

*I. Human Rights as Politics*

*II. Human Rights as Idolatry*

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## I. HUMAN RIGHTS AS POLITICS

### I. HUMAN RIGHTS AND MORAL PROGRESS

In *If This Is a Man*, Primo Levi describes being interviewed by Dr. Pannwitz, chief of the chemical department at Auschwitz.<sup>1</sup> Securing a place in the department was a matter of life or death: if Levi could convince Pannwitz that he was a competent chemist, he might be spared the gas chamber. As Levi stood on one side of the doctor's desk, in his concentration camp uniform, Dr. Pannwitz stared up at him. Levi later remembered:

That look was not one between two men; and if I had known how completely to explain the nature of that look, which came as if across the glass window of an aquarium between two beings who live in different worlds, I would also have explained the essence of the great insanity of the third German [reich].

Here was a scientist, trained in the traditions of European rational inquiry, turning a meeting between two human beings into an encounter between different species.

Progress may be a contested concept, but we make progress to the degree that we act upon the moral intuition that Dr. Pannwitz was wrong: our species is one and each of the individuals who compose it is entitled to equal moral consideration. Human rights is the language that systematically embodies this intuition, and to the degree that this intuition gains influence over the conduct of individuals and states, we can say that we are making moral progress. Richard Rorty's definition of progress applies here: "an increase in our ability to see more and more differences among people as morally irrelevant."<sup>2</sup> We think of the global diffusion of this idea as progress for two reasons: because if we live by it, we treat more human beings as we would wish to be treated

<sup>1</sup>Primo Levi, *If This Is a Man*, translated by Stuart Woolf (London: Abacus, 1987), pp. 111–12. The significance of the passage was pointed out to me by Alain Finkielkraut's *L'Humanité perdue: essai sur le 20ième siècle* (Paris: Seuil, 1996), pp. 7–11.

<sup>2</sup>Richard Rorty, *Truth and Moral Progress: Philosophical Papers* (Cambridge: Cambridge University Press, 1998), p. 11.

ourselves and in so doing help to reduce the amount of unmerited cruelty and suffering in the world. Our grounds for believing that the spread of human rights represents moral progress, in other words, are pragmatic and historical. We know from historical experience that when human beings have defensible rights—when their agency as individuals is protected and enhanced—they are less likely to be abused and oppressed. On these grounds, we count the diffusion of human rights instruments as progress even if there remains an unconscionable gap between the instruments and the actual practices of states charged to comply with them.

Calling the global diffusion of Western human rights a sign of moral progress may seem Eurocentric. Yet the human rights instruments created after 1945 were not a triumphant expression of European imperial self-confidence but a reflection on European nihilism and its consequences, at the end of a catastrophic world war in which European civilization very nearly destroyed itself. Human rights was a response to Dr. Pannwitz, to the discovery of the abomination that could occur when the Westphalian state was accorded unlimited sovereignty, when citizens of that state lacked criteria in international law that could oblige them to disobey legal but immoral orders. The Universal Declaration represented a return by the European tradition to its natural law heritage, a return intended to restore *agency*, to give individuals the juridical resources to stand up when the state ordered them to do wrong.

## 2. THE JURIDICAL, ADVOCACY, AND ENFORCEMENT REVOLUTIONS

Historically speaking, the Universal Declaration is part of a wider re-ordering of the normative order of postwar international relations, designed to create fire-walls against barbarism. The juridical revolution included the UN Charter of 1945, outlawing aggressive war between states; the Genocide Convention of 1948, protecting religious, racial, and ethnic groups against extermination; the revision of the Geneva Conventions of 1949, strengthening noncombatant immunity; and finally the international convention on asylum of 1951 to protect the rights of refugees.

Before the Second World War, only states had rights in international law. With the Universal Declaration of Human Rights of 1948, the

rights of individuals received international legal recognition.<sup>3</sup> For the first time, individuals—regardless of race, creed, gender, age, or any other status—were granted rights that they could use to challenge unjust state law or oppressive customary practice.

The juridical revolution should not be seen apart from the struggle for self-determination and national independence among the colonies of Europe's empires and, just as important, the battle for full civil rights by black Americans, culminating in the Civil Rights Act of 1965.<sup>4</sup> The international rights revolution was not led by states that already practiced what they preached. America and the European nations had not completed the juridical emancipation of their own citizens or subject peoples. Indeed, many of the states that contributed to the drafting of the Universal Declaration saw no apparent contradiction between endorsing international norms abroad and continuing oppression at home. They thought that the Universal Declaration would remain a pious set of clichés more practiced in the breach than in the observance. Yet once articulated as international norms, rights language ignited both the colonial revolutions abroad and the civil rights revolution at home.

Fifty years on, most modern states have ratified the international human rights conventions and some countries have incorporated their rights and remedies into the structure of their constitutions. The European Court of Human Rights, established in 1953, now affords citizens of European states the capacity to appeal against injustices in civil and state administration to the European Court in Strasbourg.<sup>5</sup> European states, including Britain, now accept that decisions taken by their courts or administrative bodies can be overturned by a human rights court independent of their national parliament and court systems.<sup>6</sup> New nations seeking entry into the European Union accept that they

<sup>3</sup> A. H. Robertson and J. G. Merrills, *Human Rights in the World*, 4th ed. (London: Manchester University Press, 1986), ch. 1; Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1998).

<sup>4</sup> Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 1998), p. 269; also Yael Danieli et al. (eds.), *The Universal Declaration of Human Rights: Fifty Years and Beyond* (New York: Baywood, 1998).

<sup>5</sup> Geoffrey Robertson, *Crimes against Humanity: The Struggle for Global Justice* (London: Allen Lane, 1999), pp. 51–54.

<sup>6</sup> Luke Clements and James Young (eds.), *Human Rights: Changing the Culture* (Oxford: Blackwell, 1999); see also Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54, no. 2 (Spring 2000): 217–53.

must align their domestic law in accordance with the European Convention, even jettisoning capital punishment, since it falls foul of European human rights standards.

In the developing world, ratifying international human rights covenants has become a condition of entry for new states joining the family of nations. Even oppressive states feel obliged to engage in rhetorical deference toward human rights instruments. While genuflection toward human rights is the homage that vice pays to virtue, the fact that wicked regimes feel so obliged means that vice can now be shamed and even controlled in ways that were unavailable before 1945.

The worldwide spread of human rights norms is often seen as a moral consequence of economic globalization. The U.S. State Department's annual report for 1999 on human rights practice around the world describes human rights and democracy—along with “money and the Internet”—as one of the three universal languages of globalization.<sup>7</sup> This implies too easily that human rights is a style of moral individualism that has some elective affinity with the economic individualism of the global market, and that both advance hand in hand. Actually, the relation between human rights and money, between moral and economic globalization, is more antagonistic, as can be seen, for example, in the campaigns by human rights activists against the labor and environmental practices of the large global corporations.<sup>8</sup> Human rights has gone global not because it serves the interests of the powerful but primarily because it has advanced the interests of the powerless. Human rights has gone global by going local, imbedding itself in the soil of cultures and world views independent of the West, in order to sustain ordinary people's struggles against unjust states and oppressive social practices.

We can call this global diffusion of human rights culture a form of moral progress even while remaining skeptical of the motives of those who helped to bring it about. The states who signed the Universal Declaration never actually believed that it would constrain their behavior. After all, it lacked any enforcement mechanism. It was a declaration only, rather than a state treaty or a convention requiring national ratifi-

<sup>7</sup> United States Department of State, *1999 Country Reports on Human Rights* (Washington, D.C., 1999), introduction.

<sup>8</sup> T. F. Homer-Dixon, *Environment, Scarcity and Violence* (Princeton: Princeton University Press, 1999); O. Mehmet, E. Mendes, and R. Sinding, *Towards a Fair Global Labour Market: Avoiding a New Slave Trade* (London: Routledge, 1999); see also Amnesty International, *Human Rights: Is It Any of Your Business?* (London: Amnesty, 2000); Carnegie Council on Ethics and International Affairs, *Human Rights Dialogue* 2, no. 4 (Fall 2000), “Who Can Protect Workers' Rights?”

cation. The drafters—men and women like Eleanor Roosevelt, René Cassin, and John Humphrey—were willing to live with a mere declaration because they believed that it would raise human rights consciousness around the world and in so doing restrain potential perpetrators of abuse.<sup>9</sup> We can respect their achievement while remaining skeptical about their faith. We have good reason to be doubtful about the preventive impact of human rights codes. Yet if human rights has not stopped the villains, it certainly has empowered bystanders and victims. Human rights instruments have given bystanders and witnesses a stake in abuse and oppression both within and beyond their borders, and this has called forth an advocacy revolution, the emergence of a network of nongovernmental human rights organizations—Amnesty International and Human Rights Watch being only the most famous—to pressure states to practice what they preach.<sup>10</sup> Because of this advocacy revolution, victims have gained historically unprecedented power to make their case known to the world.<sup>11</sup>

The advocacy revolution has broken the state's monopoly on the conduct of international affairs, enfranchising what has become known as global civil society. Here too we can believe in progress even while remaining dubious about some of the achievement. The phrase "global civil society" implies a cohesive moral movement when the reality is fierce and disputatious rivalry among nongovernment organizations. Global human rights consciousness, moreover, does not necessarily imply that the groups defending human rights actually believe the same things. Many of these NGOs espouse the universalist language of human rights, but actually use it to defend highly particularist causes: the rights of particular national groups or minorities or classes of persons. There is nothing wrong with particularism in itself. Everyone's universalism ultimately anchors itself in a particular commitment to a specially important group of people whose cause is close to one's heart or convictions. The problem is that particularism conflicts with universalism at the point at which one's commitment to a group leads one to

<sup>9</sup> René Cassin, *La Pensée et l'action* (Paris: Lalou, 1972); John P. Humphrey, *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, N.Y.: Transnational, 1984); Eleanor Roosevelt, *On My Own* (London: Hutchinson, 1959), ch. 8; Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2000).

<sup>10</sup> William Korey, *NGO's and the Universal Declaration of Human Rights* (New York: St. Martin's Press, 1998); see also Margaret Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998).

<sup>11</sup> See, for example, Irina Ratushinskaya, *Grey Is the Colour of Hope* (New York: Knopf, 1988).

countenance human rights violations toward another group. Persons who care about human rights violations committed against Palestinians may not care so much about human rights violations committed by Palestinians against Israelis, and *visa versa*.

Human rights activism likes to portray itself as an antipolitics, in defense of universal moral claims designed to delegitimize “political,” *i.e.*, ideological or sectarian, justifications for the abuse of human beings. In practice, impartiality and neutrality are just as impossible as universal and equal concern for everyone’s human rights. Human rights activism means taking sides, mobilizing constituencies powerful enough to force abusers to stop. As a consequence, effective human rights activism is bound to be partial and political. Yet at the same time, human rights politics is a politics disciplined or constrained by moral universals. The role of moral universalism is not to take activists out of politics, but to get activists to discipline their partiality—their conviction that one side is right—with an equal commitment to the rights of the other side.

Because human rights activists take it for granted that they represent universal values and universal interests, they have not always taken as much care as they might about the question of whether they truly represent the human interests they purport to defend. They are not elected by the victim groups they represent, and in the nature of things they cannot be. But this leaves unresolved their right to speak for and on behalf of the people whose rights they defend. A more acutely political, as opposed to moral, activism might be more attentive to the question of who activists represent and how far the right to represent extends. Few mechanisms of genuine accountability connect NGOs and the communities in civil society whose interests they seek to advance.<sup>12</sup>

Yet even if we grant that many NGOs are more particularist, and less accountable than they claim, many others perform an essential function. By monitoring human rights abuses and bringing these abuses to light, they keep state signatories of human rights conventions up to the mark, or at least expose the gap between promise and practice, rhetoric and reality. Without the advocacy revolution of the NGOs, in other words, it is likely that the passage of so many human rights instruments since 1945 would have remained a revolution on paper.

Extraterritorial moral activism predates the Universal Declaration,

<sup>12</sup> Kenneth Anderson, “After Seattle: NGO’s and Democratic Sovereignty in an Era of Globalization,” unpublished essay, Harvard Law School, autumn 2000. I am grateful to Ken Anderson for letting me see this paper.

of course. All human rights activism in the modern world properly traces its origins back to the campaigns to abolish the slave-trade and then slavery itself.<sup>13</sup> But the catastrophe of European war and genocide gave impetus to the ideal of moral intervention beyond national borders and to the moral proposition that a network of international activists could pressure and shame their own states into intervening in delinquent states in the name of universal values. Thanks to human rights advocacy international politics has been democratized, and the pressure that human rights advocates can bring to bear on state actors—witness the campaigns on behalf of Soviet Jewry, or the international struggle against apartheid—has forced most states to accept that their foreign policy must at least pay rhetorical attention to values, as well as interests. Indeed, human rights considerations are now increasingly used to make the claim that in cases where values point one way and interests the other, values should trump. The United Nations system itself is beginning to reflect this new reality. Until the 1960s, UN bodies were wary of criticizing the human rights behavior of member states.<sup>14</sup> The apartheid regime of South Africa was the first exception, and after this breach in the wall there came others: the denunciation of the Greek junta in the 1970s, and the critique of repression in the Eastern bloc in the 1980s. After forty years of deference toward the sovereignty of states, the United Nations decided in the 1990s to create its own cadre of human rights activists under the leadership of the High Commissioner for Human Rights.<sup>15</sup> The commissioner's office still lacks financial resources and real support from UN member states, and the commissioner only has the power to name and shame defaulting governments. Still, every time a state is denounced for its human rights record, it becomes harder for it to secure international loans or political and military help when it is in danger. Naming and shaming for human rights abuses now have real consequences.

Beyond the power to name and shame governments (and also private corporations) who violate human rights covenants, the international

<sup>13</sup>Lauren, *Evolution of International Human Rights*, p. 32; P. M. Kielstra, *The Politics of Slave Trade Suppression in Britain and France, 1814–48* (London: Macmillan, 2000).

<sup>14</sup>Korey, *NGO's and the Universal Declaration of Human Rights*, ch. 3.

<sup>15</sup>United Nations High Commissioner for Human Rights, Reports and Statements, Geneva, Switzerland, 1999. See also Tom Farer and Felice Gaer, "The UN and Human Rights: At the End of the Beginning," in Adam Roberts and Benedict Kingsbury, *United Nations, Divided World: The UN's Role in International Relations* (Oxford: Clarendon Press, 1993), pp. 240–96.

community has also created new instruments to punish violators. This is the enforcement revolution in human rights. The International Tribunal at Arusha secured the first convictions under the Genocide Convention since its promulgation in 1948. The prosecutors at the Hague have secured the first international convictions for war crimes since Nuremberg. The first international warrant for the arrest of a sitting head of state has been issued. The first forensic investigation of war crimes sites, immediately following a violation, was undertaken in Kosovo. These are important steps by any measure. The tribunal has done much to break the cycle of impunity in Rwanda, Bosnia, and now Kosovo. Each arrest of a suspect and each conviction by a tribunal help to substantiate the reality of a universal jurisdiction for crimes against humanity.<sup>16</sup> These tribunals, however, are temporary instruments created to respond to contingent catastrophes. The next step is the creation of a permanent International Criminal Tribunal. The statute for such a tribunal has been agreed on in Rome; and once ratified by a majority of states, it may finally be established, admittedly with its powers diluted and diminished, chiefly as a result of objections by the United States.

