

What Do Human Rights Do? An Anthropological Enquiry

A false start

1. I begin with a banal question. In the torrent of reporting on human rights in recent years far more attention is given to human rights violations in the non-Western world than in Euro-America. How should we explain this imbalance?
2. It is commonly asserted that it reflects the hypocrisy of the Western powers. Thus Daniel Singer, writing in *The Nation* weekly about reactions in Europe to the NATO war against Serbia, observes: "The left is bewildered and divided because it is struck by the horrors of the war and by its own impotence. The antiwar movement is relatively weak because it has no certitudes to offer. It must condemn Milosevic the purger and the NATO bombers, while the advocates of war claim to be the knights in shining armor. They don the mantle of champions of the Rights of Man, while the antiwar movement points out that you can't have universal laws based on double standards, one for Kosovars and another for Rwandans, Kurds and Palestinians. Indeed, one role of the peace movement is to reveal the real issues beneath the hypocritical smokescreen."[\[1\]](#)
3. The tone of cynicism also emerges in an article in *The Christian Science Monitor* newspaper on the recent UN Human Rights Commission meeting in Geneva: "to the frustration of many delegates to the United Nations Human Rights Commission, the behind-the-scenes reality of negotiations often overlooks human rights. Analysts bemoan the fact that economics and political strategy tend to take precedence -- especially in the cases of China and Russia. 'This is not an august body of world harmony. This is political from beginning to end,' says one European Union official of the six-week convention. For example, the New York-based Human Rights Watch is lobbying various Western governments to introduce a resolution against Moscow for alleged war-time abuses in Chechnya. But the United States and its European allies have been slow to take action.... [M]any activists feel that members have already made up their minds against angering Russia, which holds a permanent seat on the UN Security Council. 'There is absolutely no doubt whatsoever that the extent and scale of human rights violations in Chechnya deserve UN condemnation,' says Adam Berry at the Center for Peace-making and Community Development, which operates in and around the breakaway republic. 'But will any country dare to say so at the Human Rights Commission?'" The article ends by stating that the overwhelming majority of countries being condemned for violations belong to the third world simply because they are the countries in which Western powers have neither economic nor strategic interests.[\[2\]](#)

4. However, if our primary concern is to understand what human rights *do* in the world -- what they do as legal rules deployed by sovereign states and as moralizing discourses produced by individuals -- then I think this kind of talk about Western hypocrisy isn't useful. Instead we should look at the variable functions of the nation state, the shifting structures of international power, and the moral languages in which injustice is identified and its elimination advocated. This is what I shall try to do, tentatively, in what follows. But because champions of human rights have strong emotions invested in their point of view, I must begin by clearly warning the reader that what may appear to be a criticism of the very idea of universal values is not so at all but simply an attempt to describe something of what it means to apply universal values in the world today, and to enquire briefly into some of their specifically Christian roots.

Beginning again

5. Human rights are now universal in the sense that virtually all states have formally endorsed them and citizens in many countries as well as organizations like Human Rights Watch invoke them. In this section I want to talk a little about human rights violations. However, I want to consider not *why* and *where* they happen but rather *why* and in what circumstances they *don't* happen. Consider the following example from the domain of military strategy.
6. In the course of the UN intervention into Somalia some years ago, soldiers from Belgian and Canadian contingents were charged with torturing individual Somalis. At the same time US forces carried out the destruction of entire city-blocks and killed considerable numbers of civilians, as a consequence of the US military doctrine of using overwhelming force (preferably by air) and minimal American casualties (preferably zero). It was noted at the time that this clear breach of the Geneva conventions was not followed up by the United States holding a public enquiry into those responsible for the breach in the way the Belgians and the Canadians pursued the torturers. "The reason," claims Alex de Waal, "is quite simple: orders for helicopter attacks came from higher authorities than the force commander in Mogadishu -- they came from Centcom HQ in Florida and the White House itself. The charge sheet for any inquiry into Mogadishu war crimes might contain the names of some very high-ranking American individuals."^[3] The point I want to make, however, is not that the United States is powerful enough to flout international conventions with impunity. It is that while US military doctrine makes breaches of the Geneva convention more likely, it makes actual cases of *torture* less likely because and to the extent that a direct encounter between individual soldiers and civilians is avoided. The use of excessive force against civilians through aerial bombardment is regarded differently from the use of violence perpetrated by particular officials against *identifiable victims*. Human rights are typically concerned with cruelty to individuals. (I stress again that this is not a moral condemnation of US military

intervention abroad. My interest here is in the consequences of different modes of intervention for the *non-violation* of human rights.)

