religious persecution and South African racial practices as violations of the U.N. Charter.[58]

¶ 112 The principal UN human rights treaties were rescued from Washington and Moscow only by the arrival of newly independent African and Asian states in the U.N. General Assembly in the 1960's. Their struggle against racism and overthrow of colonialism energized and reshaped the U.N. human rights agenda. Thus the first U.N.-administered human rights treaty was the convention against race discrimination, adopted in 1965 and entered into force in 1969.

¶ 113 Their stamp is also imprinted on the two Covenants. The first article of each identically proclaims, "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[59] Moreover: "All peoples may, for their own ends, freely dispose of their natural wealth and resources . . ."[60]

¶ 114 Within only a few years, however, the disappointing domestic trajectories of most former colonies sapped their support for human rights. As most new governments of Africa and Asia rapidly evolved into repressive regimes—usually supported by one Cold War superpower or the other—they resisted efforts to extend or implement the U.N. Covenants.

¶ 115 The coalition of states supporting the U.N. human rights program has since shifted. Nowadays its core support consists mainly of democratic and democratizing states. This may be obscured by the large numbers of states parties (one hundred-and-forty-five or more) to the most popular U.N. human rights treaties—the two Covenants and the treaties on women's and children's rights and against race discrimination. But it can be seen in the smaller number of states (one-hundred-and-twenty-seven) parties to the torture convention; their military and police are more likely to be under effective civilian control or are, at least, less politically powerful.

¶ 116 It can be seen as well in states which accept individual complaint procedures, such as the Optional Protocol to the Civil and Political Covenant (one-hundred-and-one parties). And in the forty-eight states (to date) which have ratified the treaty to create the ICC. Most clearly, it can be seen in the common denominators of the above: the shorter list of mostly democratic states which are not only parties to the torture convention, but also accept individual complaint procedures and support the ICC. The U.K. is on that list; the U.S., although a party to the torture convention (subject to reservations), is not.

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[57] LAUREN, *supra* note 7, at 166-67.
[58] *Id*. at 212-214.
[59] U.N. CHARTER art 1.1.
[60] *Id*. at art. 1.2.

C. Communications Technology.

¶ 117 As late as the early nineteenth century, global communication, when possible at all, was much slower. News of distant events might not reach one's shores for months, after the arrival of sailing ships, if at all. Human rights movements were mainly national or, at most, trans-Atlantic.

¶ 118 By mid-twentieth century air travel, radio, telegraph and newsreels facilitated the development of global consciousness and global organizing on human rights. Still, most NGO's at the U.N. founding conference in San Francisco were American. Global travel and communications remained too slow, expensive and often inaccessible or unreliable.

¶ 119 As late as the 1980's, global human rights organizing was technically daunting. Telephone service in the developing world was unreliable, foreign newspapers generally difficult to obtain. To learn more than London or New York media reported about, say, El Salvador or Kenya, one often had to go there.

¶ 120 Then came the electronic communications revolution. By the end of the 1990's, most major human rights NGO's worldwide had email, internet access and web pages. Groups far and wide now inform each other and strategize instantly and collectively. Their reports are made immediately accessible to all. Activists can read the web pages of daily newspapers in distant lands. U.N. documents, previously available only in libraries in capital cities and only after months of delay and unreliably, are now promptly available to activists everywhere on the U.N. web page.

¶ 121 In less than a decade the density of communications among NGO's globally reached levels previously achievable only nationally or sub-nationally. The results can be seen in the unprecedented intensity and effectiveness of NGO involvement in such events as the 1995 Beijing conference on women's rights, and in the late 1990's campaigns for treaties on anti-personnel land mines and the ICC.

¶ 122 The degree to which the communications revolution will enable the human rights revolution actually to protect people remains to be seen. But rights advocacy is now more global, empowered by information, and capable of rapid and coordinated action than even a few years ago.

D. Networks.

¶ 123 The roles in the revolution of NGO's, supportive states and communications technology cannot be understood in isolation but must be viewed—as they are in fact used—in combination. Academic observers note the rise of "epistemic communities"—communities defined not by geography, religion, ethnicity or other traditional indicia, but by their common knowledge of and interest in a global topic such as human rights.

¶ 124 Others describe "transnational issue networks"—emphasizing that proponents of transnational goals cross institutional lines. Thus the global network of human rights advocates

involves informal coordination between NGO activists and supportive officials within governments and inter-governmental organizations, sympathetic journalists and academics, and even like-minded governments. Their priorities may be defined not so much by institutional affiliation as by a common commitment to human rights, often reinforced by personal or professional ties to others in the network. Working together they are far more effective.

E. Momentum.

¶ 125 Independent of any single component, the revolution's sheer momentum tends to carry it forward. New treaties create new international enforcement bodies, which then seek out new NGO allies to make new program commitments, which then advocate for national compliance. Any one step sets in motion a chain reaction. And many steps are taken each year, catalyzing mutually reinforcing sequences of activity. Once a critical mass of activity is reached—as in the field of human rights in the last half century—the revolution is partly self-perpetuating.