### 3. AMERICAN EXCEPTIONALISM

It is at this point, of course, that uncomfortable aspects of the human rights revolution reveal themselves, at least insofar as the United States is concerned. America's insistence on watering down the powers of the International Criminal Tribunal has opened up a significant rift between the United States and allies, like Britain and France, who can claim descent from the same family of rights traditions.<sup>17</sup> What bothers the American administration is not merely the prospect of seeing American military personnel brought before tendentious tribunals. Nor is American resistance to international human rights merely "rights narcissism"—the conviction that the land of Jefferson and Lincoln has nothing to learn from international rights norms.<sup>18</sup> It is that Americans

<sup>16</sup>Michael Ignatieff, *Virtual War: Kosovo and Beyond* (London: Chatto and Windus, 2000), pp. 115–37; Sara Sewall and Carl Kaysen (eds.), *The United States and the International Criminal Court* (New York: Rowman and Littlefield, 2000).

<sup>17</sup>Kenneth Roth, "The Court the US Doesn't Want," *New York Review*, November 19, 1998; see also David Rieff, "Court of Dreams," *New Republic*, September 7, 1998; and Geoffrey Robertson, *Crimes against Humanity: The Struggle for Global Justice* (London: Allen Lane, 1999), pp. 300–341.

<sup>18</sup>The phrase "rights narcissism" is my own and figures in my "Out of Danger," *Index on Censorship* 3 (1998): 98.

believe their rights derive their legitimacy from their own consent, as embodied in the U.S. Constitution. International rights covenants lack this element of national political legitimacy.<sup>19</sup> As a result, since the early 1950s, the American Congress has been reluctant to ratify international rights conventions. This ratification process—which, after all, is intended to vest these conventions with domestic political legitimacy—has often delayed full international implementation of the conventions or has introduced so many qualifications and reservations about American participation as to leave them weakened.

America's reluctant participation places it in a highly paradoxical relation to an emerging international legal order based on human rights principles. Since Eleanor Roosevelt chaired the committee that produced the Universal Declaration, America has promoted human rights norms around the world, while also resisting the idea that these norms apply to American citizens and American institutions. The utopia to which human rights activism aspires—an international legal order with the capacity to enforce penalties against states—is inimical to the American conception that rights derive their legitimacy from the exercise of national popular sovereignty.

Europeans and Canadians, for example, may feel that American death penalty statutes are a violation of the right to life in Article 3 of the UDHR, but a majority of Americans believe that such statutes are the expression of the democratically expressed will of the people.<sup>20</sup> Hence international human rights objections are both irrelevant and intrusive.<sup>21</sup>

#### 4. HUMAN RIGHTS AND NATIONALISM

American congressional objections to international human rights instruments may seem to be an expression of American “exceptionalism” or “imperialism,” depending on one's point of view. Yet Americans are hardly the only people to believe that their own civil and political rights

<sup>19</sup>Paul Kahn, “Hegemony,” unpublished paper, Yale Law School, January 2000. I am indebted to Paul Kahn for letting me see this essay in advance of publication.

<sup>20</sup>David Rieff, “Death Row,” *Los Angeles Times Book Review*, February 13, 2000; also H. A. Bedau (ed.), *The Death Penalty in America: Current Controversies* (New York: Oxford University Press, 1999); Amnesty International, *The Death Penalty: List of Abolitionist and Retentionist Countries* (London: Amnesty, 1999).

<sup>21</sup>Amnesty International, *Rights for All: Country Report, The USA* (London: Amnesty, 1998).

are both more legitimate and more valuable than the rights enshrined in international covenants. In most liberal democracies, citizens look first to their domestic rights and remedies, and only when these are exhausted or denied do they turn to human rights conventions and international bodies. National groups who do not have states of their own—Kurds, Kosovar Albanians, and Tamils—certainly make use of human rights language to denounce their oppression, but for ultimate remedy they seek statehood for themselves and the right to create a framework of political and legal protection for their people.

International human rights has furthered the growth of nationalism, since human rights covenants have endorsed the core claim of nationalist movements to collective self-determination. But colonial groups and oppressed minorities have put more faith in obtaining a state of their own than in the protection of international human rights regimes. The classic case of this preference for national rights rather than human rights is, of course, the state of Israel. The Universal Declaration was, in large measure, a response to the torment of the Jewish people. Yet the survivors' overwhelming desire to create a Jewish state, capable of defending Jews everywhere against oppression, reveals that they trusted more to the creation of a state of their own than to the uncertain benefits of universal human rights protection within other people's national states.

Those who stand most in need of human rights protection in the modern world—homeless, stateless peoples, minorities at the mercy of other ethnic or religious majorities—tend to seek collective self-determination, preferably in the form of a defensible state of their own or, if the situation allows, self-rule within an autonomist or federal association with another people. Collective self-government provides defensible rights, legitimized by popular sovereignty and enforced by local courts, police, and punishments. No wonder nationalist movements that promise this solution seem attractive to stateless, homeless, rightless peoples around the world.

Yet nationalism solves the human rights problems of the victorious national groups while producing new victim groups, whose human rights situation is made worse. Nationalists tend to protect the rights of majorities and deny the rights of minorities. Even if one grants that collective self-determination on nationalist lines is going to be the preference of most persecuted groups seeking rights protection in the modern world, there still remains an important place for universalist human

rights regimes. Minorities need the right to appeal against particularist and unjust rights rulings by the ethnic majorities they live beside. This is especially the case—as in the example of Israel—where ethnic majorities rule peoples who are not citizens and who do not come under full constitutional protection of national laws. In places like the occupied territories of the West Bank, Palestinian subjects of Israeli military rule stand in need of international rights monitoring and domestic human rights scrutiny.

Even societies that do fully incorporate minorities into national rights regimes need the remedies provided by international human rights. All societies need a juridical source of legitimacy for the right to refuse legal but immoral orders. Human rights is one such source. The most essential message of human rights is that there are no excuses for the inhuman use of human beings. In particular, there is no valid justification for the abrogation of human rights on the grounds of national security, military necessity, or states of siege and emergency. At most, rights protections can be suspended in cases of ultimate necessity, but these suspensions of rights must be justified before legislatures and courts of law, and they must be temporary.

Another essential function of international human rights covenants, even in societies with well-ordered national rights regimes, is to provide a universalist vantage point from which to criticize and revise particularistic national law. The European Convention on human rights has provided this vantage-point for the national rights regimes of European states since 1952, and comparison between its standards and those of national states has worked to improve and advance the rights protection afforded by national legislation.

So this is where we are after fifty years of a human rights revolution. Most human beings depend for their rights on the states they live in; those who do not have states of their own aspire to one and in some cases are fighting for one. Yet even though the nation state remains the chief source of rights protection, international human rights movements and covenants have gained significant influence over national rights regimes. Although the “default settings” of the international order continue to protect state sovereignty, in practice the exercise of state sovereignty is conditional, to some degree, on observance of proper human rights behavior. When states fail in this regard, they render themselves subject to criticism, sanction, and, as a final resort, intervention.

## 5. ESTABLISHING THE LIMITS OF HUMAN RIGHTS

As international human rights has gained power and authority, its scope and remit have become increasingly blurred. What precise balance is to be struck between international human rights and state sovereignty? When is intervention justified to reverse human rights abuses in another state? Failure to provide coherent answers to these problems has resulted in an enduring uncertainty as to how far the writ of international human rights should run.

The juridical, advocacy, and enforcement revolutions have dramatically raised expectations, and it is unsurprising that the reality of human rights practice should disappoint. The rights and responsibilities implied in the discourse of human rights are universal, yet resources—of time and money—are finite. When moral ends are universal, but means are limited, disappointment is inevitable. Human rights activism would be less insatiable, and less vulnerable to disappointment, if activists could appreciate the degree to which rights language itself imposes—or ought to impose—limits upon itself.

The first limit is a matter of logic and formal consistency. Because the very purpose of rights language is to protect and enhance individual agency, rights advocates must, if they are to avoid contradicting their own principles, respect the autonomy of those agents. Likewise, at the collective level, rights language endorses the desire of human groups to rule themselves. If this is so, human rights discourse must respect the right of those groups to define the type of collective life they wish to lead, provided that this life meets the minimalist standards requisite to the enjoyment of any human rights at all.

Human rights activists accept this limit in theory—but tend to soften it into the necessarily vague requirement to display cultural sensitivity in the application of moral universals. In reality, the limit is something more. If human rights principles exist to validate individual agency and collective rights of self-determination, then human rights practice is obliged to seek consent for its norms and to abstain from interference when consent is not freely given. Only in strictly defined cases of necessity—where human life is at risk—can coercive human rights interventions be justified. These norms of informed consent operate inside liberal democratic states to protect human subjects from well-intentioned but potentially harmful medical interventions. The same rules of informed consent need to govern human rights interventions.

If, for example, religious groups determine that women should occupy a subordinate place within the rituals of the group, and this place is accepted by the women in question, there is no warrant to intervene on the grounds that human rights considerations of equality have been violated.<sup>22</sup> Human rights principles themselves imply that groups that do not actively persecute others or actively harm their own members should enjoy as much autonomy as the rule of law allows.<sup>23</sup>

Establishing the limits of human rights as a language of moral intervention is all the more important because at least one source of power that held Western human rights in check is now in ruins. There were two human rights cultures after 1945, not just one. The Communist rights tradition—which put primacy on economic and social rights—kept the capitalist rights tradition—emphasizing political and civil rights—from overreaching itself. Since the Helsinki Final Act of 1975, in which the Soviet bloc conceded the right of its citizens to have human rights organizations, there has been one global human rights culture. The collapse of communism leaves the West freer than before to undertake interventions in the affairs of delinquent or collapsed states. But these interventions have served to blur rather than clarify the proper line between the rights of states and the rights of citizens who may be oppressed within these states. The West has got ahead of itself, and it is time to redraw the balance. We may need less intervention, not more; more respect for state sovereignty, not less. This is the political dimension of the problem. But a cultural dimension ensues. As the West intervenes ever more frequently but ever more inconsistently in the affairs of other societies, the legitimacy of its rights standards is put into question. Human rights is increasingly seen as the language of a moral imperialism just as ruthless and just as self-deceived as the colonial hubris of yesteryear.

Activists who suppose that the Universal Declaration of Human Rights is a comprehensive list of all the desirable ends of human life fail to understand that these ends—liberty and equality, freedom and security, private property and distributive justice—conflict and, because they do, the rights that define them as entitlements are also in conflict. If rights conflict and there is no evident order of moral priority in rights

<sup>22</sup> Avishai Margalit and Moshe Halbertal, "Liberalism and the Right to Culture," *Social Research* 61, no. 3 (Fall 1994).

<sup>23</sup> Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995), pp. 107–31.

claims, we cannot speak of rights as trumps.<sup>24</sup> The idea of rights as trumps implies that when rights are introduced into a political discussion, they serve to resolve the discussion. In fact, the opposite is the case. When political demands are turned into rights claims, there is a real risk that the issue at stake will become irreconcilable, since calling a claim a right is to call it non-negotiable, at least in popular parlance.<sup>25</sup> Compromise is not facilitated by the use of rights claim language. So if rights are not trumps, and if they create a spirit of non-negotiable confrontation, what is their use? At best, rights create a common framework, a common set of reference points that can assist parties in conflict to deliberate together. Common language, however, does not necessarily facilitate agreement. In the American abortion debate, for example, both sides agree that the inhuman use of human life should be prohibited and that human life is entitled to special legal and moral protections.<sup>26</sup> Yet this is hardly common ground at all, since the two sides disagree as to when human life commences and as to whether the claims of the mother or the unborn child should prevail. This example suggests that it is an illusion to suppose that the function of human rights is to define a higher realm of shared moral values that will assist contending parties to find common ground. Broad evaluative consensus about human rights may be a necessary condition for deliberative agreement, but it is not a sufficient one. Other political factors are essential for closure: shared exhaustion with the conflict, dawning mutual respect, joint mutual recognition—all these must be present, as well as common commitment to moral universals, if agreement is to be reached.

The larger illusion I want to criticize is that human rights is above politics, a set of moral trump cards whose function is to bring political disputes about competing claims to closure and conclusion. Shared human rights talk can do something to engender mutual respect and foster mutual recognition, provided that each side listens with respect to the other's particularist inflection of universal claims. Beyond that, rights language raises the stakes. It reminds disputants of the moral nature of their claims. When two sides recognize that the other side has a claim of

<sup>24</sup> Ronald Dworkin, *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977).

<sup>25</sup> Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991).

<sup>26</sup> Ronald Dworkin, *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom* (New York: Knopf, 1993).

right, the dispute ceases to be—in their eyes—a conflict between right and wrong and becomes a conflict between competing rights. The resolution of these competing rights claims never occurs in the abstract kingdom of ends, but in the kingdom of means. Human rights is nothing other than a politics, one that must reconcile moral ends to concrete situations and must be prepared to make painful compromises not only between means and ends, but between ends themselves.

But politics is not just about compromise and deliberation. Human rights language is also there to remind us that there are some abuses that are genuinely intolerable, and some excuses for these abuses that are insupportable. Rights talk, therefore, helps us to know when deliberation and compromise have become impossible. Hence, human rights talk is sometimes used to assemble the reasons and the constituencies necessary for the use of force. Given the conflictual character of rights, and given the fact that many forms of oppression will not answer to argument and deliberation, there are occasions, which must be strictly defined, when human rights as politics becomes a fighting creed, a call to arms.

## 6. HUMAN RIGHTS AND SELF-DETERMINATION

From being the insurgent creed of activists during the Cold War, human rights has become “main-streamed” into the policy framework of states, multilateral lending institutions like the World Bank, and the UN itself. The foreign policy rhetoric of most Western liberal states now repeats the mantra that national interests must be balanced by due respect for values, chief of which is human rights. But human rights is not just an additional item in the policy priorities of states. If taken seriously, human rights values put interests into question, interests such as sustaining a large export sector in a nation’s defense industry, for example. It becomes incoherent for states like Britain and the United States to condemn Indonesia or Turkey for their human rights performance while providing their military with vehicles or weapons that can be used for the repression of civilian dissent. When values do not actually constrain interests, an “ethical foreign policy”—the self-proclaimed goal of Britain’s Labour government—becomes a contradiction in terms.

This is not the only practical problem in reconciling values and interests in dealing with states that violate human rights. There is the additional conflict between furthering the human rights of individuals

and maintaining the stability of the nation-state system. Why should stability be of concern to human rights activists? Simply because stable states provide the possibility for national rights regimes, and these remain the most important protector of individual human rights.

Democratic governments in the age of human rights have to reconcile dealing both with governments in power and with a dissident or oppressed opposition or an ethnic minority seeking self-determination. Many of these states face secessionist challenges, often backed up by terrorism. Other states face minority rights challenges that jeopardize the unity of the state. To be sure, oppressive states, faced with these challenges, usually exaggerate them and defend their repression on the grounds of ultimate necessity: *salus populi primus lex*. China, for example, justifies human rights abuses as the price required to maintain the unity of a continental nation state subject to many regional, ethnic, religious, and tribal pressures. Whenever human rights complaints are aired within earshot of the Chinese leadership, they are quick to waive the specter of civil war—in other words, to argue that furthering human rights and maintaining state stability are ultimately incompatible.

Much of this is special pleading in defense of the privileges and political monopoly of the party in power. Chinese human rights activists correctly reply that the best long-term guarantee of Chinese national unity is a democratic regime that guarantees human rights.<sup>27</sup> They are also correct to point out that trade liberalization and free markets do not necessarily bring human rights and democracy in their wake. It is quite conceivable to combine authoritarian politics with free markets, despotic rule with private property. When capitalism enters the gates of a closed society, it does not necessarily function as a Trojan horse for human rights. Human rights will come to authoritarian societies when activists risk their lives and create a popular and indigenous demand for these rights and when their activism receives consistent and forthright external support from influential nations.