7. But military action is not the only -- or even the most important -- form of intervention by powerful states in the affairs of others. Financial pressures can have effects that are more far-reaching than many military adventures. But the devastation these pressures can cause to social life, and the punishments they deliver to individual citizens of an economically weakened state, can not be addressed as human rights violations.
8. For example: "In the early '90s, East Asian countries had liberalized their financial and capital markets -- not because they needed to attract more funds (savings were already 30 percent or more) but because of international pressure, including some from the US Treasury Department. These changes provoked a flood of short-term capital -- that is, the kind of capital that looks for the highest returns in the next day, week, or month, as opposed to long-term investment in things like factories. In Thailand, this short-term capital helped fuel an unsustainable real estate boom.... Just as suddenly as capital flowed in, it flowed out.... Output in some of the affected countries fell 16 percent or more. Half the businesses in Indonesia were in virtual bankruptcy or close to it... Unemployment soared, increasing as much as tenfold, and real wages plummeted -- in countries with basically no safety nets. Not only was the IMF not restoring economic confidence in East Asia, it was undermining the regions social fabric."[\[4\]](#) This account, which I have taken from Joseph Stiglitz (until recently vice-president and chief economist of the World Bank), can be replicated even more dramatically for Russia. In both cases, the ability of the affected states to uphold certain rights was directly compromised by IMF and US policies aimed at liberalizing national economies. But these interventions themselves cannot be regarded as a species of human rights violation.
9. The first part of Article 25 of *The Universal Declaration of Human Rights* states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." But the responsibility for ensuring the conditions in which these rights can be realized is assigned solely to individual sovereign states, each of which is defined in part by its right to govern "the national economy". Deliberate damage done to the economy of another country (as in the case of the interventions I have mentioned) does not constitute a violation of human rights even if it causes immense suffering because in the final analysis the responsibility for the damage is borne only by the governors of "the national economy". This point emerges even more clearly in the case of Iraq where the collective punishment inflicted on the poor in that country due to UN sanctions is explicitly made the responsibility of its dictatorial regime, which

governs the national economy. (Note again: my concern here is *not* to ascribe blame -- to argue that South East Asian governments were innocent victims of a conspiracy -- but to examine the *limits* of human rights violations.)

Identifying human rights

10. The historical roots of human rights have been traced to the idea of natural law in Latin Christendom and to the way the medieval version of that idea appropriated Aristotelian thought. More specifically it has been argued that "natural right" (i.e., right by birth) is an idea that belongs to feudal organizations and practices.^[5] Thus although the way moderns employ the notion of rights is integrally connected to the rise of the nation state, it has been argued that it was the feudal legacy that made it plausible for seventeenth-century theorists such as John Locke to invoke natural rights *against* the ambitions of the early modern state.^[6] At the same time the seventeenth century was the period of a massive growth of public debt, and this development contributed, say historians, to the increasing precariousness and volatility of new forms of property -- and hence to a growing sense of the importance of government in regulating aspects of the economy. Locke's famous emphasis on natural right as the limit to arbitrary government also reflects and presupposes the growing centrality of state functions we have come to recognize as modern.^[7]
11. However that may be, it is the case today that only the state can enforce norms as *the law*. The state concedes that it has violated rights and restores them, or restores rights that have been violated within its own domain (or the domain of a weaker state), or it legally endorses rights vindicated by other civil powers (trade-unions, women's movements, etc.). Human rights depend, it has been said, on national rights. States are essential to the protection they offer. This means that states can and do use human rights discourse against their citizens -- as colonial empires used it against their subjects^[8] -- to realize their civilizing project.
12. In his influential account of the development of citizenship in Britain, T. H. Marshall traced the history of rights in that country since medieval times but stressed that the critical moments in their formation were the seventeenth, eighteenth and nineteenth centuries, i.e. precisely when the modern state was being constructed.^[9] He saw citizenship rights as being divided into *civil* ("liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice"), *political* ("the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body"), and *social* ("from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society"). It is this classification, coming as it does out of the Anglo-American legal tradition, that makes its way in

1948 into *The Declaration of Human Rights*. It thus moves from a national context of struggle between classes punctuated by settlements whose legal scope (like that of all laws) was limited to citizens, to the abstract universality of a world sentimentalized as "the human family". In doing so it assumes that "the human" can be identified and separated off from the non-human ("animals," for example), but there is no attempt to define "the human" except tautologically in terms of the rights with which it is endowed.

13. It may be noted that although *The Universal Declaration of Human Rights* begins by asserting "the inherent dignity" and "the equal and inalienable rights of all members of *the human family*", it turns immediately to the state. In doing so it underlines the fact that the universal character of the rights-bearing person is made the responsibility of sovereign states, each of which has jurisdiction over a limited group within the human family. This limited population -- as Foucault noted -- is at once the object of the state's care and the means of securing its own power.^[10] We read in *The Declaration* that unless human rights are "protected by the rule of law", subjects will be "compelled to have recourse, as a last resort, to rebellion against tyranny and oppression". Thus tyranny and oppression are equated with the intolerable infringement, by state rulers, of human rights conceived as law that is above positive law. Paradoxically, *The Declaration* legitimizes rebellion as a legal act to restore a government to "the rule of law", and not as a response to a government's violation of traditional expectations of just and moral behaviour. There is no explicit recognition that what is lawful may be intolerable, but only the statement that nothing contravening human rights can be lawful (which is either a tautology or untrue). *The Declaration* assumes -- problematically -- a direct convergence between "the rule of law" and social justice.
14. There is, in effect, an unresolved tension here between the invocation of "universal humanity" and the power of political authorities charged with maintaining the law. For not only does *The Declaration* equate law with justice, it also privileges the state's norm-producing function, and thereby encourages the questionable thought that the authority of norms corresponds to the political force that supports them as law. Ironically, it was the moral revulsion against the legal atrocities of the Nazi state that led, after World War II, to a renewed interest in the old natural law tradition, and to the framing of *The Declaration*. Thus the condemnation in terms of non-state norms of a particular state's cruel system of law did not lead to a recognition that non-state norms have authority as such. They led instead to the attempt to formulate eternally just laws that must depend, *as laws*, on the authority of states.
15. An aspect of the divergence between the moral authority of norms and the political force of state laws may be illustrated by a recent example from Europe. As a consequence of Greece having joined the European Union, the Greek state was required by the European charter of human rights to remove any