¶ 126 Momentum is sustained in part by a "ratcheting up" effect. New human rights norms are continually developed, but few repealed; new institutions created, but few abolished. Over time more governments join human rights treaties, but few withdraw. Even when a prior government ratified a treaty only for reasons of passing political expedience, a new government hesitates to call attention to itself by withdrawing. The result is a progressive thickening of the normative and institutional density of international human rights regimes.

F. Globalization.

¶ 127 Globalization has several positive effects on the human rights revolution. Global communications technology accelerates the spread of human rights consciousness and facilitates coordinated advocacy. Greater global financial and economic interdependence renders outlaw states more vulnerable to international economic pressure to improve their rights records.

¶ 128 But globalization has an important countervailing effect. An essential component of the international human rights revolution is the national government. Treaties, by definition, are agreements among governments. Human rights treaties either prohibit governments from committing violations (*e.*g., torture), bind them to take affirmative steps to protect rights (*e.g.*, to establish judicial or social security systems), or utilize them to curb violations by others (*e.g.*, domestic violence against women). While treaties may also establish international mechanisms, these are designed to work through, and are generally subsidiary to, national governments.

¶ 129 Globalization, however, tends to weaken national governments. Competitive pressures in global markets, and policies imposed by international financial institutions, lead to privatization of public services and deregulation of private activity. Entry into national markets is gained by huge multinational corporations whose revenues dwarf those of most governments. Taxes on these enterprises are limited by competitive pressures, while fiscal targets may force increases in consumption taxes on the poor, even as government expenditures on health and food subsidies are cut.

¶ 130 There is ongoing debate over whether economic globalization and structural adjustment policies are good social and economic medicine in the long run. The point here is not

to enter that larger debate, but simply to observe that an important instrument of human rights delivery—the national government—is no longer what it once was. Its capacity as a delivery vehicle is diminished.[61]

¶ 131 While this is clearest in the case of economic and social rights, diminished state capacity can also impede delivery of civil and political rights. Governments that cannot afford properly to pay, train and recruit police, prosecutors and judges are at risk of violating rights to due process, and of using torture or mistreatment of suspects as substitutes for professional investigation. Where government revenues are tight, prison budgets are taut; it should be no surprise that prison riots have erupted in Latin America in the last decade.

¶ 132 If even well-meaning national governments cannot do the job, human rights regimes must look for alternative delivery vehicles.

G. Non-State Actors

¶ 133 Increasingly they have. Recently the human rights revolution has focused on non-state actors. U.N. peacekeeping missions with human rights components substitute for failed states or intervene in conflicts. Human rights rules are imposed on U.N. peacekeepers. Not only traditional laws of war but also human rights norms are imposed on guerrilla forces as well.

¶ 134 Multinational corporations attract mounting human rights attention. This has led to a growing number and sophistication of voluntary corporate codes of conduct on worker rights, and sometimes on broader human rights issues, as well as more vigorous and sometimes even independent, external monitoring of corporate codes.

¶ 135 International financial and economic agencies—such as the World Bank, IMF and the World Trade Organization—are also targets of human rights protest and reform efforts.

¶ 136 Finally, societal mores and private conduct in such matters as domestic violence, female genital mutilation, bride burning, and sexual trafficking of women and children are now prominent on the human rights agenda. States are not the primary culprits in such matters, but are asked to help curb them.

¶ 137 However, this latest phase of the revolution—focusing on non-state actors—is less well developed in public consciousness and international laws and institutions. While the gap in human rights norms governing state and non-state actors is beginning to close, it will not soon disappear. Powerful multinational corporations, for example, still see their human rights practices as, in effect, within their "exclusive domestic jurisdiction." A long struggle lies ahead.

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[61] *See generally* Andrew G. McGrew, *Human Rights in a Global Age: Coming to Terms with Globalization*, *in* HUMAN RIGHTS FIFTY YEARS ON: A REAPPRAISAL 188 (Tony Evans ed., 1998).

VI. Conclusion

¶ 138 A leading historian of human rights styles his principal work, "The *Evolution* of International Human Rights."[62] One cannot quarrel with his stress on the accumulation of developments throughout history that led to modern international human rights regimes. Short-sighted moderns must understand that international human rights were not invented full-blown in 1945.

¶ 139 At the same time, what has taken place in the last half century is qualitatively different—and far more intense and accelerated—than its precursors. There has been a revolution in consciousness, law and institutions. In both a formal and a real sense, basic human rights are no longer merely national, but global concerns.

¶ 140 The rights revolution can claim partial credit for significant improvements in rights realities in many countries. But in large portions of the globe, formal rights are not yet translated into reality. Moreover, the focus of the rights revolution on states, both as violators and enforcement vehicles, is increasingly bypassed by economic globalization, civil wars, and evolving social attitudes toward gender roles in the family. The international human rights revolution to date—an achievement of historic magnitude—remains far from complete.

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[62] LAUREN, *supra* note 7 (emphasis added).