We need not be detained by the special pleading of authoritarian, one-party regimes, but there is much more of a conflict between human rights and state stability when the regime in question is not oppressively authoritarian and when the human rights demands come in the form of a collective demand for territorial autonomy, self-rule, or secession. In these situations, Western states want to promote human rights,

<sup>27</sup> Wei Jing Sheng, "The Taste of the Spider," *Index on Censorship* 3 (1998): 30–38; see also U.S. Department of State, *1999 Country Reports on Human Rights: China*.

but not at the price of dismembering viable democracies and adding to the number of failed, collapsed, or disunited states in the world system. Most states in the post–Cold War era skate around this tension in the fundamental goals of their policy: both supporting human rights and propping up states whose stability is deemed to be essential.

Some human rights activists deny this conflict between state stability and human rights. They claim that the best guarantee of state stability has to be democracy, human rights, and fairness in the states in question. In the long run this may be true; but in the short term—where most governments actually live—democracy and human rights often conflict, and popular sovereignty for a majority is often achieved at the cost of ethnic cleansing for a minority. Sometimes the conflicts unleashed by the coming of democracy shatter the state altogether, plunging all human groups into a war of all against all.

The overwhelming problem of the post–Cold War world system has been the collapse of state order in three key sectors of the globe—the Balkans, the Great Lakes region of Africa, and the southern Islamic frontier of the former Soviet Union.<sup>28</sup> Obviously these regions have fragmented in part because of the flagrant human rights abuses committed by ethnic majority tyrannies that tried—and failed—to create stable nation states. But in part fragmentation also results from the destructive impact of demands for territorial autonomy and independence on the part of secessionist groups. Western governments watching the slide of these regions into endemic civil war are justified in concluding that restoring stability—even if it is authoritarian and undemocratic—matters more than either democracy or human rights. Stability, in other words, may count more than justice.

Most Western states are finessing this moral triage between rights and stability. They proclaim human rights as their goal, while aiding or investing in states with derisory human rights records. While this is usually seen as a problem of hypocrisy—not matching words to deeds—in fact it represents a fundamental conflict of principle.

The issues at stake can be illustrated by looking at the case of the Kurds. Promoting the human rights of Kurds and maintaining the territorial integrity of Turkey are not obviously compatible. For Kurds are not campaigning simply to improve their civic position as individuals,

<sup>28</sup>See Mary Kaldor, *New and Old Wars: Organized Violence in a Global Era* (London: Polity, 1999); see also Michael Ignatieff, *Blood and Belonging: Journeys into the New Nationalism* (London: Vintage, 1993).

but to achieve self-determination as a people. Kurdish human rights campaigns are not essentially individual and apolitical in character. They represent a demand for collective self-determination that challenges the governmental authority of Turkey, Syria, Iran, and Iraq. It is by no means obvious how autonomy for the Kurds can be reconciled in practice with the territorial integrity of these states. Because the West fails to face this conflict in its own principles, its interventions satisfy no one. The Turks regard Western human rights criticism as meddling in their internal affairs, while the Kurds regard our support for their struggle as false and disingenuous.

The Kurdish case also illustrates the political naiveté that so often diminishes the effectiveness of human rights advocacy. For too long human rights has been seen simply as a form of apolitical humanitarian rescue for oppressed individuals. Thus human rights advocates campaign on behalf of groups or individuals imprisoned or oppressed by the states in the region without squarely facing up to the political issue—which is how to find a constitutional framework in the four states that have a Kurdish minority that will guarantee their rights, without creating a dynamic toward independence that would drive the region into civil war. Such a framework would require the Security Council to convene a conference to redefine the constitutions and boundaries of four states. None of the states in question will submit to such interference. The only viable option is a long and persistent negotiation between Western governments and the nations in the region, aiming at relaxing the unitary national ideologies of the countries concerned so that minority groups like the Kurds can find ways to protect their own linguistic and historical heritage with forms of autonomy and constitutionally protected devolution.<sup>29</sup> At this point, of course, human rights values and state interests conflict, since Western states have a stronger interest in conciliating Turkey as a trusted ally in a volatile region than they do in pushing it to change its constitution. A further alibi for Western inaction is intense and debilitating Kurdish factionalism. It is difficult to represent the interests of a victim community when its elites waste their energies fighting among themselves, yet neither independent human rights organizations nor Western governments have much capacity to put an end to the Kurdish power struggle.

Since large-scale constitutional reordering in the Kurdish region is

<sup>29</sup>On Kurdistan, see Ignatieff, *Blood and Belonging*, pp. 176–212; P. G. Kreyenbroek and S. Sperl, *The Kurds* (London: Routledge, 1991).

rightly seen as an illegitimate interference in the sovereignty of established states, Western states with human rights agendas are forced back to a strategy of quiet diplomacy that places two-way bets: one on the government in power, another, smaller bet on the oppressed minority. It discretely aids both, while undermining each, with consequences that actually devalue the legitimacy of its own moral language.

The same inability to reconcile human rights values with maintaining state stability has bedeviled Western policy toward Indonesia. Since 1975 journalists and human rights activists have denounced the Indonesian seizure and occupation of the former Portuguese colony of East Timor. But as long as Indonesia was regarded as a bulwark of the East Asian security system of the United States, as long as the territorial integrity of the huge island archipelago was seen as the overriding objective of Western policy, nothing was done to stop Indonesian oppression of the East Timorese. How then are we to explain why in 1998 the West suddenly began to take a sustained interest in the human rights situation in East Timor? With the collapse of the Soviet regime, there was no longer a credible Communist threat in East Asia to justify further appeasement of the Indonesian military. Secondly, the overthrow of Suharto by the students and the East Asian economic crisis weakened the Indonesian regime so that it could no longer resist human rights pressure. Finally, an indigenous human rights movement, championed by able and courageous individuals, was making the Indonesian human rights record a matter of real embarrassment in the international arena, at a time when Indonesia needed international credits and diplomatic support. This confluence of pressures led Indonesia to accede to demands for a referendum in East Timor, which Western observers duly supervised. But the UN Security Council supposed that it could help the East Timorese achieve self-determination, while doing nothing to protect them from the wrath of the pro-Indonesian militias. In effect, the Security Council granted their claim to self-determination without respecting their need for security. The consequences were easy to predict: the massacre of civilians, the destruction of an already poor country, and finally the inevitable dispatch of a peace-keeping force onto what remains the sovereign territory of Indonesia.

Have we sufficiently attended to the probable consequences of this intervention for the territorial integrity of Indonesia? If East Timor successfully secedes, how many other parts of a complex multiethnic, multilingual, multiconfessional state will also seek independence? It may

prove impossible to reconcile self-determination for the East Timorese with the long-term territorial integrity of Indonesia as it now exists. Even accepting that East Timor is a special case—a former colony illegally annexed—we seem not to understand that human rights advocacy is contributing to the possible disintegration, at high human cost, of the state of Indonesia. If it is said that its disintegration is inevitable anyway, then it still follows that we need a policy that prevents such disintegration from jeopardizing what we intervened to safeguard in the first place, namely the human rights of ordinary people. For we can be sure that the Indonesian military will not go without a bloody struggle, and we can be certain that self-determination for some groups will be purchased with the blood of the minorities in their midst.

To repeat, the problem in Western human rights policy is that by promoting ethnic self-determination we may actually endanger the stability that is a precondition for protecting human rights. Having started the ball rolling in Indonesia, we need to help Indonesians decide where it should stop: whether secessionist claims by other minorities can be contained within a devolved Indonesian democracy, or whether some of these claims will have to result, one day, in statehood.

Beyond the specifics of the Indonesian case, human rights activists need to face up to the fact that human rights advocacy can set in train secessionist pressures that do threaten existing states and may make the human rights situation of ordinary people worse rather than better in the short term. The painful truth is that national self-determination is not always favorable to individual human rights, and democracy and human rights do not necessarily advance hand in hand.

## 7. HUMAN RIGHTS, DEMOCRACY, AND CONSTITUTIONALISM

In order to reconcile democracy and human rights, Western policy will have to put more emphasis not on democracy alone but on constitutionalism, the entrenchment of a balance of powers, judicial review of executive decisions, and enforceable minority rights guarantees.<sup>30</sup> Democracy without constitutionalism is simply ethnic majority tyranny.

In the face of secessionist claims, which threaten the territorial in-

<sup>30</sup>Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs* (November/December 1997): 22–43; Louis Henkin, *Constitutionalism, Democracy and Foreign Affairs* (New York: Columbia University Press, 1990); see also Anthony Lewis, "Yes to Constitutions and Judges That Enforce Them," *International Herald Tribune*, January 7, 2000.

tegrity of nation states, human rights activists will have to do more than merely champion arrested human rights activists. Nor can they remain neutral in the face of secessionist claims. They will have to develop criteria for understanding which secessionist claims deserve full independence and statehood and which ones can be solved by means of regional autonomy and political devolution. Where groups have sound historical reasons for believing that they cannot live in security and peace alongside another group inside a state, they may have a necessary claim to secession and statehood, based on their right to self-defense. But such claims are not justified everywhere. Where there is no such history of bad blood, no recent history of intercommunal violence, as for example between Canada and the Québécois, between the English and the Scots, secessionist claims may best be met with devolution and autonomy within the existing nation state. Devolutionist solutions tend to protect minority rights more effectively than separationist ones. In a territory where an ethnic majority has self-government, it remains bound by the federal constitution signed with the other ethnic majority to respect its own minorities. When outright separation occurs, this pattern of mutual rights supervision no longer takes place within shared institutions.

Where a state is democratic, secessionist demands for self-determination should be contained within the framework of that state wherever possible; but where a state is not democratic, where it opposes all devolution to minorities and denies them protection of their educational, linguistic, and cultural rights, secession and independence become inevitable.<sup>31</sup>

Yet the case of Sri Lanka, where there has been a secessionist movement among the minority Tamil population since 1983 against the Sinhalese-dominated government, indicates just how difficult it is to get the balance right between minority rights, state sovereignty, and individual human rights. The two populations did not have a long history of intercommunal violence before or after national independence in 1947. There was substantial, and deeply resented, discrimination against the Tamil language together with denial of access to state employment. But violence—in which both sides then took part—did not begin until the 1980s. To reward a secessionist claim with independence now would be

<sup>31</sup> Robert McCorquodale, "Human Rights and Self-Determination," in Mortimer Sellers (ed.), *The New World Order: Sovereignty, Human Rights and the Self-Determination of Peoples* (Oxford: Berg, 1996), pp. 9–35; see also Hurst Hannum, *Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).

to reward a terrorist movement with a great deal of blood on its hands. It would also transfer political control over the Tamil people to the hands of a group with no democratic credentials. In so doing, secession might confer collective self-determination on the Tamils in the form of single party dictatorship, and this would achieve self-determination for the Tamils as a people, while delivering them up as individuals to tyranny. In these circumstances, the best guarantee of individual Tamil rights and of collective protection of their language and culture would not be the separate statehood demanded by the Tigers, but instead substantial self-government and autonomy for the Tamil people within the framework of a democratic Sri Lankan state no longer dominated by the Singala majority.<sup>32</sup>

This example should indicate, first, that there are substantial dangers for human rights of individuals if the international community were to concede statehood to secessionist groups who back their campaign with terror; second, that any resolution of these minority rights claims requires more supple, less unitary and intransigent states. Indeed, the problem is not just getting the state and the insurgent minority to respect human rights. A long-term solution requires an institutional setting in which the state is no longer communalized, no longer seen as the monopoly of any particular confessional, ethnic, or racial group, in which the state is reinvented as the arbiter of a civic pact between ethnic groups. Constitutionalism and the civic state are the institutional *sine qua non* of effective human rights protection.

Constitutionalism implies loosening up the unitary nation state—one people, one nation, one state—so that it can respond adequately to the demands of minorities for protection of their linguistic and cultural heritage and for their right to self-government. But communalization becomes inevitable in poor countries where the state—with its resources, perquisites, and privileges—remains the major source, not merely of political power, but of social and economic prestige as well. As long as economic, social, and political power is concentrated in the state, states will become the monopoly of the ethnic majority that holds democratic power. Ethnic conflict is at its most intense in societies, like the former Communist state of Yugoslavia or a desperately poor state like Rwanda, where control of state power is the unique source of all social, political, and economic privilege. Breaking the zero-sum game of

<sup>32</sup>International Center for Ethnic Studies, *Sri Lanka: The Devolution Debate* (Colombo: ICES, 1998); Robert Rotberg (ed.), *Creating Peace in Sri Lanka: Civil War and Reconciliation* (Washington, D.C.: Brookings, 1999).

ethnic competition for state power requires enlarging social and economic sources of privilege independent of the state, so that even if minority groups can never prevail democratically against majorities, they can secure independent sources of wealth, privilege, and prestige. If so, they do not need to seek secession and can remain within a state democratically dominated by another ethnic group. The South African white minority, for example, has a secure place within the institutions of the economy and society of a black South Africa. Their power in the economy effectively protects them from the adverse effects of majority rule. An independent civil society, therefore, is the essential economic basis for multiethnic pluralism, but also for constitutionalism. Being committed to constitutionalism and human rights, therefore, means a comprehensive strategy of economic and social development as well, aimed at creating an independent and plural civil society. Only then can states create the checks and balances that protect minorities against ethnic majority tyranny.

Beyond making the nation state more flexible toward minority rights claims, the international order needs to strengthen multinational and regional organizations so that they can grant rights of participation to nations and autonomist regions. This allows nations who do not have states on their own to enter the international arena and advance their interests without having to insist on full sovereignty and further fragment the state system. The European Community allows Catalans, Scots, Basques, and other nonstate peoples to participate in fora promoting the development of their regions. The Organization for Cooperation and Security in Europe (OSCE) helps substate groups and national minorities to find representation and protection in the international arena. The OSCE's minority rights commissioner has done pioneering work with the Baltic states, helping them to revise their citizenship and language laws in order to protect the rights of the Russian minority.<sup>33</sup> In this way, three small states maintain their national independence without creating a *casus belli* with their former imperial occupier, while minorities inside these states know that powerful European institutions are keeping watch on their interests.<sup>34</sup>

In the world now emerging, state sovereignty will become less

<sup>33</sup> Walter Kemp (ed.), *Quiet Diplomacy in Action: The OSCE High Commissioner on National Minorities* (Amsterdam: Kluwer, 2000).

<sup>34</sup> John Packer, "Problems in Defining Minorities," in D. Fottrell and B. Bowring (eds.), *Minority and Group Rights in the New Millennium* (Amsterdam: Kluwer, 1999), pp. 223–74; see also *The Oslo Recommendations Regarding the Linguistic Rights of National Minorities* (The Hague: Foundation on Inter-Ethnic Relations, 1998).

absolute and national identity less unitary. As a result, human rights within states will be protected by overlapping jurisdictions. Regional rights bodies—like the OSCE—will have more oversight over minority rights problems in member states, and they will do so simply because emerging states conclude that surrendering some of their sovereignty on these issues is worth the price of full admission to the European club. As sovereignty is more permeable and more controlled, minorities will feel less afraid, and therefore less responsive to secessionist appeals.

Yet it is utopian to look forward to an era beyond state sovereignty. Instead of regarding state sovereignty as an outdated principle, destined to pass away in the era of globalization, we need to appreciate the extent to which state sovereignty is the basis of order in the international system and that national constitutional regimes represent the best guarantee of human rights. This is an unfamiliar, even controversial principle within a human rights community that for fifty years has looked on the state as the chief danger to the human rights of individuals. And so it proved in the age of totalitarian tyranny. Today, however, the chief threat to human rights comes not from tyranny alone, but from civil war and anarchy. Hence, we are rediscovering the necessity of state order as a guarantee of rights. It can be said with certainty that the liberties of citizens are better protected by their own institutions than by the well-meaning interventions of outsiders.