information on religious affiliation, family status, nationality and thumb-print in the identity cards issued to citizens. Popular opposition apparently sees this as a threat to collective religious identity. "We've got to fight for our right to be Christian Orthodox Greeks," one demonstrator put it. "It seems [Prime Minister Costas] Simitis is capable of selling everything that Greece stands for, for the sake of appearing European," observed another. But the protests and demonstrations have not shifted the government, which insists that the new cards must conform to the privacy law on personal data. The church has called for a referendum on the proposed change but the government has rejected the idea on the grounds that "such methods cannot apply to issues of human rights." (In liberal democratic regimes democracy may sometimes have to be sacrificed for the sake of liberalism. The origins of liberalism are not in democracy.) A compromise proposed by the church that the old form be retained on an optional basis has been dismissed by the government. The church, using the *secular* language of human rights to defend its authority, has charged that the new arrangement curtails the right of citizens to express their religious affiliation publicly if they so desire. The government, in its turn, has responded by issuing a *religious* judgement: "The introduction of new identity cards poses no threat to the Greek Orthodox faith."^[11] In my view this is more than a case of bruised identities (which is how the foreign press represents it). It is also about the authority of a social group to uphold norms that its members (but not the government) regard as good. The group may compete for nation-wide jurisdiction with state law, as in the Greek example. Or it may seek an enclave of relative immunity, as in the case of the Amish community in the United States. But the question is equally one of normative authority.

16. The requirement that all citizens of E.U. member states carry identity cards is not itself considered a violation of human rights but a general good. Identity cards have been integral to the way populations have been governed and cared for in modern European states. Britain, although a member of the European Union, has never had them (except during the Second World War) and is vigorously resisting their introduction on the grounds that they infringe the citizen's civil rights as understood historically in that country. Thus in Britain identity cards are thought of as a threat to the freedom of individual subjects (i.e., *citizens*), and in the E.U. states as a necessary means for providing collective objects (i.e., *population*) with equal and efficient welfare. Each provides a different perspective on what makes for political justice. And a different point from which to interpret human rights.

Languages of justice

17. I now want to consider a different question. Not: How do particular states interpret and apply human rights law? But: Is human rights discourse the only language used to talk about justice?

18. The US government has been a major force behind the attempt to globalize human rights -- especially since the collapse of the Soviet Union. It has also been central to the historical evolution of the idea of human rights as it has been central to its globalization since the end of the Cold War. Yet inside the United States the human rights language has had comparatively little purchase. I shall now take up the case of a modern American who invoked human rights but failed to mobilize public opinion behind him in that endeavor.
19. In a famous speech criticizing the American civil-rights movement in the sixties, Malcolm X urges his fellow blacks to resort to human rights as a way of transcending the limitations of the American state. I quote at length the following passage with its powerful demotic style and its acute forensic intelligence. However, the transcendence Malcolm X seeks consists in a turn from the authority of one state to the collective authority of several other states -- a fact indicating that one cannot escape from a world constituted of states that are equal as sovereign entities but unequal in power.
20. "We need to expand the civil-rights struggle to a higher level -- to the level of human rights. Whenever you are in a civil-rights struggle, whether you know it or not, you are confining yourself to the jurisdiction of Uncle Sam. No one from the outside world can speak out in your behalf as long as your struggle is a civil-rights struggle. Civil-rights comes within the domestic affairs of this country. All of our African brothers and our Asian brothers and our Latin-American brothers cannot open their mouths and interfere in the domestic affairs of the United States. And as long as it's civil rights, this comes under the jurisdiction of Uncle Sam.
21. "But the United Nations has what's known as the charter of human rights, it has a committee that deals in human rights. You may wonder why all of the atrocities that have been committed in Africa and in Hungary and in Latin America are brought before the UN, and the Negro problem is never brought before the UN. This is part of the conspiracy. This old, tricky, blue-eyed liberal who is supposed to be your and my friend, supposed to be in our corner, supposed to be subsidizing our struggle, and supposed to be acting in the capacity of an adviser, never tells you anything about human rights. They keep you wrapped up in civil rights. And you spend so much time barking up the civil-rights tree, you don't even know there's a human-rights tree on the same floor.
22. "When you expand the civil-rights struggle to the level of human rights, you can then take the case of the black man in this country before the nations in the UN. You can take it before the General Assembly. You can take Uncle Sam before a world court. But the only level you can do it on is the level of human rights. Civil-rights keeps you under his restrictions, under his jurisdiction. Civil rights keeps you in his pocket. Civil rights means you are asking Uncle Sam to treat you right. Human rights are something you were born with. Human rights

are your God-given rights. Human rights are the rights that are recognized by all nations of this earth. And any time anyone violates your human rights you can take them to the world court. Uncle Sam's hands are dripping with blood, dripping with the blood of the black man in this country. He's the earth's number-one hypocrite. He has the audacity -- yes, he has -- imagine him posing as the leader of the free world. The free world! -- and you over here singing 'We Shall Overcome.' Expand the civil-rights struggle to the level of human rights, take it into the United Nations, where our African brothers can throw their weight on our side, where our Asian brothers can throw their weight on our side, where our Latin-American brothers can throw their weight on our side, and where 800 million Chinamen are sitting there waiting to throw their weight on our side."[\[12\]](#)

23. Needless to say, the civil-rights struggle was never expanded to what Malcolm X called the level of human rights. I don't want to dwell on the political reasons, both national and international, why this was so. I have quoted the passage at length because of its remarkable language. In it Malcolm X does three things: First, he diagnoses a profound crisis of justice in race-based America and claims that it cannot be resolved by a purely domestic manouevre -- that is, by the state's voluntary extension of full citizenship to American blacks. Second, he defiantly asserts the humanity of American blacks quite independently of -- in hostile opposition to -- the American state and its political culture. Third, he proposes that justice consists in the legal conviction of America in an international court; to be just is a matter of the law. This invocation of human rights by an American citizen identifies America as the violator. The language of human rights invoked by him doesn't make a moral appeal -- at any rate, not to those who are declared to be the violators of rights -- it declares a state of war and gives reasons why this war is necessary. It thus re-affirms the connection of rights discourse with war and revolution. For it will be recalled that the English Bill of Rights of 1699 came out of the seventeenth-century civil war, that the War of Independence produced the American Bill of Rights, that the French Revolution gave birth to the Rights of Man and the Citizen, and that the Universal Declaration of Human Rights of 1948 was a response to the destructive horrors of World War II. These Bills and Declarations not only came out of war, they carried the metaphor of warfare into the domain of social reform. And they sought to extend a specific legal culture beyond its original Euro-American location with the aim of emancipating the world.

24. Hannah Arendt, writing at about the same time as Malcolm X gave his speech, observed that human rights depended essentially on national rights: "The conception of human rights, based upon the assumed existence of a human being as such, broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships -- except that they were still human. The world found nothing sacred in the abstract nakedness of being human. And *in view of objective political conditions, it is hard to say how the concepts of man*

upon which human rights are based -- that he is created in the image of God (in the American formula), or that he is the representative of mankind, or that he harbors within himself the sacred demands of natural law (in the French formula) -- *could have helped to find a solution to the problem.*"^[13] Although Arendt was talking about European refugees immediately after the Second World War, her remarks are entirely applicable to American Blacks. For it was precisely their humanness that was invoked by Malcolm X, not their ethnic origin or religious identity, and not their centuries of residence in particular states of the Union. The political failure of Malcolm X's use of the language of human rights need not be attributed to conspiracy. It can be explained by the fact that it ignored the power of the state in which he and other Blacks lived, and the anomalous position of Black Americans who were neither the bearers of national rights nor of human rights. Malcolm X had told his audience that "Human rights are something you were born with". However, Blacks were at once born American (with citizenship rights only in the United States), and they were human beings who happened to be Black (and therefore discriminated against by White Americans). One aspect of birth diminished the other, rendering the idea of human rights abstract and ineffective.

25. But if the language of human rights made little impact, there were other languages in the United States in which social crises might be diagnosed, the weak defended, and substantial reform called for. And other ways of defining the identity of "the human."

26. An important language in the United States that overlaps in varying measure with rights language (not to be directly equated with human rights language) is its prophetic language. Unlike human rights discourse, which assumes a universalist formula, American prophetic language not only draws its vocabulary and imagery from a particular scripture (the Old Testament), it is also deeply rooted in narratives of the founding of a particular nation (the American). Famously, there are two narratives -- one anticipating the other supplementing: First, the story of the seventeenth-century Puritan escape to religious freedom from persecution in England; and second, the story of the constitution of thirteen American colonies into a new sovereign state, signifying a repudiation of English despotism. In both cases freedom -- including the freedom to re-create oneself as an individual and one's nation as a community of liberated individuals -- comes from a rejection of tradition. The power of prophetic language derives not only from its religious origins but also from a series of moral separations -- English tyranny, Amerindian paganism, and the sub-humanity of African slaves. The class of humans remains intact when the tyrant, the pagan, and the slave are excluded from it. However distasteful it might be to us today, the definition on which that initial concept of citizen was based is in a sense no less universal than others that succeeded it in the sense that it defines the class to which all who are "properly human", and only they, belong to it.

27. "In American political culture, the prophetic story of captivity, deliverance, and founding legacy, thus of decline from origins and redemption, has been especially important," writes George Shulman. "Americans have retold this story to authorize claims about rights, inequality, membership, history, and their meaning."^[14] So this language allows, even encourages, the identification of social crises and the condemnation of social injustice, both by those who occupy the ideological center of American liberalism and by those who stand outside it as its critics. But it does so in terms of a particular, excluding origin. It invokes the promise of freedom that needs to be redeemed or warns of the decline and corruption that threaten that promise, but it always demands the conversion of subjects if they are to vindicate their human status.
28. This is the language that the leadership of the Civil-Rights movement in America deployed to great effect. It is the language that Martin Luther King used when he proclaimed that "now is the time to make real the promise of democracy" thereby attaining "the goal of America [which is] freedom". Turning to fellow blacks King declares: "Abused and scorned though we may be, our destiny is tied up with the destiny of America [because] the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands." And he goes on to proclaim that "One day the South will know that when these disinherited children of God sat down at lunch counters they were in reality standing up for the best in the American dream and the most sacred values in our Judeo-Christian heritage, and thus carrying our whole nation back to the great wells of democracy, which were dug deep by the founding fathers in the formulation of the Constitution and Declaration of Independence."^[15] In this way Martin Luther King's political discourse identifies the guilt of the white majority and urges their repentance, seeking thereby not only an extension of civil rights to all American citizens irrespective of race but the regeneration of America itself. "Justice" for King is not primarily a secular legal term, as it is for Malcolm X, but a religious one -- the idea of redemption. To be redeemed and to redeem others is to restore an inheritance -- the Judeo-Christian heritage in general and the American expression of it in particular.
29. King's language stands in sharp contrast to the universalist language of human rights used by Malcolm X. It is no less universalist, but in a different way. Precisely because it was peculiar to America, it mobilized public opinion for change in a way that Malcolm X was never able to do. Of course the two languages are not contradictory. The prophetic language of America, for all its particularity, works as a force in the field of foreign relations to globalize human rights. For that language does, after all, draw on the idea that "freedom" and "America" are virtually interchangeable -- that American political culture is (as the Bible says of the Chosen People) "a light unto the nations". Hence "democracy" and "human rights" are integral to the universalizing moral project of America -- the project of redeeming the world -- and an important part of the way America

sees itself. That is how one may understand Congress's passing and the President's signing the International Religious Freedom Act of 1998.