So human rights might best be strengthened in today's world not by weakening already weak and overburdened states but by strengthening them wherever possible. State failure cannot be rectified by human rights activism on the part of NGOs. What is required when states fail is altogether more ambitious: regional powers brokering peace accords between factions; peace-keeping forces to ensure that truces stick; multilateral assistance to build national institutions, like tax-collection, police forces, courts, and basic welfare services. The aim of the exercise is to create states strong enough and legitimate enough to recover their monopoly over the means of violence, to impose order and create the rule of law. Authoritarian rule usually endangers human rights less than anarchy and civil war do. Societies that accord their citizens a degree of personal security are preferable to no government at all.

It is not merely that democracy may not be possible; there may also be an objection in principle as to our right to insist on it. In *The Law of Peoples*, John Rawls argues that liberal states do not have a right to impose their idea of constitutional democracy on others. There may be

other nondemocratic, but hierarchical and ordered states whose internal orders do provide the rule of law and some elementary respect for human rights. Rawls imagines a society called Kazanistan that debars full political participation for those not of Muslim faith but tolerates the religious and private rights of other religious and ethnic minorities. Such a state lives at peace within the international system, even if it does not meet all criteria of human rights equality. There is nothing in Rawls's view—or mine—that would mandate interference in the domestic affairs of this state. Liberal democrats, Rawls argues, need to accept that state forms other than their own may provide adequate procedural fairness and minority rights protection.<sup>35</sup>

This is not the only lesson that human rights activists from Western liberal democracies may need to learn. The other lesson is that universality properly implies consistency. It is inconsistent to impose international human rights constraints on other states unless we accept the jurisdiction of these instruments on our own. Canadians have no business telling Latvia, Lithuania, and Estonia what to do about Russian minority rights unless they accept an obligation to subscribe to OSCE standards in their own treatment of French and aboriginal minorities. Americans have no business lecturing other countries about their human rights performance unless they are prepared to at least enter into dialogue with international rights bodies about sensitive areas—capital punishment and the conditions in American prisons, for example—which may be in contravention of international rights norms. The obligation to at least engage in dialogue is clear, and the obligation that nations actually practice what they preach is the minimum requirement for a legitimate and effective human rights policy.

## 8. HUMAN RIGHTS AND MILITARY INTERVENTION

Where all order in a state has disintegrated and its people have been delivered up to a war of all against all, or where a state is engaging in gross, repeated, and systematic violence against its own citizens, the only effective way to protect human rights is direct military intervention. Since 1991, this “right of humanitarian intervention” has been asserted, most loudly by the French, but also by other governments seeking to

<sup>35</sup> John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), pp. 75–78.

justify interventions in Iraq, Bosnia, and Kosovo.<sup>36</sup> The armed forces of the Western powers have been busier since 1989 than they ever were during the Cold War, and the legitimizing language for this activity has been the defense of human rights. Yet the juridical status of a right of intervention is exceedingly unclear.<sup>37</sup> While the UN Charter calls on states to proclaim human rights, it also prohibits the use of force against other states and forbids internal interference. The human rights covenants that states have signed since 1945 have implied that state sovereignty is conditional on adequate human rights observance. The gulf in international law between the nonintervention language of the charter and the interventionist implications of human rights covenants has never been bridged.

Drafters of the Universal Declaration explicitly assumed that the Declaration would warrant interventions where human rights abuse was flagrant. As René Cassin, one of the drafters of the Declaration, put it in 1946, “when repeated or systematic violation of human rights by a given state within its borders results in a threat to international peace (as was the case of the Third Reich after 1933), the Security Council has a right to intervene and a duty to act.”<sup>38</sup>

In practice, of course, states have been exceedingly wary of the right of intervention, and when they have intervened, they have done so as a temporary measure. Thus where a state fails in its elementary obligations—maintaining physical security and an adequate food supply for its population—or where its army and police are engaged in sustained violence against minority or dissident political groups, it may temporarily forfeit its rights of sovereign immunity within the international system. But the forfeiture is temporary. Northern Iraq remains under the formal jurisdiction of the government in Baghdad, while in practice Allied aircraft patrolling overhead prevent any effective exercise of Iraqi sovereignty in the Kurdish enclave. Kosovo, for example, is under UN protectorate, but UN Security Council Resolution 1244 explicitly reaffirms that the territory remains under Yugoslav sovereignty.

<sup>36</sup> Bernard Kouchner, *Le Malheur des autres* (Paris: Grasset, 1993); Kofi Annan, *The Question of Intervention* (New York: United Nations, 1999).

<sup>37</sup> Gerry J. Simpson, “The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age,” in Sellers, *The New World Order*, p. 55; Christopher Greenwood, “International Law, Just War and the Conduct of Modern Military Operations,” in Patrick Mileham and Lee Willet (eds.), *Ethical Dilemmas of Military Interventions* (London: RIIA, 1999), pp. 1–9.

<sup>38</sup> M. G. Johnson and Janusz Symonides, *The Universal Declaration of Human Rights: A History of Its Creation and Implementation, 1948–1998* (Paris: UNESCO, 1998), p. 32.

This idea that interventions do not eradicate or supersede the sovereignty of the defaulting party, merely suspend it, is our attempt to provide universal human rights protection to endangered groups within states without abrogating the sovereignty of that state. We hold onto the importance of state sovereignty for another reason, which is to prevent intervention from becoming imperial. Both our human rights norms and the UN Charter outlaw the use of military power for territorial aggrandizement or occupation. Hence our military interventions are intended to be self-limiting. We are not intervening to take over territory, but to bring peace and stability and then get out; our mandate is to restore self-determination, not to extinguish it. Managing these conflicting tensions has not been easy. We are now firmly ensconced in long-term protectorates in Bosnia, Kosovo, and East Timor, behaving like imperial police with imperial obligations and no exit in sight.

Looking at the interventions we have undertaken since the end of the Cold War, who can say that we have been successful? In Bosnia, the intervention has not created a stable self-governing society. Instead we have frozen an ethnic civil war in place. We have not succeeded in anchoring a human rights culture in shared institutions.

Intervention, instead of reinforcing respect for human rights, is consuming their legitimacy, both because our interventions are unsuccessful and because they are inconsistent. And we cannot solve our problem by not intervening at all. In 1994, the UN Security Council stood by and did nothing while hundreds of thousands of Tutsis were massacred by a concerted, organized, and centrally directed plan of genocide organized by the Hutu-dominated government of Rwanda. Failing to intervene in Rwanda has proved even more damaging to the standing and credibility of human rights principles than late and partial interventions in Iraq, Bosnia, and Kosovo.

So what are we to do? If human rights are universal, human rights abuses everywhere are our business. But we simply cannot intervene everywhere. If we do not ration our resources, how can we possibly be effective? Rationing is both inevitable and necessary, yet there needs to be a clear basis to justify these decisions.

Three criteria have emerged in the late 1990s to ration interventions: (1) the human rights abuses at issue have to be gross, systematic, and pervasive; (2) they have to be a threat to international peace and security in the surrounding region; and (3) military intervention has to stand a real chance of putting a stop to the abuses.

In practice, a fourth criterion comes into play: the region in question must be of vital interest, for cultural, strategic, or geopolitical reasons, to one of the powerful nations in the world. Most states abide by the rough and ready rule that military intervention is only warranted when a gross and persistent human rights crisis is simultaneously a threat to their own national security interests or those of their most important allies. Intervention in Kosovo was justified on this mixture of human rights and national interest grounds: the human rights violations endured by the Kosovars threatened to destabilize Albania, Macedonia, and Montenegro and constituted a threat to the peace and security of the region.

The national interest criterion is supposed to limit the ambit of moral concern, in fact, to trump values. But in Kosovo and Bosnia, values and interests were nearly indistinguishable. The NATO powers intervened to make values prevail, to safeguard the territorial integrity of neighboring states, and, most important of all, to demonstrate the credibility of NATO when faced with a challenge from a defiant leader of a small state.

But values and interests do not always point policy in the same direction. The idea of national interest implies that where gross human rights abuses do *not* threaten the peace and security of a region, military intervention is not warranted. Burma's repression of civilian dissent may be a clear violation of international human rights norms, but so long as its military rulers do not constitute a threat to their neighbors, they run no risk of military intervention.

There are cases, however, where purely domestic repression rises to such a level that while interests say: "Stay out," values cry: "Go in." The Rwandan genocide ought to have been such a case, but since Western countries could not articulate a pressing national interest to undertake the risks involved in military action, they stood by and watched 800,000 people die, leaving many Africans to conclude that our supposed commitment to universal values was fatally compromised by racial partiality. In reality, Rwanda was never a purely internal genocide, and our failure to stop it is a direct cause of the widening collapse of state order in the whole of central Africa.

The Rwandan case illustrates that the line between internal and external conflict is hard to draw; that the national interest criterion that keeps us from interfering is not so clear as its defenders claim it to be;

and, finally, that atrocities may be so terrible that we are bound to intervene even when they do not impinge on any direct national interest.

Even when a state's domestic behavior is not a clear and present danger to the international system, it is a reliable predictor that it is likely to be so in the future. Consider the example of Hitler's regime, 1933–38, or Stalin's in the same period. In hindsight, there seems no doubt that Western governments' failure to sanction or even condemn their domestic policies encouraged both dictators to believe that their international adventures would go unpunished and unresisted.

So the line between purely domestic human rights abuses and those that threaten international peace and security is unclear, and the deferred or future costs of remaining silent about domestic abuses can be terrible indeed. Yet the rule against intervening in other people's states protects weak states against stronger ones and guarantees a minimum degree of equality between national communities in the world arena. Moreover, the nonintervention rule acts as a restraint on intemperate, premature, and ill-judged forms of coercion. It gives time for sanctions, diplomacy, and negotiation to work. But if they fail, what then? There are no peaceful diplomatic remedies when we are dealing with a Hitler, a Stalin, a Saddam, or a Pol Pot.

If force is an inescapable feature of human rights protection, the question then becomes whether we need to change the default setting of the international system, which is currently set against intervention. Most small states believe that any formalized right of intervention would constitute an encouragement to intervention that would in turn erode the sovereignty of rights-observing and rights-violating states alike. But those in favor believe that the international system needs to formalize in words what it already believes in practice: that state sovereignty is conditional on human rights performance and that, where this performance threatens international peace and security, the Security Council should have the right to mandate a graduated set of coercive responses ranging from sanctions to full-scale military intervention. The failure to formalize a right of intervention under the UN system simply means that coalitions of the willing who wish to intervene will do so by bypassing the authorizing process of the UN altogether.<sup>39</sup>

<sup>39</sup> Advisory Council on International Affairs, "Humanitarian Intervention" (Amsterdam, 2000; see [www.aiv-advice.nl](http://www.aiv-advice.nl)); also Danish Institute of International Affairs, "Humanitarian Intervention: Legal and Political Aspects" (Copenhagen, 1999).

Changing the default of the international system may or may not be desirable. In practice, there is as little chance of a change in the UN Charter language on intervention as there is of substantive Security Council veto reform or enlargement. We are thus stuck with enforcing human rights in the twenty-first century with an international system drafted by the victors of 1945. As a result, interventions will rarely command international consensus because the institutions do not exist to create such consensus. Human rights may be universal, but support for coercive enforcement of their norms will never be universal. Because interventions will lack full legitimacy, they will have to be limited and partial, and because they will have to be limited and partial, they will only be partially successful.

#### 9. MEANS AND ENDS

The legitimacy of human rights standards in the new century will be further compromised by the gulf that has opened up between the universalistic values we proclaim and the risk-averse means we choose to defend them. Since the end of the Cold War, Western nations, acting through the Security Council, have repeatedly promised to protect civilians caught in the middle of civil wars or menaced by rogue regimes. Such promises were made by the UN military mission to Rwanda, by the UN peace-keepers in Srebrenica.<sup>40</sup> In both cases, large populations trusted our moral promises, and their trust was horribly betrayed. I do not need to rehearse the Srebrenica catastrophe here.<sup>41</sup> A comprehensive UN report to the Secretary General has already drawn the necessary lessons: if the UN offers to protect civilians in safe havens, its member states must provide heavy armor and air-cover and issue robust rules of engagement that allow attacking forces to be engaged and repulsed. This is not a job for lightly armed peace-keepers. Indeed, peace-keeping itself is out of date. It has a limited role in the supervision of truce and border lines established after conflicts between states. Most of the wars

<sup>40</sup>On the UN military role in Rwanda, see Romeo Dallaire, "The End of Innocence: Rwanda, 1994," in Jonathan Moore (ed.), *Hard Choices: Moral Dilemmas in Humanitarian Intervention* (New York: Rowman and Littlefield, 1998), pp. 71–87.

<sup>41</sup>UN Office of the Secretary General, "Srebrenica Report," pursuant to UNGA Resolution 53/35 (1998), November 15, 1999; see also "Report of the Panel on UN Peace Operation," UN General Assembly, August 21, 2000.

since 1989 are internal conflicts between crumbling or disintegrating state armies and a variety of insurgent militias. Both sides use ethnic cleansing as a weapon of war in the drive to create defensible territories with ethnically homogenous populations. In these conditions, there is not only no peace to keep, but no credible position of neutrality either. In these situations, human rights protection can only be undertaken as part of peace-enforcement operations in which the international community aligns with the side more nearly in the right and uses military force robustly to stop human rights abuse and create conditions for the reestablishment of stable state order in the region.

Any military or humanitarian intervention amounts to a moral promise to persons in need. If we make promises of this sort, we owe it ourselves and those we intend to help to devise the military strategy, rules of engagement, and chain of command necessary to make good on our promises. Our failure to do so—in Rwanda and in Bosnia—has undermined the credibility of human rights values in zones of danger around the world. Innocent civilians now have no good reason to trust any moral promise made by UN agencies, especially its peace-keepers.

#### 10. INTERVENTION AS A REWARD FOR VIOLENCE

Intervention is also problematic because we are not necessarily coming to the rescue of pure innocence. Intervention frequently requires us to side with one party in a civil war, and the choice frequently requires us to side with parties who are themselves guilty of human rights abuses.

The early warning systems of our democracies only sound the alarm when victims turn to terror and reprisal. For all the earnest talk about the importance of early intervention and prevention, the international community rarely commits resources to a problem before violence has broken out. But this in turn compromises the legitimacy of human rights interventions, for they appear to require violations of human rights for them to occur. The Kosovo Liberation Army committed human rights abuses against Serbian civilians and personnel in order to trigger reprisals, which would in turn force the international community to intervene on their behalf.<sup>42</sup> The KLA's success between 1997 and

<sup>42</sup>See Michael Ignatieff, "The Dream of Albanians," *New Yorker*, January 11, 1999; see also Michael Ignatieff, "Balkan Physics," *New Yorker*, May 10, 1999; and Human Rights

1999 was a vintage demonstration of how to exploit the human rights conscience of the West in order to incite an intervention that resulted eventually in guerrilla victory.

For several years, the West hesitated before the choice it had to make. It could either sit by and watch Kosovo descend into full-scale civil war, which threatened to destabilise Albania, Macedonia, or Montenegro, or it could intervene and attempt to control the roll-out of Kosovan self-determination. Gradually, it chose the second option. But this military intervention, when it came in March 1999, then unleashed a genuine human rights disaster: the forcible eviction of 800,000 Kosovan citizens to Albania and Macedonia, followed by the massacre of up to 10,000 of those who remained.