30. Thus it comes as no surprise that Section 2 (a) of that Act, entitled "FINDINGS", begins by defining the national identity of America in terms of the narrative of redemption: "(1) The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established in law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution." Paragraphs (2) and (3) then explicitly link this tradition to various international instruments that define "freedom of religious belief and practice" as a universal human right. Paragraphs (4), (5) and (6) go on to speak of this right being "under renewed and, in some cases, increasing assault in many countries around the world." The implication, clearly, is that American identity itself is under threat. Paragraph (7) adduces two recent resolutions of the House and Senate regarding "the persecution of Christians worldwide" and one resolution "concerning the emancipation of the Baha'i community." (No resolutions mentioning other religious communities by name appear in the "FINDINGS".) The Act then lays down the policy of the United States in this regard, requiring the President of the United States to enforce religious freedom globally by using economic sanctions wherever necessary, setting up a new Office in the State Department to report annually on religious persecution in all foreign countries (i.e. excluding the United States), and prescribing training in "religious freedom" for members of the U.S. Foreign Service, etc.[\[16\]](#)

31. There is clearly a world to be redeemed, and America, as the leading Judeo-Christian civilization, must redeem it. This may require her to act militarily (as in Yugoslavia) or financially (as in Russia). Of course in each of these cases contingent motives were involved, but in both the overall aim was liberation -- the freeing of people *and* property. At any rate, the narrative of redemption -- in contrast to the Exodus narrative -- is essentially interventionist, and its telos is to humanize populations, to fulfill the original promise of their secular humanity, as the Judeo-Christian tradition has now come to conceive of salvation.

Arguments for defending humanity through the law

32. Human rights are defended as a universal ideal and are opposed to "cultural relativism". My brief discussion in the previous section was intended to show how closely intertwined the two languages -- the culturally specific language of prophecy and the universalist language of human rights -- have become in the global moral project of America. This needs to be kept in mind as we turn to some well-known arguments that seek to dismiss every attempt to

relativize human rights (i.e. to relate them to particular motive forces and effects). Because pitting "relativism" against "universalism" is not helpful in understanding what human rights actually do.

33. In an excellent essay on the difficulty of providing philosophical foundations for human rights, Susan Mendus has urged that the attempt to secure such foundations be abandoned and that careful attention be paid instead to political practice. This, she contends, will reveal that critics of human rights make the highly questionable assumption that boundaries between nations or between cultures are always clear and determinate, that human identities are essentially homogeneous or at least fully integrated. "The harsh realities of political life show us," she maintains, "not that boundaries are fixed and identities determinate, but rather that boundaries are at best fluid, at worst disputed, and identities fragmented and often conflictual."[\[17\]](#)
34. Many social theorists agree with Mendus's assertion that today most boundaries are fluid and identities fragmented. But is this assertion valid? I think not. For although boundaries may not be fixed for ever, the processes by which their fixing, maintenance, and alteration occur -- by which they are transcended or transgressed -- are continuous facts of contemporary political power. Thus we should not suppose that trouble spots such as East Timor, Israel, Chechnya, and Kosovo demonstrate how elusive boundaries are.[\[18\]](#) On the contrary, they indicate that political and military power is able to redraw boundaries in the face of opposition or to defend those boundaries effectively. All such disputes presuppose the process of boundary-fixing.
35. The solidity of state boundaries is indicated by the very fact of transgressions, for "boundary" does not spell imperviousness, it points to the penalty for disregarding it. The trickle of Asian and African immigrants into Europe or of Central Americans into the United States does not prove the fluidity of state boundaries -- on the contrary, the movement of immigrants and the attempt by states to regulate immigration are both comprehensible only in relation to the presupposition that there are such things as "fixed territorial boundaries". Again: The legally authorized movement of capital from one country to another occurs precisely because the existence of national boundaries creates differently structured markets, and differential opportunities for their exploitation.
36. States *are* bounded (always in international law, usually in administrative practice) even when they are weak and internally riven. Cultures, it is true, may not be clearly demarcated -- as when people speak of "Provençal culture", or "Mediterranean culture", or "Western culture". They may not even allude to territory: "corporate business culture" or "the culture of science" or "human rights culture". But when the term "culture" is linked to a clearly bounded political entity, it reflects that unity. When people refer to "American political culture" they signify the political practices, legitimations, and discourses that are

integral to the way the United States works as a bounded nation state, to the various ways these elements define Americans as citizens, and to an important way that Americans identify themselves. There is nothing essentialist in such usages. It is precisely because culture is circumscribed in this case and attributed to a named political entity, to the agents who make it up, that it can be meaningfully assessed and criticized. Calls for reforming parts of that culture or changing it assume "an American responsibility". If responsibility for a particular "cultural" condition cannot be attributed to an agent with an integral identity, the demand for reform makes no sense. The demand for doing away with restrictions on the freedom of speech -- such as blasphemy laws -- must be addressed to a state having an integrated identity, because only it can make, enforce, or alter the relevant laws. In other words, a state that has indeterminate boundaries and a fragmented, conflictual identity cannot be responsible as a state for a culture of human rights.