The Western allies said they were waging a war for the sake of human rights. In reality, they were dragged into a war by an oppressed ethnic majority whose guerrilla army itself committed human rights abuses. Having been dragged into a war, the West then found itself unable to stop a flood of human rights abuses unleashed as a response to intervention. And even now, the West hesitates over the ultimate question of whether Kosovo should achieve full status as an independent state. Kosovan Albanians who feel that the human rights abuses they have suffered at the hands of the Serbs validate their claim to statehood now feel betrayed by the West; while the West feels equally betrayed by the human rights abuses—the wholesale eviction of Serbs—that have followed the liberation of Kosovo. This enormously complicates the issue of Kosovo's final status, for granting Kosovars full independence appears to reward a secessionist movement that used terror. An indefinite UN protectorate in Kosovo seems the only solution, since it postpones the necessity of deciding Kosovo's final status.<sup>43</sup>

Some human rights activists profess to be untroubled by the West's assumption of an unlimited and indefinite "human rights protectorate" in the whole Balkan region. They believe a profound and long-term shift of the balance of power away from nation states is underway. For many human rights activists, state sovereignty is an anachronism in a global

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Watch, *Human Rights Abuses in Kosovo* (New York: Human Rights Watch, 1993); *Humanitarian Law Violations in Kosovo* (New York: Human Rights Watch, 1998); *A Week of Terror in Drenica: Humanitarian Law Violations in Kosovo* (New York: Human Rights Watch, 1999).

<sup>43</sup>Independent International Commission on Kosovo, *The Kosovo Report* (New York: Oxford University Press, 2000).

world. They wish to see ever more global oversight, ever more power to the international human rights community, ever more human rights protectorates. But is this wise? All forms of power are open to abuse, and there is no reason why power that legitimizes itself in the name of human rights should not end up as open to abuse as any other. Those who will end up with more power may only be those who have power already: the coalitions of the willing, the Western nations with the military might necessary for any successful “human rights” intervention.

The only outcome in Kosovo consistent with our principles is one that moves the province toward effective self-government by its own people and away from administration by UN, NATO, and European Community personnel. Either we believe in self-determination or we don't. A prolonged imperial administration of the south Balkans, justified in the name of human rights, will actually end up violating the very principles it purports to defend.

So, to summarise the political dimensions of the human rights crisis: we are intervening in the name of human rights as never before, but our interventions are sometimes making matters worse. Our interventions, instead of reinforcing human rights, are slowly consuming their legitimacy as a universalistic basis for foreign policy.

The crisis of human rights relates first of all to our failure to be consistent—to apply human rights criteria to the strong as well as to the weak; second, to our related failure to reconcile individual human rights with our commitment to self-determination and state-sovereignty; and third, to our inability, once we intervene on human rights grounds, to successfully create the legitimate institutions that alone are the best guarantee of human rights protection.

These problems of consistency have consequences for the legitimacy of human rights standards themselves. Non-Western cultures look at the partial and inconsistent way we enforce and apply human rights principles and conclude that there is something wrong with the principles themselves. The political failure, in other words, has cultural consequences. It has led the cultures of the non-Western world to view human rights as nothing more than a justification for Western moral imperialism. Failure to be consistent in enforcement and clear about the boundaries of state sovereignty has led to an intellectual and cultural challenge to the universality of the norms themselves. This will be the subject of my second lecture.

## II. HUMAN RIGHTS AS IDOLATRY

Fifty years after its proclamation, the Universal Declaration of Human Rights has become the sacred text of what Elie Wiesel has called a “world-wide secular religion.”<sup>1</sup> UN Secretary General Kofi Annan has called the Declaration the “yardstick by which we measure human progress.” Nobel Laureate Nadine Gordimer has described it as “the essential document, the touchstone, the creed of humanity that surely sums up all other creeds directing human behavior.”<sup>2</sup> Human rights has become the major article of faith of a secular culture that fears it believes in nothing else. It has become the lingua franca of global moral thought, as English has become the lingua franca of the global economy.

The question I want to ask about this rhetoric is this: if human rights is a set of beliefs, what does it mean to believe in it? Is it a belief like a faith? Is it a belief like a hope? Or is it something else entirely?

Human rights is misunderstood, I shall argue, if it is seen as a “secular religion.” It is not a creed; it is not a metaphysics. To make it so is to turn it into a species of idolatry: humanism worshipping itself. Elevating the moral and metaphysical claims made on behalf of human rights may be intended to increase its universal appeal. In fact, it has the opposite effect, raising doubts among religious and non-Western groups who do not happen to be in need of Western secular creeds.

It may be tempting to relate the idea of human rights to propositions like the following: that human beings have an innate or natural dignity, that they have a natural and intrinsic self-worth, that they are sacred. The problem with these propositions is that they are not clear and they are controversial. They are not clear because they confuse what we wish men and women to be with what we empirically know them to be. On occasion, men and women, for example, behave with inspiring dignity. But that is not the same thing as saying that all human beings have an innate dignity or even a capacity to display it. Because these ideas about dignity, worth, and human sacredness appear to confuse what is with what ought to be, they are controversial, and because they are controversial they are likely to fragment commitment to the practical responsibilities entailed by human rights instead of strengthening them. Moreover, they are controversial because each version of them

<sup>1</sup> Elie Wiesel, “A Tribute to Human Rights,” in Y. Danieli et al. (eds.), *The Universal Declaration of Human Rights: Fifty Years and Beyond* (Amityville, N.Y.: Baywood, 1999), p. 3.

<sup>2</sup> Nadine Gordimer, “Reflections by Nobel Laureates,” in Danieli et al., *Universal Declaration of Human Rights*, p. vii.

must make metaphysical claims about human nature that are intrinsically contestable. Some people will have no difficulty thinking human beings are sacred, because they happen to believe in the existence of God the Father and believe He created Mankind in His likeness. People who do not believe in God must either reject that human beings are sacred or believe they are sacred on the basis of a secular use of religious metaphor that a religious person will find unconvincing. Foundational claims of this sort divide, and these divisions cannot be resolved in the way humans usually resolve their arguments, by means of discussion and compromise. Far better, I would argue, to forego these kinds of foundational arguments altogether and seek to build support for human rights on the basis of what such rights actually *do* for human beings.

While the foundations for human rights belief may be contestable, the prudential grounds for believing in human rights protection are much more secure. People may not agree why we have rights, but they can agree that they need them. Such grounding as modern human rights requires, I would argue, is based on what history tells us: that human beings are at risk of their lives if they lack agency; that agency itself requires protection in internationally agreed standards; that these standards should entitle individuals to oppose and resist unjust laws and orders within their own states; and, finally, that when all other remedies have been exhausted, these individuals have the right to appeal to other peoples, nations, and international organizations for assistance in defending their rights. These facts may have been demonstrated most clearly in the catastrophic history of Europe in the twentieth century, but there is no reason in principle why non-European peoples cannot draw the same conclusions from them or why in ages to come the memory of the Holocaust and other such crimes will not move future generations to support the universal application of human rights norms.

A prudential—and historical—justification for human rights need not make appeal to a philosophical anthropology of human nature. Nor should it seek its ultimate court of appeal in an articulation of the human good. Human rights are an account of what is right, not an account of what is good. People may enjoy full human rights protection and still believe that they lack essential features of a good life. If this is so, shared belief in human rights ought to be compatible with diverging attitudes to what constitutes a good life. A universal regime of human rights protection ought to be compatible with moral pluralism. That is, it should be possible to maintain regimes of human rights protection in a wide variety of civilizations, cultures, and religions, each of which happens to

disagree with the other as to what a good human life should be. Another way of putting the same thought is that people from different cultures may continue to disagree about what is good, but nevertheless agree about what is insufferably, unarguably wrong.

The universal commitments implied by human rights can only be compatible with a wide variety of ways of living if the universalism implied is self-consciously minimalist. Human rights can command universal assent only as a decidedly “thin” theory of what is right, a definition of the minimum conditions for any kind of life at all. Even then it may not be minimal enough to command universal assent. No authority whose power is directly challenged by human rights regimes is likely to concede their legitimacy. The bias of human rights advocacy must be toward the victim, and the test of legitimacy—and hence of universality—is what might be termed the victim’s consent. If victims do freely seek human rights protection, rights language applies. The objections of those who engage in oppression can be heard—as to facts about whether oppression is or is not occurring. If victims seek protection, those in power will obviously refuse to admit the jurisdiction of rights, but they have no legitimacy in doing so. The claims of victims should count more than the claims of oppressors. Still, victims cannot enjoy unlimited rights in the definition of what constitutes an abuse. A human rights abuse is something more than an inconvenience, and raising human rights claims is something more than drawing attention to yourself and your people and engaging in a competitive battle for recognition. Seeking human rights redress is distinct from seeking recognition. It is about protecting an essential exercise of human agency. Hence, while it is the victim’s claim of abuse that sets a human rights process moving, a victim remains under an obligation to prove that such an abuse genuinely occurred, and it must be an abuse, not just an inconvenience.

In these lectures, my definition of “minimal” will be focused on agency. By agency, I mean more or less what Isaiah Berlin meant by “negative liberty,” the capacity of each individual to achieve rational intentions without let or hindrance. By rational, I do not necessarily mean sensible or estimable, merely those intentions that do not involve obvious harm to other human beings. Human rights is a language of individual empowerment, and empowerment for individuals is desirable because when individuals have agency they can protect themselves against injustice. Equally, when individuals have agency they can define for themselves what they wish to live and die for. In this sense, to emphasize agency is to empower individuals, but also to impose limits on

human rights claims themselves. To protect human agency necessarily requires us to protect all individuals' right to chose the good life as they see fit. The usual criticism of this sort of individualism is that it imposes a Western conception of the individual on other cultures. My claim is the reverse: that moral individualism protects cultural diversity, for an individualist position must respect the diverse ways individuals choose to live their lives. In this way of thinking, human rights is only a systematic agenda of "negative liberty," a tool-kit against oppression, a tool-kit that individual agents must be free to use as they see fit within the broader frame of cultural and religious beliefs that they live by.

Why should this "minimalist" justification for human rights be necessary? Why should it matter that we find a way to reconcile human rights universalism with cultural and moral pluralism? Since 1945 human rights language has become a source of power and authority. Inevitably, power invites challenge. Human rights doctrine is now so powerful, but also so confused, so unthinkingly imperialist in its claims that it has begun to invite serious intellectual attack on the legitimacy of its standards and claims. These challenges have raised important questions about whether human rights deserves the authority it has acquired; whether its claims to universality are justified, or whether it is just another cunning exercise in Western moral imperialism.

There are three distinct sources of the cultural challenge to the universality of human rights. Two come from outside the West: one from resurgent Islam, the second from East Asia; and the third, from within the West itself. Each of these is independent of the others; but taken together, they have raised substantial questions about the cross-cultural validity and hence legitimacy of human rights norms.

## I. THE ISLAMIC CHALLENGE

The challenge from Islam has been there from the beginning.<sup>3</sup> When the Universal Declaration was being drafted in 1947, the Saudi Arabian delegation raised particular objection to Article 16, relating to free marriage choice, and Article 18, relating to freedom of religion. On the

<sup>3</sup> Katerina Dalacoura Islam, *Liberalism and Human Rights* (London: I. B. Tauris, 1998); F. Halliday, "The Politics of Islamic Fundamentalism," in A. S. Ahmed and H. Donnan (eds.), *Islam, Globalization and Post-Modernity* (London: I. B. Tauris, 1994); A. A. An-Naim (ed.), *Human Rights in Cross-Cultural Perspectives* (Philadelphia: University of Pennsylvania Press, 1992), ch. 1; see also Mehdi Amin Razavi and David Ambuel (eds.), *Philosophy, Religion and the Question of Tolerance* (New York: SUNY Press, 1997), ch. 4.

question of marriage, the Saudi delegate to the committee examining the draft of the Universal Declaration made an argument that has resonated ever since through Islamic encounters with Western human rights:

The authors of the draft declaration had, for the most part, taken into consideration only the standards recognized by western civilization and had ignored more ancient civilizations which were past the experimental stage, and the institutions of which, for example, marriage, had proved their wisdom through the centuries. It was not for the Committee to proclaim the superiority of one civilization over all other or to establish uniform standards for all countries of the world.<sup>4</sup>

This was simultaneously a defence of the Islamic faith from Western secular standards and a defence of patriarchal authority. The Saudi delegate in effect argued that the exchange and control of women is the very *raison d'être* of traditional cultures and that the restriction of female choice in marriage is central to the maintenance of patriarchal property relations. On the basis of these objections to Articles 16 and 18, the Saudi delegation refused to ratify the Declaration.

There have been recurrent attempts, including Islamic Declarations of Human Rights, to reconcile Islamic and Western traditions by putting more emphasis on family duty and religious devotion and by drawing on distinctively Islamic traditions of religious and ethnic toleration.<sup>5</sup> But these attempts at syncretic fusion between Islam and the West have never been entirely successful: agreement is reached by actually trading away what is vital to each side. The resulting consensus is bland and unconvincing.

Since the 1970s the Islamic relation to human rights has grown more hostile. Ever since the Islamic Revolution in Iran rose up against the failed and tyrannical modernization of the shah, Islamic figures have questioned the universal writ of Western human rights norms. They have pointed out that the Western separation of church and state, secular and religious authority, is alien to the jurisprudence and political thought of the Islamic tradition. The freedoms articulated in Articles 18 and 19 of the Universal Declaration make no sense within the theo-

<sup>4</sup>Glen Johnson and Janusz Symonides, *The Universal Declaration of Human Rights: A History of Its Creation and Implementation, 1948–1998* (Paris: UNESCO, 1998), pp. 52–53.

<sup>5</sup>Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 1998), p. 8.

cratic bias of Islamic political thought. Likewise, the right to marry and found a family, to freely choose one's partner, is a direct challenge to the forces in Islamic society that enforce the family choice of spouse, polygamy, and the keeping of women in purdah. In Islamic eyes, universalizing rights discourse implies a sovereign and discrete individual, which is blasphemous from the perspective of the Holy Koran.

In assessing this challenge, the West has made the mistake of assuming that fundamentalism and Islam are synonymous. Islam of course speaks in many voices and variants, some more anti-Western than others, some more theocratic than others. National contexts may be much more important in defining local Islamic reactions to Western values than broad theological principles in the religion as a whole. Where Islamic societies have managed to modernize, create a middle-class, and enter the global economy—Egypt and Tunisia being examples—a constituency in favor of basic human rights can emerge. Egypt, for instance, is in the process of passing legislation to give women the right to divorce; and although dialogue with Egypt's religious authorities has been difficult and the law has made compromises with Islamic conceptions of female duty that human rights activists may find objectionable, women's rights will be substantially enhanced by the new legislation.<sup>6</sup> In Algeria, where a secularizing elite who rode to power after a bloody anticolonial revolution failed to modernize their country, the opposition, led by Islamic militants, has taken an anti-Western, anti-human rights direction. And in Afghanistan, where the state itself has collapsed and Western arms transfers have only aggravated the nation's decline, the Taliban movement has arisen, explicitly rejecting all Western human rights standards. Again, the critical variant is not Islam itself—a protean, many-featured religion—but the fateful course of Western policy and economic globalization itself.

But there is another Western reaction to the Islamic challenge that is equally ill-conceived. There is a style of cultural relativism that concedes too much to the Islamic challenge and in the process trades away the universality of human rights standards. For the last twenty years, an influential current in Western political opinion has faced the challenge to the universality of human rights language by maintaining, in the words of Adamantia Pollis and Peter Schwab, that human rights are a “Western construct of limited applicability,” a twentieth-century

<sup>6</sup>*New York Times*, March 3, 2000.

fiction, dependent on the rights traditions of America, Britain, and France and therefore inapplicable in cultures that do not share this historical matrix of liberal individualism.<sup>7</sup>

This current of thought has complicated intellectual origins: the Marxist critique of the rights of man, the anthropological critique of the arrogance of late nineteenth century bourgeois imperialism, and the postmodernist critique of the universalizing pretensions of European Enlightenment thought.<sup>8</sup> All of these tendencies have come together in a critique of Western intellectual hegemony as expressed in the language of human rights. Human rights is seen as an exercise in the cunning of Western reason: no longer able to dominate the world through direct imperial rule, Western reason masks its own will to power in the impartial, universalizing language of human rights and seeks to impose its own narrow agenda on a plethora of world cultures who do not actually share the West's conception of individuality, selfhood, agency, or freedom. This postmodernist relativism began as an intellectual fashion in Western campuses, but it has seeped slowly into Western human rights practice, causing all activists to pause and consider the intellectual warrant for the universality they once took for granted.

## 2. ASIAN VALUES

This challenge within has been amplified by a challenge from without: the critique of Western human rights standards by some political leaders in the tiger economies of East Asia. While the Islamic challenge to human rights can be explained in part by the failure of Islamic societies to benefit from the global economy, the Asian challenge is a response to Asia's staggering economic success. Malaysia's leaders, for example, feel confident enough to reject Western ideas of democracy and individual rights in favor of an Asian route to development and prosperity—which depends on authoritarian government and authoritarian family structures—because Malaysia has enjoyed such demonstrable economic success in the 1980s and 1990s. The same can be said about Singapore, which combined political authoritarianism with market capitalism in a

<sup>7</sup> A. Pollis and P. Schwab (eds.), *Human Rights: Cultural and Ideological Perspectives* (New York: Praeger, 1979), pp. 1, 4; see also Amitai Etzioni, "Cross-Cultural Judgments: The Next Steps," *Journal of Social Philosophy* 28, no. 3 (Winter 1997).

<sup>8</sup> For a Marxist critique of human rights as bourgeois ideology, see Tony Evans (ed.), *Human Rights Fifty Years On: A Reappraisal* (Manchester: Manchester University Press, 1998).

spectacularly successful synthesis. Singapore's Lee Kuan Yew has been quoted as saying that Asians have "little doubt that a society with communitarian values where the interests of society take precedence over that of the individual suits them better than the individualism of America." This Singaporean model cites rising divorce and crime rates in the West in order to argue that Western individualism is subversive of the order necessary for the enjoyment of rights themselves.<sup>9</sup> An "Asian model" puts community and family ahead of individual rights and order ahead of democracy and individual freedom. In reality, of course, there is no single Asian model: each of these societies has modernized in different ways, within different political traditions, and with differing degrees of political and market freedom. Yet it has proven useful for Asian authoritarians to argue that they represent a civilizational challenge to the hegemony of Western models.<sup>10</sup>

Let it be conceded at once that these three separate challenges to the universality of human rights discourse—two from without, one from within the Western tradition—have had a productive impact. They have forced human rights activists to question their assumptions, to rethink the history of their commitments, and to realize just how complicated intercultural dialogue on rights questions actually becomes when all cultures enter the dialogue on grounds of moral and intellectual equality.

### 3. HUMAN RIGHTS AND INDIVIDUALISM

Having said this, however, I would argue that Western defenders of human rights have traded too much away. In the desire to find common ground with Islamic and Asian positions and to purge their own discourse of the imperial legacies uncovered by the postmodernist critique, Western defenders of human rights norms risk compromising the very universality they ought to be defending. They also risk rewriting their own history.

Many traditions, not just Western ones, were represented at the drafting—the Chinese, Middle Eastern Christian, but also Marxist,

<sup>9</sup>For a mordant critique of the Singaporean argument, see Ian Buruma, "The King of Singapore," *New York Review*, June 10, 1999. Lee Kuan Yew quoted in the *International Herald Tribune*, November 9–10, 1991.

<sup>10</sup>W. T. De Bary, *Asian Values and Human Rights: A Confucian Communitarian Perspective* (Cambridge, Mass.: Harvard University Press, 1998), pp. 1–16.

Hindu, Latin American, Islamic—and the drafting committee members explicitly construed their task not as a simple ratification of Western convictions, but as an attempt to define a delimited range of moral universals from within their very different religious, political, ethnic, and philosophic backgrounds.<sup>11</sup> This helps to explain why the document makes no reference to God in its preamble. The Communist delegations would have vetoed any such reference and the competing religious traditions could not have agreed on the wording of the terms that would make human rights derive from our common existence as God's creatures. Hence the secular ground of the document is not a sign of European cultural domination so much as a pragmatic common denominator designed to make agreement possible across the range of divergent cultural and political viewpoints.

It remains true of course that Western inspirations—and Western drafters—played the predominant role in the drafting of the document. Even so, their mood in 1947 was anything but triumphalist. They were aware, first of all, that the age of colonial emancipation was at hand: Indian independence was proclaimed while the language of the Declaration was being finalised. Although the Declaration does not specifically endorse self-determination, its drafters clearly foresaw the coming tide of struggles for national independence. Because it does proclaim the right of people to self-government and freedom of speech and religion, it also concedes the right of colonial peoples to construe moral universals in a language rooted in their own traditions. Whatever failings the drafters of the Declaration may be accused of, unexamined Western triumphalism is not one of them. Key drafters like René Cassin of France and John Humphrey of Canada knew the knell had sounded on two centuries of Western colonialism.<sup>12</sup>

They also knew that the Declaration was not so much a proclamation of the superiority of European civilization as an attempt to salvage the remains of its Enlightenment heritage from the barbarism of a world war just concluded. The Universal Declaration is written in full awareness of Auschwitz and dawning awareness of Kolyma. A consciousness of European barbarism is built into the very language of the Declaration's preamble: "whereas disregard and contempt for human rights

<sup>11</sup> Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999).

<sup>12</sup> René Cassin, "Historique de la déclaration universelle en 1938," in his *La Pensée et l'action* (Paris: Editions Lalou, 1972), pp. 103–18; J. P. Humphrey, *Human Rights and the United Nations: A Great Adventure* (Dobbs Ferry, N.Y.: Transnational, 1984), pp. 46–47.

have resulted in barbarous acts which have outraged the conscience of mankind . . . ”

The Declaration may still be a child of the Enlightenment, but it was written when faith in the Enlightenment faced its deepest crisis of confidence. In this sense, human rights is not so much the declaration of the superiority of European civilization as a warning by Europeans that the rest of the world should not seek to reproduce its mistakes. The chief of these was the idolatry of the nation state, causing individuals to forget the higher law commanding them to disobey unjust orders. The abandonment of this moral heritage of natural law, the surrender of individualism to collectivism, the drafters believed, led to the catastrophe of Nazi and Stalinist oppression. Unless the disastrous heritage of European collectivism is kept in mind, as the framing experience in the drafting of the Universal Declaration, its individualism will appear to be nothing more than the ratification of Western bourgeois capitalist prejudice. In fact, it was much more: a studied attempt to reinvent the European natural law tradition in order to safeguard individual agency against the totalitarian state.

It remains true, therefore, that the core of the Universal Declaration is the moral individualism for which it is so much reproached by non-Western societies. It is this individualism for which Western activists have become most apologetic, believing that it should be tempered by greater emphasis on social duties and responsibilities to the community. Human rights, it is argued, can only recover universal appeal if it softens its individualistic bias and puts greater emphasis on those parts of the Universal Declaration, especially Article 29, which says that “everyone has duties to the community in which alone the free and full development of his personality is possible.” This desire to water down the individualism of rights discourse is driven by a desire both to make human rights more palatable to less individualistic cultures in the non-Western world and also to respond to disquiet among Western communitarians at the supposedly corrosive impact of individualistic values on Western social cohesion.<sup>13</sup>

But this tack mistakes what rights actually are and misunderstands why they have proven attractive to millions of people raised in non-Western traditions. Rights are only meaningful if they confer entitlements and immunities on individuals; they only have force and bite if

<sup>13</sup>Michael Sandel, *Democracy's Discontents* (Cambridge, Mass.: Harvard University Press, 1996).

they can be enforced against institutions like the family, the state, and the church. This remains true even when the rights in question are collective or group rights. Some of these rights—like the right to speak your own language or practice your own religion—are essential preconditions for the exercise of individual rights. The right to speak a language of your choice won't mean very much if the language has died out. For this reason, group rights are needed to protect individual rights. But the ultimate purpose and justification of group rights is not the protection of the group as such, but the protection of the individuals who compose it. Group rights to language, for example, must not be used to prevent an individual from learning a language besides the language of the group. Group rights to practice religion should not cancel the right of individuals to leave a religious community if they choose.<sup>14</sup>

Rights are inescapably political because they tacitly imply a conflict between a rights holder and a rights "withholder." Rights presume an individual rights holder and some authority against which the rights holder can make claims. To confuse rights with aspirations, and rights conventions with syncretic syntheses of world values, is to wish away the conflicts that define the very content of rights. There will always be conflicts between individuals and groups, and rights exist to protect individuals. Rights language cannot be parsed or translated into a non-individualistic, communitarian framework. It presumes moral individualism and is nonsensical outside that assumption.

Moreover, it is precisely this individualism that renders it attractive to non-Western peoples and explains why human rights has become a global movement. Human rights is the only universally available moral vernacular that validates the claims of women and children against the oppression they experience in patriarchal and tribal societies; it is the only vernacular that enables dependent persons to perceive themselves as moral agents and to act against practices—arranged marriages, purdah, civic disenfranchisement, genital mutilation, domestic slavery, and so on—that are ratified by the weight and authority of their cultures. These agents seek out human rights protection, not because it ratifies their culture, but precisely because it legitimizes their protests against its oppression.

If this is so, then we need to rethink what it means when we say that rights are universal. Rights doctrines arouse powerful opposition be-

<sup>14</sup>Michael Ignatieff, *The Rights Revolution* (Toronto: Anansi, 2000), ch. 3; Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995).

cause they challenge sources of power: religions, family structures, authoritarian states, and tribes. It would be a hopeless task to attempt to persuade these holders of power of the universal validity of rights doctrines, since if these doctrines prevailed they would necessarily abridge and constrain their exercise of authority. Thus universality cannot imply universal assent, since in a world of unequal power, the only propositions that the powerful and powerless would agree on would be entirely toothless and anodyne ones. Rights are universal because they define the universal interests of the powerless, namely that power be exercised over them in ways that respect their autonomy as agents. In this sense, human rights is a revolutionary creed, since it makes a radical demand of all human groups, that they serve the interests of the individuals who compose them. This then implies that human groups should be, insofar as possible, consensual, or at least that they should respect an individual's right to exit when the constraints of the group become unbearable.

The idea that groups should respect an individual's right of exit is not easy to reconcile with what groups actually are. Most human groups—the family, for example—are blood groups, based on inherited kinship or ethnic ties. People do not choose to be born into them and do not leave them easily, since these collectivities provide the frame of meaning within which individual life makes sense. This is as true in modern secular societies as it is in religious or traditional societies. Group rights doctrines exist to safeguard the collective rights—for example, to language—that make individual agency meaningful and valuable. But individual and group interests inevitably conflict. Human rights exist to adjudicate these conflicts, to define the irreducible minimum beyond which group and collective claims must not go in constraining the lives of individuals.

Even so, defending individual agency does not necessarily entail adopting Western ways of life. Believing in your right not to be tortured or abused need not mean adopting Western dress, speaking Western languages, or approving of the Western way of life. To seek human rights protection is not to change your civilization; it is merely to avail yourself of the protections of “negative liberty.”

Human rights doesn't have to delegitimize traditional culture as a whole. The women in Kabul who come to Western human rights agencies seeking their protection from the Taliban militias do not want to cease being Muslim wives and mothers; they want to combine respect for their traditions with the right to an education or professional health

care provided by a woman. They hope the agencies will defend them against being beaten and persecuted for claiming such rights.<sup>15</sup>

The legitimacy of these claims to rights protection depends entirely on the fact that the people who are making them are the victims themselves. In Pakistan, it is local human rights groups, not international agencies, who are leading the fight to defend poor country women from “honor killings,” being burned alive when they disobey their husbands; it is local Islamic women who are criticizing the grotesque distortion of Islamic teaching that provides justification for such abuse.<sup>16</sup> Human rights has gone global, but it has also gone local because it empowers the powerless, gives voice to the voiceless.

It is simply not the case, as Islamic and Asian critics contend, that human rights forces the Western way of life upon their societies. For all its individualism, human rights does not require adherents to jettison their other cultural attachments. As Jack Donnelly argues, human rights “assumes that people probably are best suited, and in any case are entitled, to choose the good life for themselves.”<sup>17</sup> What the Declaration does mandate is the right to choose, and specifically the right to *leave* when choice is denied. The global diffusion of rights language would never have occurred had these not been authentically attractive propositions to millions of people, especially women, in theocratic, traditional, or patriarchal societies.

Critics of this view of human rights diffusion would argue that it is too “voluntaristic”: it implies that traditional societies are free to choose the manner of their insertion into the global economy; free to choose which Western values to adapt and which to reject. In reality, these critics argue, people are not free to choose. Economic globalization steamrolls over local economies, and moral globalization—human rights—follows behind as the legitimizing ideology of global capitalism. “Given the class interest of the internationalist class carrying out this agenda,” Kenneth Anderson writes, “the claim to universalism is a sham. Universalism is mere globalism and a globalism, moreover,

<sup>15</sup> See Michael Ignatieff, *The Warrior's Honour: Ethnic War and the Modern Conscience* (London: Vintage, 1995), pp. 55–69.

<sup>16</sup> See *Murder in Purdah*, BBC Television Correspondent Special, January 23, 1999, directed by Giselle Portenier, produced by Fiona Murch.

<sup>17</sup> Jack Donnelly, “Human Rights and Asian Values: A Defense of Western Universalism,” in Joanne R. Bauer and Daniel A. Bell (eds.), *The East Asian Challenge for Human Rights* (Cambridge: Cambridge University Press, 1999), p. 86.

whose key terms are established by capital.”<sup>18</sup> This idea that human rights is the moral arm of global capitalism falsifies the insurgent nature of the relation between human rights activism and the global corporation.<sup>19</sup> The NGO activists who devote their lives to challenging the employment practices of global giants like Nike and Shell would be astonished to discover that their human rights agenda has been serving the interests of global capital all along. Anderson conflates globalism and internationalism and mixes up two classes, the free market globalists and the human rights internationalists, whose interests and values are in conflict.

While free markets do encourage the emergence of assertively self-interested individuals, these individuals often want human rights precisely to protect them from the indignities and indecencies of the market. Moreover, the dignity such individuals are seeking to protect is not necessarily derived from Western models. Anderson writes as if human rights is always imposed from the top down by an international elite bent on “saving the world.” He ignores the extent to which the demand for human rights is issuing from the bottom up.

The test of human rights legitimacy, therefore, is take-up from the bottom, from the powerless. Instead of apologizing for the individualism of Western human rights standards, activists need to attend to another problem, which is how to create conditions in which individuals are genuinely free to avail themselves of such rights as they want. Increasing the freedom of people to exercise their rights depends on close cultural understanding of the frameworks that often constrain choice. The much debated issue of genital mutilation illustrates this point. What may appear as mutilation in Western eyes is simply the price of tribal and family belonging to women; if they fail to submit to the ritual, they no longer have a place within their world. Choosing to exercise their rights, therefore, may result in a social ostracism that leaves them no option but to leave their tribe and make for the city. Human rights advocates have to be aware of what it really means for a woman to abandon traditional practices. But, equally, activists have a duty to

<sup>18</sup> Kenneth Anderson, “Secular Eschatologies and Class Interests,” in Carrie Gustafson and Peter Juviler (eds.), *Religion and Human Rights: Conflicting Claims* (Armonk, N.Y.: M. E. Sharpe, 1999), p. 115.