37. But let us suppose for the sake of argument that boundaries were always fluid, disputed, etc. Let's suppose that "there has emerged a new transnational order in which states no longer have borders." What follows for arguments about human rights? According to some, one of the things that surely follows is that all talk of "authentic cultures" must be abandoned because everywhere there are conflicts within cultures and because cultures (like persons) are always subject to change. Consider the remarks by a Professor of International Relations to the effect that "nobody speaks for cultures in the way governments presume to do for states, and cultures in the modern world are interpenetrated. We hear about 'the Islamic position' or 'Asian values', but who speaks for Islam, or Asia? Nobody does: yet at the same time many people, organizations and states do. Invariably, when it comes to cultures, it is the loudest, the most powerful or the most fundamentalist who speak, and claim authenticity. Authenticity becomes not merely a cultural matter: it becomes profoundly political."[\[19\]](#) One may not speak *for* "a culture" but anyone can speak *about* a cultural practice and if it is a highly technical practice then those who are its keepers will have the authority to speak for it (a lawyer specializing in company law, say). The fact that there are disagreements over whether a particular claim to authenticity is legitimate (for example the antiquity of a particular ritual) does not imply that "authenticity" has no substance, or that it is really political rather than cultural. Disagreements become political when an attempt is made *to defend* a particular mode of doing things -- a "cultural element" -- on the grounds that it is essential to a community in contrast to a proposed substitute that is equally "cultural".
38. Of course politicians often have covert reasons for arguing in terms of authenticity, but the point of an argument should not be confused with the motives that lead people to propound it. When people argue over whether particular practices should be preserved or eliminated the idea of authenticity often becomes part of a vocabulary for claiming self-government. This vocabulary

isn't used only by representatives of the state. It may be used by citizens to criticize oppressive measures of their government. In this context, claims about authenticity introduce a politics of autonomy. But that doesn't *necessarily* mean that people who make such claims are committed to a pre-given, unchanging identity. Still less, that they are advocates of moral relativism. (I may believe I have the right to make my own decisions about my life, and that in general I should govern myself in such matters; it doesn't follow that I also believe other people cannot share this moral principle with me.) The politics of authenticity does not *in principle* exclude the willingness to acquire new ideas and practices. Its concern is with the manner in which these things take place. It rests on the claim to intellectual independence in assessing proposed ideas and practices as opposed to a chosen elite's promise of redemption. It says, in effect: Yes, you are entitled to disapprove of other people's way of living, to judge them on the basis of universal moral criteria. But that in itself does not give you a right to intervene forcibly in their lives, to suppress what they regard as authentic to them. Such a right issues from a judgment about the limits to your toleration, a moral judgment that depends on how well you understand particular social circumstances and how wisely you respond to your own changing experiences. The more serious the matter, the more difficult the judgment will be -- in some cases you may have to conclude that you do not know whether it is right or wrong to intervene in a certain way. As in a Greek tragedy.

39. It is indeed right to say that cultures are not (and never were) unchanging, that they have always drawn from and been dependent on one another, that they have now (and have always had) internal lines of disagreement. But from this it does not follow that those who contest the dominant values from within will want to live in quite the way that self-styled champions of modernity (from within their society and without) say they should. To take an example that is often used: It is true that many women in male-dominated societies resent their husbands governing them. This does not mean that all these women will spontaneously seek the particular ordering of gender relations that abstracted human rights would prescribe -- a law predicated on the supreme value of the self-owning individual. If it is true that cultures are conflictual, and if selves are indeed fragmentary, then there are many wholes that can be imagined, tolerated, desired, and worked for -- including new patterns of mutual dependence -- that are not adequately represented as the state of freedom replacing unfreedom.

40. In fact one should examine critically the assumption that even if human rights don't always prevent suffering then at least they always lead in an emancipatory direction, that they enable subjects to move beyond controlling power into the realm of freedom. Consider the contemporary debate in Britain about relaxing the legal restrictions on television advertising. In support of this aim, the official spokesperson for the Advertising Association invokes human rights to promote an already expanding consumer culture. "The human rights

act," she points out, "obliges public authorities to ensure that any prohibition on the advertising of a legal product or service can be justified under the act, which guarantees commercial freedom of speech." She then goes on to reassure opponents fearful of the possible consequences of removing legal restrictions by reminding them of specific cultural sensibilities that would guide and restrain the new freedom. "Even if the [Television Authority] does lift the existing prohibitions, advertisers would still have to abide by some of the most stringent regulations on taste, decency and misleadingness in Europe."[\[20\]](#)

41. What we have in this case is not simply a resort to human rights legislation to extend the scope of advertising -- and thus to incite yet further the desire to consume (although that is in part what it is). We have first of all an appeal to a power that is able to make or remove laws -- a state or proto-state. *That* power (the U.K. government, the E.U. central administration) constitutes the legal conditions within which persons act in private and in public. The power of positive law is the means by which the Advertisers seek to constitute *their* freedom.
42. We also have a reference to the extra-legal regulations of the Television Authority that will guide judgements on "taste, decency and misleadingness". The culturally specific character of such judgements is a well-known feature of all law that has resort to notions such as "clear public nuisance", or "reasonable behaviour", or "compelling government interest". In other words, many judgements will depend on a *particular kind* of human subject, one who has been shaped by cultural processes that enable her to identify "taste", "decency", etc., in a way British audiences (not Indian ones) have learnt to recognize. And yet we are dealing here with a universal human right that must be applied in the same way everywhere and at all times. For this to be done properly the same kind of judging subject must exist everywhere. Whether world capitalism produces global homogeneity (thus making it relatively simple to apply a universal law equally), or heterogeneity (making the universal application of human rights difficult), power will remain central in shaping the judging subject.
43. It has been argued, plausibly, that in a world where capitalist transformation increasingly isolates the individual and makes her more vulnerable, a legal-rights culture (including human rights law) provides some protection. But it is also the case that modern international law itself facilitates capitalist transformations -- just as legal reforms did in Asia and Africa in the nineteenth and twentieth centuries.[\[21\]](#) And as Marx pointed out long ago, the increasing power of capital in liberalized society produces the universal equality of citizens, where all individuals have the same abstract rights before the law but are unequally placed to enjoy these rights. The abstract equality of citizens goes hand-in-hand with the inequalities of class and administrative power. As with all cultural material, "the culture of law" is soaked in complex inequalities of power. And as with all law, it is necessarily dependent on violence.[\[22\]](#) "Human rights

culture" therefore is not simply a persuasive and reasoned language that comes down from a transcendent sphere to protect and redeem individuals. It articulates inequalities in social life everywhere and at all times.

44. Today, those who formulate and implement Western policies often assume that there is a natural fit between the legal culture of "human rights" and the wider culture of "Western norms". To illustrate: At a recent meeting the US Trade Representative negotiating China's entry into the World Trade Organization casually observed in response to a journalist's question that "democratic political reform and greater adherence to human rights are certainly encouraged by an opening to the West *and Western norms*"[\[23\]](#). What is remarkable here is that the US Representative makes no attempt to explain what she means by "Western norms", and that the questioner does not press her to do so. What might these norms be when viewed as styles of life?
45. In a recent article on American global power, Ignacio Ramonet, chief editor of *Le Monde Diplomatique*, recounts the scale of US military, diplomatic, economic, and technological hegemony, and then goes on to ask why -- given the liberal democratic ideology of equality and autonomy -- there isn't more criticism of it? I quote his elegant answer in full:
46. "No doubt because US hegemony also embraces culture and ideology. It has long been the home of many fine, respected intellectuals and creative artists, rightly admired by everybody. Its mastery extends to the symbolic level, lending it what Max Weber calls charismatic domination. The US has taken control of vocabulary, concepts and meaning in many fields. *We have to formulate the problems it invents in the words it offers*. It provides the codes to decipher enigmas it created. It has set up many research centers and think tanks just for this, employing thousands of analysts and experts. These eminent bodies produce reports on legal, social and economic issues with a perspective that supports the ideal of the free market, the world of business and the global economy. Their lavishly funded work attracts media attention and is broadcast the world over.... Wielding the might of information and technology, the US establishes, with the passive complicity of the people it dominates, affable oppression or delightful despotism. And this is the more effective because the culture industries it controls capture our imagination. The US uses its know-how to people our dreams with media heroes, Trojan horses sent to invade our brains. Only 1% of the films shown in the US are foreign productions, while Hollywood floods the world. Close behind come television series, cartoons, videos and comics, fashion, urban development and food. The faithful gather to worship the new icons in malls -- temples to the glory of consumption. All over the world these centers promote the same way of life, in a world of logos, stars, songs, idols, brands, gadgets, posters and celebrations (like the extraordinary spread of Halloween in France). All this is accompanied by the seductive rhetoric of freedom of choice and consumer liberty, backed by obsessive, omnipresent

advertising (annual advertising expenditure in the US exceeds \$200bn) that has as much to do with symbols as with goods. Marketing has become so sophisticated that it aims to sell not just a brand name or social sign, but an identity. It's all based on the principle that having is being.... The American empire has mastered symbols and seduction. Offering unlimited leisure and endless distraction, its hypnotic charm enters our minds and instills ideas that were not ours. America does not seek our submission by force, but by incantation. It has no need to issue orders, for we have given our consent. There is no need for threats, as it wins because of our thirst for pleasure."[\[24\]](#)

47. I do not present this account as decisive evidence of what is going on in the world. Its interest lies in the explanation it offers of how, by having "to formulate the problems [America] invents in the words [America] offers", the world adapts to a stronger, more modern language -- the language of redemption -- without overt coercion. Its recognition that desire is evoked by marketing discourse is surely familiar enough, the normalization of consuming desire is a banal feature of contemporary capitalism. But it is important to recognize that the process is not agentless. It is not driven by its own inexorable laws or produced by a global machine called "Capitalism" that everyone in the world can operate equally. Capitalism and the associated culture that many call by the name "modernity" are promoted vigorously by powerful liberal states and business corporations, and followed with varying degrees of enthusiasm and of success, by other agents around the world. It is in this context that we must understand the US Trade Representative's claim that greater adherence to human rights is encouraged by the acquisition of "Western (i.e. American) norms" in place of older ones.

48. My thought is not that this claim is arrogant but that it is true.[\[25\]](#) Cultures are indeed contradictory, as critics never tire of reminding us. But cultures are also *unequally displaced practices*. Whether cultural displacement is a means of ensuring political domination or merely its effect, whether it is a necessary stage in the growth of universal civilization or an instance of cultural bullying, is not the point here. What I want to stress is that cultures are to be understood not only in geometrical terms ("clearly bounded", "interlaced", "fragmented", etc.) but also in terms of the games of power by which -- rightly or wrongly -- *practices* are displaced, outlawed, and penalized. In an interdependent modern world, "traditional" cultures do not spontaneously grow or develop into "modern" cultures. It is people who are pushed, seduced, coerced, or persuaded into trying to change themselves into something else. It may not be possible to stop this process; it may be a good thing that the process takes place as it does because people really are redeemed through it. But it is not possible without the games of power.