<sup>19</sup> Richard Falk, “The Quest for Human Rights,” in *Predatory Globalization: A Critique* (London: Polity, 1999), ch. 6.

inform women of the medical costs and consequences of these practices and seek, as a first step, to make them less dangerous for women who wish to undergo them. Finally, it is for women themselves to decide how to make the adjudication between tribal and Western wisdom. The criteria of informed consent that regulate patient choice in Western societies are equally applicable in non-Western settings, and human rights activists are under an obligation, inherent in human rights discourse itself, to respect the autonomy and decision-making power of agents. An activist's proper role is not to make the choices for the women in question, but to enlarge their sense of what the choices entail. In traditional societies, harmful practices can only be abandoned when the whole community decides to do so. Otherwise, individuals who decide on their own face ostracism and worse. Consent in these cases means collective or group consent.

Sensitivity to the real constraints that limit individual freedom in different cultures is not the same thing as deferring to these cultures. It does not mean abandoning universality. It simply means facing up to a demanding intercultural dialogue in which all parties come to the table under common expectations of being treated as moral equals. Traditional society is oppressive to individuals within it not because it fails to afford a Western way of life, but because it does not accord them a right to speak and be heard. Western activists have no right to overturn traditional cultural practice, provided that practice continues to receive the assent of its members. Outsiders have the right to argue—not to insist—that all individuals within the group have a right to express their opinion about a tradition's continuance and to exit freely if they cannot give their assent. Human rights is universal not as a vernacular of cultural prescription but as a language of moral empowerment. Its role is not in defining the content of culture but in trying to enfranchise all agents so that they can freely shape that content.

Empowerment and freedom are not value-neutral terms: they have an unquestionably individualistic bias, and traditional and authoritarian societies will resist these values because they aim a dart at the very premises that keep patriarchy and authoritarianism in place. But how people use their freedom is up to them, and there is no reason to suppose that if they adopt the Western value of freedom they will give it Western content. Furthermore, it is up to victims, not outside observers, to define for themselves whether their freedom is in jeopardy. It is entirely

possible that people whom Western observers might suppose are in oppressed or subordinate positions will seek to maintain the traditions and patterns of authority that keep them in this subjection. Women are placed in such subordinate positions in many of the world's religions, including ultra Orthodox Judaism and certain forms of Islam. Some will come to resent these positions, others will not, and those who do not cannot be supposed to be trapped inside some form of false consciousness that it is the business of human rights activism to unlock. Indeed adherents may believe that the forms of participation provided by their religious tradition enable them to enjoy forms of belonging that are more valuable to them than the negative freedom of private agency. What may be an abuse of human rights to a human rights activist may not be seen as such by those whom human rights activists construe to be victims. This is why consent ought to be the defining constraint of human rights interventions in all areas where human life itself or gross and irreparable physical harm is not at stake.

Human rights discourse is universal precisely because it supposes that there are many differing visions of a good human life, that the West's is only one of them, and that, provided agents have a degree of freedom in the choice of that life, they should be left to give it the content that accords with their history and traditions.

To sum up at this point, Western human rights activists have surrendered too much to the cultural relativist challenge. Relativism is the invariable alibi of tyranny. There is no reason to apologize for the moral individualism at the heart of human rights discourse: it is precisely this that makes it attractive to dependent groups suffering exploitation or oppression. There is no reason, either, to think of freedom as a uniquely Western value or to believe that advocating it then unjustly imposes Western values on them. For it contradicts the meaning of freedom itself to attempt to define for others the use they make of it.

The best way to face the cultural challenge to human rights—coming from Asia, Islam, and Western postmodernism—is to admit its truth: rights discourse *is* individualistic. But that is precisely why it has proven an effective remedy against tyranny, and why it has proven attractive to people from very differing cultures. The other advantage of liberal individualism is that it is a distinctly “thin” theory of the human good: it defines and proscribes the “negative,” i.e., those restraints and injustices that make any human life, however conceived, impossible; at

the same time, it does not prescribe the “positive” range of good lives that human beings can lead.<sup>20</sup> Human rights is morally universal because it says that all human beings need certain specific freedoms “from”; it does not go on to define what their freedom “to” should consist in. In this sense, it is a less prescriptive universalism than many world religions: it articulates standards of human decency without violating rights of cultural autonomy.

Certainly, as Will Kymlicka and many others have pointed out, there are some conditions of life—the right to speak a language, for example—that cannot be protected by individual rights alone. A linguistic minority needs to have the right to educate its children in the language in order for the linguistic community to survive, and it can only do this if the larger community recognizes its collective right to do so. At the same time, however, all collective rights provisions have to be balanced with individual rights guarantees, so that individuals do not end up being denied substantive freedoms for the sake of the group. This is not an easy matter, as any English-speaking Montrealer with experience of Quebec language legislation will tell you. But it can be done, provided individual rights have an ultimate priority over collective ones, so that individuals are not forced to educate their children in a manner that is not freely chosen.<sup>21</sup> Even granting, therefore, that groups need collective rights in order to protect shared inheritances, these rights themselves risk becoming a source of collective tyranny unless individuals retain a right of appeal. To repeat, it is precisely the individualism of human rights that makes it a valuable bulwark against even the well-intentioned tyranny of linguistic or national groups.

The conflict over the universality of human rights norms is a political struggle. It pits traditional, religious, and authoritarian sources of power against human rights advocates, many of them indigenous to the culture itself, who challenge these sources of power in the name of those who find themselves excluded and oppressed. Those who seek human rights protection are not traitors to their culture, and they do not necessarily approve of other Western values. What they seek is protection of their rights as individuals within their own culture. Opposition to their

<sup>20</sup> These distinctions—negative liberty, positive liberty, freedom from, freedom to—are suggested by Isaiah Berlin, “Two Concepts of Liberty,” in Henry Hardy (ed.), *The Proper Study of Mankind* (London: Chatto and Windus, 1997), pp. 191–243; on “thin” theories of the good, see John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1970).

<sup>21</sup> Kymlicka, *Multicultural Citizenship*, pp. 2–6.

demands invariably takes the form of a defense of the culture as a whole against intrusive forms of Western cultural imperialism, when in reality this relativist case is actually a defense of local political or patriarchal power. Human rights intervention is warranted not because traditional, patriarchal, or religious authority is primitive, backward, or uncivilized by *our* standards, but because it oppresses specific individuals who themselves seek protection against these abuses. The warrant for intervention derives from *their* demands, not from ours.

#### 4. THE SPIRITUAL CRISIS

Whereas the cultural crisis of human rights has been about the intercultural validity of human rights norms, the spiritual crisis of human rights concerns the ultimate metaphysical grounds for these norms. Why do human beings have rights in the first place? What is it about the human species and the human individual that entitles them to rights? If there is something special about the human person, why is this inviolability so often honored in the breach rather than in the observance? If human beings are special, why exactly do we treat each other so badly?

Human rights has become a secular article of faith. Yet the faith's metaphysical underpinnings are anything but clear. Article 1 of the Universal Declaration cuts short all justification and simply declares: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Universal Declaration enunciates rights; it doesn't explain why people have them.

The drafting history of the Declaration makes clear that this silence was deliberate. When Eleanor Roosevelt first convened a drafting committee in her Washington Square apartment in February 1947, a Chinese Confucian and a Lebanese Thomist got into a stubborn argument about the philosophical and metaphysical bases of rights. Mrs. Roosevelt concluded that the only way forward lay in West and East agreeing to disagree.<sup>22</sup>

There is thus a deliberate silence at the heart of human rights culture. Instead of a substantive set of justifications explaining why human rights are universal, instead of reasons that go back to first principles—

<sup>22</sup>See Morsink, *The Universal Declaration of Human Rights*.

as in Thomas Jefferson's unforgettable preamble to the American Declaration of Independence—the Universal Declaration of Human Rights simply takes the existence of rights for granted and proceeds to their elaboration.

Pragmatic silence on ultimate questions has made it easier for a global human rights culture to emerge. As the philosopher Charles Taylor puts it, the concept of human rights “could travel better if separated from some of its underlying justifications.”<sup>23</sup> The Declaration's vaunted “universality” is as much a testament to what the drafters kept *out* of it, as to what they put *in*.

The Declaration envisioned a world where, if human beings found their civil and political rights as citizens were taken away, they could still appeal for protection on the basis of their rights as human beings. Beneath the civil and political, in other words, stood the natural. But what exactly is the relationship between human rights and natural rights, or between the human and the natural? What is naturally human?

Human rights is supposed to formalize in juridical terms the natural duties of human conscience in cases where civil and political obligations either prove insufficient to prevent abuses or have disintegrated altogether. Human rights doctrines appear to assume that if the punishments and incentives of governed societies are taken away, human rights norms will remind people of the requirements of natural decency. But this assumes that the capacity to behave decently is a natural attribute. Where is the empirical evidence that this is the case? A more likely assumption is that human morality in general and human rights in particular represent a systematic attempt by human communities to correct and counteract the natural tendencies they discovered in themselves as human beings. The specific tendency they were seeking to counteract is that while we may be naturally disposed, by genetics and history, to care for those close to us—our children, our family, our immediate relations, and possibly those who share our ethnic or religious origins—we may be naturally indifferent to all others outside this circle. Historically, human rights doctrines emerged to counteract this tendency toward particularist and exclusivist ethical circles of concern and care. As Avishai Margalit has put it, “we need morality to overcome our natural indifference for others.”<sup>24</sup>

<sup>23</sup> Charles Taylor, “Conditions of an Unforced Consensus on Human Rights,” in Bauer and Bell, *The East Asian Challenge for Human Rights*, p. 126.

<sup>24</sup> Avishai Margalit, “The Ethics of Memory,” the Horkheimer Lectures, May 1999, Goethe University, Frankfurt. I am grateful to Avishai Margalit for letting me see these lectures in manuscript.

The history immediately antecedent to the Universal Declaration of Human Rights provides abundant evidence of the natural indifference of human beings. The Holocaust showed up the terrible insufficiency of all the supposedly natural human attributes of pity and care in situations where these duties were no longer enforced by law. Hannah Arendt argued in *Origins of Totalitarianism* that when Jewish citizens of European states were deprived of their civil and political rights, when, finally, they had been stripped naked and could only appeal to their captors as plain, bare human beings, they found that their nakedness did not even awaken the pity of their tormentors. As Arendt put it, “it seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow man.”<sup>25</sup> The Universal Declaration set out to reestablish the idea of human rights at the precise historical moment in which they had been shown to have had no foundation whatever in natural human attributes.

All that one can say about this paradox is that it defines the divided consciousness with which we have lived with the idea of human rights ever since. We defend human rights as moral universals in full awareness that they must counteract rather than reflect natural human propensities.

So we cannot build a foundation for human rights on natural human pity or solidarity. For the idea that these propensities are natural implies that they are innate and universally distributed among individuals. The reality—as the Holocaust and countless other examples of atrocity make clear—is otherwise. We must work out a basis for belief in human rights on the basis of human beings as they are, working on assumptions about the worst we can do, instead of hopeful expectations of the best. In other words, we do not build foundations on human nature but on human history, on what we know is likely to happen when human beings do not have the protection of rights. We build on the testimony of fear, rather than on the expectations of hope. This, it seems to me, is how human rights consciousness has been built since the Holocaust. Human rights is one of the achievements of what Judith Shklar once called “the liberalism of fear.”<sup>26</sup> Likewise, in 1959, Isaiah Berlin argued that in the post-Holocaust era awareness of the necessity of a moral law is no longer sustained by belief in reason but by the memory of horror. “Because

<sup>25</sup> Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt and Brace, 1973), p. 300.

<sup>26</sup> Judith N. Shklar, “The Liberalism of Fear,” in Stanley Hoffman (ed.), *Political Thought and Political Thinkers* (Chicago: University of Chicago Press, 1998), pp. 3–21.

these rules of natural law were flouted, we have been forced to become conscious of them.”<sup>27</sup> And what, in his view, were these rules?

We know of no court, no authority, which could, by means of some recognized process, allow men to bear false witness, or torture freely or slaughter fellow men for pleasure; we cannot conceive of getting these universal principles or rules repealed or altered.

The Holocaust laid bare what the world looked like when pure tyranny was given free rein to exploit natural human cruelty. Without the Holocaust then, no Declaration. Because of the Holocaust, no unconditional faith in the Declaration either. The Holocaust demonstrates both the prudential necessity of human rights and their ultimate fragility.

If one end product of Western rationalism is the exterminatory nihilism of the Nazis, then any ethics that takes only reason for its guide is bound to be powerless when human reason begins to rationalize its own exterminatory projects. If reason rationalized the Holocaust, then only an ethics deriving its ultimate authority from a higher source than reason can prevent a Holocaust in the future. So the Holocaust accuses not just Western nihilism, but Western humanism itself and puts human rights in the dock. For human rights is a secular humanism: an ethics ungrounded in divine or ultimate sanction and based only in human prudence.

It is unsurprising, therefore, that in the wake of the Holocaust human rights should face an enduring intellectual challenge from a range of religious sources, Catholic, Protestant, and Jewish, all of whom make the same essential point: that if the purpose of human rights is to restrain the human use of power, then the only authority capable of doing so must lie beyond humanity itself, in some religious source of authority.

Michael Perry, a legal philosopher at Wake Forest University, argues, for example, that the idea of human rights is “ineliminably religious.”<sup>28</sup> Unless you think, he says, that human beings are sacred, there seems no persuasive reason to believe that their dignity should be protected with rights. Only a religious conception of human beings as the handiwork of God can sustain a notion that individuals should have in-

<sup>27</sup> Isaiah Berlin, “European Unity and Its Vicissitudes,” in *The Crooked Timber of Humanity* (London: Chatto and Windus, 1991), pp. 204–5.

<sup>28</sup> M. J. Perry, *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 1998), pp. 11–41.

violable natural rights. Max Stackhouse, a Princeton theologian, argues that the idea of human rights has to be grounded in the idea of God, or at least the idea of “transcendent moral laws.” Human rights needs a theology in order to explain, in the first place, why human beings have “the right to have rights.”<sup>29</sup>

Secular humanism may indeed be putting human beings on a pedestal when they should be down in the mud where they belong. If human rights exists to define and uphold limits to the abuse of human beings, then its underlying philosophy had better define humanity as a beast in need of restraint. Instead human rights makes humanity the measure of all things, and from a religious point of view this is a form of idolatry. Humanist idolatry is dangerous for three evident reasons: first, because it puts the demands, needs, and rights of the human species above any other and therefore risks legitimizing an entirely instrumental relation to other species; second, because it authorizes the same instrumental and exploitative relationship to nature and the environment; and finally, because it lacks the metaphysical claims necessary to limit the human use of human life, in such instances as abortion or medical experimentation.<sup>30</sup>

What, exactly, is so sacred about human beings? Why, exactly, do we think that ordinary human beings, in all their radical heterogeneity of race, creed, education, and attainment, can be viewed as possessing the same equal and inalienable rights? If idolatry consists in elevating any purely human principle into an unquestioned absolute, surely human rights looks like an idolatry.<sup>31</sup> To be sure, humanists do not literally worship human rights, but we use the language to say that there is something inviolate about the dignity of each human being. This is a worshipful attitude. What is implied in the metaphor of worship is a cultlike credulity, an inability to subject humanist premises to the same critical inquiry to which humanist rationalism subjects religious belief. The core of the charge is that humanism is simply inconsistent. It criticizes all forms of worship, except its own.

To this humanists must reply, if they wish to be consistent, that

<sup>29</sup>Max Stackhouse, “Human Rights and Public Theology,” in Gustafson and Juviler, *Religion and Human Rights*, pp. 13, 16.

<sup>30</sup>Peter Singer, *Animal Liberation* (New York: Random House, 1990); J. M. Coetzee, *The Lives of Animals* (Princeton, N.J.: Princeton University Press, 1999).