49. Human rights discourse is not merely an ideal that speaks universally against the human abuse of human beings. It doesn't just reflect a universal

aspiration that the damage done by the powerful to the weak by torturing, starving, hurting, or humiliating them should be prevented or remedied. It is not simply about naming governments who practice torture (although it is about that). Human rights discourse is also about undermining styles of life by means of the law as well as by means of a wider culture that sustains and motivates the law. In the nineteenth century and the first half of the twentieth the expansion of European law in the Third World -- its growing universalization -- was openly recognized as an instrument of cultural transformation described first as "civilization" or "Europeanization" and then as "development" or "modernization", always linked to some vision of a humanity redeemed by its chosen elite.[\[26\]](#) Today human rights discourse, with its emphasis on the required autonomy of rights-exercising individuals, represents a universal ideal of justice. This historical origin does not invalidate human rights, of course. People outside Euro-America have welcomed them despite that origin -- many even because of it. But that origin, as well as the continuing inequality in the world today, puts them in perspective and helps to explain some aspects of their unequal thrust.

A provisional ending

50. It is generally agreed that as an ideal, human rights are intended for a secular world. They derive their authority not from heaven but from this earth. Yet most human rights theorists don't address seriously enough the thought that human rights is part of a great work of conversion. I have suggested that human rights are not simply found by the individual and invoked by her, that they serve to define "the human". The project of which human rights are part is less than thorough, often inconsistent, frequently subject to revision in its detail. But it is an integral part of our modern life. My conclusion should not be confused with the view of those who would attack human rights on the grounds that each culture has the god-given right to remain immune from criticism and change -- that demands in the name of the human must always be rejected in favor of cultural difference. On the contrary. The world we live in requires us to recognize our interdependence -- and hopefully to honor it. But it is not at all clear that this is done best through the system of nation states with their clear-cut boundaries and their gross inequalities in power and wealth, the system on which human rights law now depends for its interpretation as well as its application. Nor is it evident that human rights must be both cause and consequence of universal redemption.
51. Since all living bodies are subject to pain, decay, and death, to humiliation and loneliness, a universal ethic aimed at minimizing the suffering they occasion seems to me entirely right -- an ethic that calls for collective commitment as well as personal virtue, for respecting past and future generations as well as those now living. As the descendants of natural rights, human rights do not depend on complementary duties. There are no "human obligations" in a parallel sense. Human rights discourse may not, therefore, always be the best way (and it is certainly not the only way) to help remove oppression and relieve

suffering among human animals, as well as non-human animals, or to preserve the world's natural and cultural inheritance. Working in hospices, providing comfort for the traumatized, the sick, the destitute, helping to rejuvenate depressed neighborhoods, are among the activities that help to relieve human suffering. Such commitments remain outside the imperative of the law. This does not mean that the collective obligation to provide general services can be replaced by voluntary charity. If we are citizens of liberal democratic states concerned to make nation-wide welfare available we will, of course, vote accordingly. But it hardly needs to be stressed that while the collective duty to make adequate resources available is necessary it is not sufficient to deal with human suffering. For that certain virtues (compassion, patience, commitment, selflessness, etc.) are necessary, and these cannot be ensured by the law of the state.

52. It is the attempt to address non-human suffering that is now the most challenging. That animals have an *interest* in living free from human cruelty has long been recognized. But some people have gone further and asked: Why don't non-human animals have, like human animals, *all the rights of personhood*? This question springs from and demands a radical reworking of attitudes and behaviours in which our modern concept of "the human" is embedded. For attempts to draw a radical separation between "human" and "animal" have been a continuous feature of modern thinking and practice. The criteria for constituting "the human" in contradistinction to "the animal" have been endlessly debated: Do animals possess real consciousness? Do they have language in the proper sense? Are they able to change their culture as humans are? Ultimately the aim behind this questioning seems to be to distinguish the subject of rights from the objects of rights, the owner from the property owned. Although for a long time now the law has been concerned to penalize "unjustifiable" pain and distress to animals, there has been a strong reluctance to transform the way animals live in human company -- except perhaps in allowing them to become subjects of biological and psychological experiments that aim at "knowledge for human benefit".[\[27\]](#)

53. A remarkable new book by an animal rights activist and lawyer now demands legal personhood, and consequently rights, for chimpanzees and bonobos who have been cruelly mistreated in Africa and in Euro-America. But it also notes that "there are about 1 million species of animals [and that] many of them, say, beetles and ants, should never have these rights." They are too different from us. However, chimpanzees and bonobos are like humans. We are told that their genes and brain structures are similar to ours, that they are conscious and self-conscious, that they understand relations of cause and effect, make tools, live in complex and fluid societies, that they deceive and empathize, use numbers, communicate with symbols, treat illnesses with medicinal plants. That is why "an increasing number of scientists demand they be tucked into the genus *Homo* with us." writes the author Steven M. Wise [\[28\]](#)

54. This well-intentioned book wants the partition between humans and non-humans to be flexible, but it cannot do without it. The assumption is that to qualify for rights "they" must be sufficiently like "us" -- and conversely, that if they are too unlike us, they cannot be redeemed. Wise is right to insist that the statement "Animals can't have hu