<sup>31</sup>Moshe Halbertal and Avishai Margalit, *Idolatry* (Cambridge, Mass.: Harvard University Press, 1992).

there *is* nothing sacred about human beings, nothing entitled to worship or ultimate respect. All that can be said about human rights is that they are necessary to protect individuals from violence and abuse and if it is asked why, the only possible answer is historical. Human rights is the language through which individuals have created a defense of their autonomy against the oppression of religion, state, family, and group. Conceivably, other languages for the defense of human beings could be invented, but this one is what is historically available to human beings here and now. Moreover, a humanist is required to add, human rights language is *not* an ultimate trump card in moral argument. No human language can have such powers. Indeed, rights conflicts and their adjudication involve intensely difficult tradeoffs and compromises. This is precisely why rights are not sacred, nor are those who hold them. To be a rights-bearer is not to hold some sacred inviolability, but to commit oneself to live in a community where rights conflicts are adjudicated through persuasion, rather than violence. With the idea of rights goes a commitment to respect the reasoned commitments of others and to submit disputes to adjudication. The fundamental moral commitment entailed by rights is not to respect, and certainly not to worship. It is to deliberate.<sup>32</sup> The minimum condition for deliberating with another human being is not necessarily respect, merely negative toleration, a willingness to remain in the same room, listening to claims one doesn't like to hear, for the purpose of finding compromises that will keep conflicting claims from ending in irreparable harm to either side. That is what a shared commitment to human rights entails.

This reply is not likely to satisfy a religious person. From a religious perspective, to believe, as humanists do, that nothing is sacred—although what others hold to be sacred is entitled to protection—is to remove any restraining limits to the exercise of human power.

The idea of the sacred—the idea that there is some realm that is beyond human knowing or representation, some Mount Sinai forever withheld from human sight—is supposed to impose a limit on the human will to power. Even as metaphor—divorced from any metaphysical claim—the sacred connotes the idea that there must be a moral line that no human being can cross. The ideology of human rights is clearly an attempt to define that line. But, from a religious point of view, any attempt to create any strictly human limit to the exercise of human power

<sup>32</sup> Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: Belknap Press, 1996).

is bound to be self-defeating. Without the idea of the nonhuman divine, without the idea of the sacred and the idea of impassable limits, both to reason and power, there can be no viable protection of our species from ourselves. The dispute comes down to this: the religious side believes that only if humans get down on their knees can they save themselves from their own destructiveness; a humanist believes that they will only do so if they stand up on their own two feet.

This is an old dispute, and each side has powerful historical arguments. The strongest aspect of the religious case is the empirical evidence that men and women, moved by religious conviction, have been able to stand up against tyranny when those without such convictions did not. In the Soviet labor camps, religious people, from convictions as various as Judaism and Seventh Day Adventism, gave inspiring examples of indestructible dignity. Similarly, it was religious conviction that inspired some Catholic priests and laypersons to hide Jews in wartime Poland. Finally, the black movement for civil rights in the United States is incomprehensible unless we remember the role of religious leadership, metaphors, and language in inspiring individuals to risk their lives for the right to vote. These examples carry more weight than metaphysical argument. But secularism has its heroes too. The lyric poet Anna Akhmatova's writing gave voice to the torments of all the women like herself who lost their husbands and children in the Gulag. Primo Levi, a secular Jew and a scientist, gave witness on behalf of those who perished at Auschwitz. His work is exemplary testimony to the capacity of secular reason to describe the enormity of evil. Moral courage draws its resources where it can, and both secular and religious sources have inspired heroes.

If we turn from the sources of heroism to the sources of villainy, the religious cannot claim that the fear of God has prevented humans from doing their worst. The idea that a sense of the sacred is necessary to keep humans moral stands on weak empirical grounds, to say the least. Indeed, sacred purposes have often been pressed into the service of iniquity. Religion after all is a foundational doctrine, making claims that it regards as incontestable. The belief that one possesses unassailable grounds of faith has been one of the most powerful justifications for torture, forced conversion, the condemnation of heresy, and the burning of heretics. Foundational beliefs, unmixed with humility, have been a longstanding menace to the human rights of ordinary individuals.

On the other hand, it is hard to deny the force of the religious

counterargument—that the abominations of the twentieth century were an expression of secular hubris, of human power intoxicated by the means at its disposal and unrestrained by any sense of ethical limit. To the extent that history is a relevant witness in metaphysical matters, its testimony corroborates neither the believer nor the unbeliever. Before radical evil, both secular humanism and ancient belief have been either utterly helpless victims or enthusiastic accomplices.

So how are we to conclude? A humanist will point out that religions make anthropomorphic claims about the identity of their God while simultaneously claiming that He cannot be represented. This contradiction is idolatrous, but it may be a necessary idolatry; believers must worship something. Their devotions must fall upon some image or object that can give a focus to their prayers. Hence the unavoidable necessity of graven images or representations of divinity in most of the world religions. Idolatry may therefore be a necessary component on any belief. If this is true of religion, it may also be true of humanism. We may not be entitled to worship our species, but our commitment to protect it needs sustaining by some *faith* in our species. Such faith, needless to say, can only be conditional, reasserted in the face of the evidence that we are, upon occasion, worse than swine.

The idea of idolatry calls all believers, secular or religious, to sobriety; it asks them to subject their own enthusiasm, their overflowing sense of righteousness or correctness, to a continual scrutiny. Religious persons aware of the dangers of idolatry scrutinize their worship for signs of pride, zeal, or intolerance toward other believers; nonbelievers ought to scrutinize their beliefs for signs of Voltairian contempt for the convictions of others. Such contempt presumes that human reason is capable of assessing and dismissing the truth content of a competing form of religious belief. For both a religious and a secular person, the metaphor of idolatry acts as a restraint against both credulity and contempt. For secular unbelievers radically misread the story of Exodus if they think it is a warning merely against religious credulity. Surely it is the great mythic warning against human fallibility, both secular and religious, our weakness for idols of our own making, our inability to cease worshipping the purely human. A humanism that worships the human, that takes pride in being human, is surely as flawed as those religious beliefs that purport to *know* God's plans for humans. A humanism that is not idolatrous is a humanism that refuses to make metaphysical claims that it cannot justify; it is a humanism that justifies itself only on

the grounds that we have good reason to fear our delusional attachment to violence. In short, it is a humanism with the wisdom to respect the dire warnings of Exodus.

Yet even a humble humanism should have the courage to ask why human rights needs the idea of the sacred at all. If the idea of the sacred means that human life ought to be cherished and protected, why does such an idea need theological foundations? Why do we need an idea of God in order to believe that human beings are not free to do what they wish with other human beings; that human beings should not be beaten, tortured, coerced, indoctrinated, or in any way sacrificed against their will? These intuitions derive simply from our own experience of pain and our capacity to imagine the pain of others. Believing that humans are sacred does not necessarily strengthen these injunctions. The reverse is often true: acts of torture or persecution are frequently justified in terms of some sacred purpose. Indeed the strength of a purely secular ethics is its insistence that there are no “sacred” purposes that can ever justify the inhuman use of human beings. An antifoundational humanism may seem insecure, but it does have the advantage that it cannot justify inhumanity on foundational grounds.

A secular defense of human rights depends on the idea of moral reciprocity: that we judge human actions by the simple test of whether we would wish to be on the receiving end. And since we cannot conceive of any circumstances in which we or anyone we know would wish to be abused in mind or body, we have good reasons to believe that such practices should be outlawed. That we are capable of this thought experiment—i.e., that we possess the faculty of imagining the pain and degradation done to other human beings as if it were our own—is simply a fact about us as a species. Because we are all capable of this form of limited empathy, we all possess a conscience, and because we do, we wish to be free to make up our own minds and express those justifications. The fact that there are many humans who remain indifferent to the pain of others does not prove that they do not possess a conscience, merely that this conscience is free. This freedom is regrettable: it makes human beings capable of freely chosen acts of evil, but this freedom is constitutive of what a conscience is. Such facts about human beings—that they feel pain, that they can recognize the pain of others, and that they are free to do good and abstain from evil—provide the basis by which we believe that all human beings should be protected from cruelty. Such a minimalist conception of shared human capacities—

empathy, conscience, and free will—essentially describes what is required for an individual to be an agent of any kind. Protecting such an agent from cruelty means empowerment with a core of civil and political rights. Those who insist that civil and political rights need supplementing with social and economic ones make a claim that is true—that individual rights can only be exercised effectively within a framework of collective rights provision—but they may be obscuring the priority relation between the individual and the collective. Individual rights without collective rights may be difficult to exercise, but collective rights without individual ones means tyranny.

Moreover, rights inflation—the tendency to define anything desirable as a right—ends up eroding the legitimacy of a defensible core of rights. That defensible core ought to be those that are strictly necessary to the enjoyment of any life whatever. The claim here would be that civil and political freedoms are the necessary condition for the eventual attainment of social and economic security. Without the freedom to articulate and express political opinions, without freedom of speech and assembly, together with freedom of property, agents cannot organize themselves to struggle for social and economic security.

As Amartya Sen argues, the right to freedom of speech is not, as the Marxist tradition maintained, a lapidary bourgeois luxury, but the precondition for having any other rights at all. “No substantial famine has ever occurred,” Sen observes, “in any country with a democratic form of government and a relatively free press.” The Great Leap Forward in China, in which between 23 and 30 million people perished as a result of irrational government policies implacably pursued in the face of their obvious failure, would never have been allowed to take place in a country with the self-correcting mechanisms of a free press and political opposition.<sup>33</sup> So much for the argument so often heard in Asia that a people’s “right to development,” to economic progress, should come before their right to free speech and democratic government. Such civil and political rights are both an essential motor of economic development in themselves and also a critical guarantee against coercive government schemes and projects. Freedom, to adapt the title of Sen’s latest book, *is* development.<sup>34</sup>

Such a secular defense of human rights will necessarily leave religious thinkers unsatisfied. For them secular humanism is the contin-

<sup>33</sup> Amartya Sen, “Human Rights and Economic Achievements,” in J. R. Bauer and D. A. Bell (eds.), *The East Asian Challenge for Human Rights*, pp. 92–93.

<sup>34</sup> Amartya Sen, *Development as Freedom* (New York: Oxford University Press, 1999).

gent product of late European civilization and is unlikely to command assent in non-European and nonsecular cultures. Accordingly, a lot of effort has been expended in proving that the moral foundations of the Universal Declaration are derived from the tenets of all the world's major religions. The Universal Declaration is then reinterpreted as the summation of the accumulating moral wisdom of the ages. Paul Gordon Lauren begins his history of the idea of human rights with an inventory of the world's religions, concluding with the claim that "the moral worth of each person is a belief that no single civilization or people or nation or geographical area or even century can claim uniquely as its own."<sup>35</sup>

This religious syncretism is innocuous as inspirational rhetoric. But as Lauren himself concedes, only Western culture turned widely shared propositions about human dignity and equality into a working doctrine of rights. This doctrine didn't originate in Jeddah or Peking, but in Amsterdam, Sienna, and London, wherever Europeans sought to defend the liberties and privileges of their cities and estates against the nobility and the emerging national state.

To point out the European origins of rights is not to endorse Western cultural imperialism. Historical priority doesn't confer moral superiority. As Jack Donnelly points out, the Declaration's historical function was not to universalize European values, but actually to put certain of them—racism, sexism, and anti-Semitism for example—under eternal ban.<sup>36</sup> Non-Western foes of human rights take its proclamations of "universality" as an example of Western arrogance and insensitivity. But universality properly means consistency: the West is obliged to practice what it preaches. This puts the West, no less than the rest of the world, on permanent trial.

## 5. THE WEST AGAINST ITSELF

In the moral dispute between the "West" and the "Rest," both sides make the mistake of assuming that the other speaks with one voice. When the non-Western world looks at human rights, it assumes—rightly—that the discourse originates in a matrix of historical traditions shared by all the major Western countries. But the non-Western world

<sup>35</sup> Paul Gordon Lauren, *The Evolution of International Human Rights* (Philadelphia: University of Pennsylvania Press, 1999), p. 11.

<sup>36</sup> Donnelly in Bauer and Bell (eds.), *The East Asian Challenge for Human Rights*, p. 68.

should begin to notice how differently nations with the same rights traditions interpret its core principles. A common tradition does not necessarily result in common points of view on rights matters. All of the formative rights cultures of the West—the English, the French, and the American—give a different account of privacy, free speech, incitement, and the right to life. In the fifty years since the promulgation of the Universal Declaration, these disagreements within the competing Western rights traditions have become more salient. Indeed, the moral unanimity of the West—always a myth more persuasive from the outside than from the inside—is breaking up and revealing its incorrigible heterogeneity. American rights discourse once belonged to the common European natural law tradition and to the British common law. But this sense of a common anchorage now competes with a growing sense of American moral and legal exceptionalism.

American human rights policy in the last twenty years is increasingly distinctive and paradoxical: a nation with a great national rights tradition that leads the world in denouncing the human rights violations of others but that refuses to ratify international rights conventions itself. The most important resistance to the domestic application of international rights norms comes not from rogue states outside the Western tradition or from Islam and Asian societies. It comes, in fact, from within the heart of the Western rights tradition itself, from a nation that, in linking rights to popular sovereignty, opposes international human rights oversight as an infringement on its democracy. Of all the ironies in the history of human rights since the Declaration, the one that would most astonish Eleanor Roosevelt is the degree to which her own country is now the odd one out.

In the next fifty years, we can expect to see the moral consensus that sustained the Universal Declaration in 1948 splintering still further. For all the rhetoric about common values, the distance between America and Europe on rights questions—like abortion and capital punishment—may grow, just as the distance between the West and the Rest may also increase. There is no reason to believe that economic globalization entails moral globalization. Indeed, there is some reason to think that as economies have unified their business practices, ownership, languages, and networks of communication, a countermovement has developed to safeguard the integrity of national communities, national cultures, religions, and indigenous and religious ways of life.

This does not mean the end of the human rights movement, but its

belated coming of age, its recognition that we live in a plural world of cultures that have a right to equal consideration in the argument about what we can and cannot, should and should not, do to human beings. Indeed, this may be the central historical importance of human rights in the history of human progress: it has abolished the hierarchy of civilizations and cultures. As late as 1945, it was normative to think of European civilization as inherently superior to the civilizations it ruled. Many Europeans continue to believe this, but they know that they have no right to do so. More to the point, many non-Western peoples also took the civilizational superiority of their rulers for granted. They no longer have any normative reason to continue believing this. One reason why this is so is the global diffusion of human rights. It is the language that most consistently articulates the moral equality of all the individuals on the face of the earth. But to the degree that it does, it simultaneously increases the level of conflict over the meaning, application, and legitimacy of rights claims. Rights language says: all human beings belong at the table, in the essential conversation about how we should treat each other. But once this universal right to speak and be heard is granted, there is bound to be tumult. There is bound to be discord. Why? Because the European voices that once took it upon themselves to silence the babble with a peremptory ruling no longer believe in their right to do so, and those who sit with them at the table no longer grant them the right to do so. All this counts as progress, as a step toward a world imagined for millennia in different cultures and religions: a world of genuine moral equality among human beings. But if so, a world of moral equality is a world of conflict, deliberation, argument, and contention.

To repeat a point made earlier: We need to stop thinking of human rights as trumps and begin thinking of them as a language that creates the basis for deliberation. In this argument, the ground we share may actually be quite limited: not much more than the basic intuition that what is pain and humiliation for you is bound to be pain and humiliation for me. But this is already something. In such a future, shared among equals, rights are not the universal credo of a global society, not a secular religion, but something much more limited and yet just as valuable: the shared vocabulary from which our arguments can begin and the bare human minimum from which differing ideas of human flourishing can take root.