HUMAN RIGHTS IN A POST-COLD WAR WORLD

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The idea of human rights is one of the most appealing contributions of western civilization. Rooted in some aspects of Greco-Roman culture, developed by the Enlightenment philosophies, implemented on a grand scale following the American—and less securely the French—Revolutions, the abstract concept of human rights has generated broad support. In the 1990s, from China to Chile, from Kampuchea to Kenya, people are demanding greater attention to human rights. Zbigniew Brzezinski, national security advisor to President Carter, wrote provocatively in 1989 that the notion of human rights was "the single most magnetic political idea of the contemporary time."[1]

Pursuing basic human dignity—or at least minimum social justice—by recognizing entitlements of the person is an idea whose appeal is clearly growing, even if it competes with nationalism and state interest. The end of the cold war between the Soviet Union and the United States has raised the possibility of creating a new world order in which human rights will be enhanced still further. The central thesis of this essay is that international concern with universal human rights will continue to increase, boosted temporarily by events in Central Europe, but in an untidy process involving much attention to competing values as well.

Retrospective on Central Europe

The rise of Mikhail Gorbachev in the Soviet Union, the decline of the Soviet European empire, and the end of the cold war did not mark the beginning of increased attention to human rights in world affairs. International laws and agencies focusing on human rights had been growing in number, and various states' foreign policies had begun addressing human rights as a distinct issue during the 1970s—although there was antecedent action in 1945 and earlier.

Nor is it true that human rights considerations per se caused the rise of Gorbachev and his decision to relax Soviet controls at home and over Eastern Europe. It was social and economic decay at home and overextension abroad,

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1. Zbigniew Brzezinski, *The Grand Failure: The Birth and Death of Communism in the Twentieth Century* (New York: Scribners and Sons, 1989), 256.

the Soviet version of Paul Kennedy's "imperial overstretch," that caused Gorbachev to relax police controls at home and permit national independence in Eastern Europe. The Gorbachev faction has only secondarily and half-heartedly endorsed political rights while the old guard has yet to do even that, as events in the winter of 1990–1991 demonstrated. Abandoning the Soviet empire abroad was part of the economic retrenchment necessary to bring Soviet political ends into line with economic means. While western pressure on behalf of human rights played a role in the changes Gorbachev either led or allowed, human rights were primarily a means to economic recovery.

Whatever Gorbachev's motivation, events in Central Europe in the 1980s gave a considerable boost to universal human rights in at least three major ways. First, the fall of Communist regimes in Central Europe discredited Leninism and Stalinism as rationalizations for human rights violations, although China and a few other nations like North Korea and Cuba cling to the old slogans. Gorbachev also refuses to jettison Marxism, trying instead to galvanize Soviet society under discredited banners. Other ideologies, and such notions as nationalism, national interest, and cultural relativism, can be used to rationalize rights violations, but Marxism no longer serves this end with any legitimacy.

Second, there is a domino effect emanating from reforms in Central Europe. Increased attention to rights in these former Stalinist states has led to demands for similar changes around the world—from Vietnam to Kenya, from Indonesia to Zambia. If one-party states in Europe can be transformed in accordance with, if not strictly because of, internationally recognized human rights, why can't other one-party states, dictatorships, and oligarchies accomplish the same goal? But the trend toward increased respect for civil and political rights is neither linear nor without exceptions, as conditions in Saudi Arabia should remind us.

Third, changes in Eastern Europe theoretically have freed the western states and Japan to pursue human rights matters to a greater extent, since the security threat from their main adversary has all but disappeared. For decades, leading western thinkers such as Hans Morgenthau and Reinhold Niebuhr had been preaching the doctrine that international morality is different from intranational or individual morality. World affairs, lacking a basic security brought about by a central government with a monopoly over legitimate force, could never be as secure and orderly as national affairs—at least national affairs as found in the industrialized West. Therefore in the cold war system of international relations, governments did not have the luxury of promoting individual human rights abroad on an even-handed basis; to do so at the cost of national security was both politically irresponsible and immoral. This argument, based on the "realist" philosophy, has lost much of its appeal for the West with the end of the cold war. While world affairs are not yet characterized by the same commitment to law and order as found in most western states—as events in the Persian Gulf clearly demonstrate—western states definitely have more room to maneuver on behalf of human rights

abroad without fear of compromising national security interests. Thus, for the United States and the West, morality in the international context now can be conceived as similar to morality in the intranational context.

Whether states, in fact, show greater emphasis on human rights in their foreign policies remains to be seen, for cultural and other factors often argue against such emphasis. Japan, for example, has not been enthusiastic about human rights action that might impede its long-term economic interests. Despite thousands of extrajudicial killings by Guatemala's army, President Bush moved to suspend military assistance to that country only after an American innkeeper was killed. Only recently has France begun systematically to raise human rights issues with its former colonies in Africa. Germany has been insensitive to human rights considerations in Iraq and Libya.

Although events in Europe and elsewhere have created an environment conducive to more international attention to human rights, it may be wrong to think that these developments will bring about a new world order in which human rights are a prominent consideration. The complexities of the subject can be discussed by examining three paradoxes and a possible synthesis.

Consensus and Controversy

Since 1945, and especially since 1970, there has been growing agreement not only on the notion and core definition of universal human rights, but also on the propriety of certain types of international action to push for their implementation. At the same time, the question of human rights remains one of the most controversial issues in world affairs. Increasing consensus is joined by considerable contention.

During the United Nations' (UN) first two decades, internationally recognized human rights were considered to be "low politics," as opposed to issues of "high politics" such as state security, power, and prestige. The articles of the UN Charter obligating states to promote human rights without discrimination were mostly dormant legal theory. The Universal Declaration of Human Rights adopted by the General Assembly in 1948 met with the abstention of the Soviet Union and its close allies as well as Saudi Arabia and South Africa. The only impressive international action for human rights was initiated in Western Europe, where the Council of Europe agreed not only on treaty standards but also, over time, on implementation and enforcement measures involving both conciliation and supranational adjudication. To a less impressive degree, the Organization of American States took action at the regional level to secure human rights.

Starting in the late 1960s and continuing through the 1970s, a variety of factors altered this situation. The new states of the non-western world employed the language of human rights to target Portuguese colonialism, South African apartheid, and Israeli seizure of territory. This movement within the UN led western states to examine other situations under the microscope of rights performance. The result was broad attention to actual rights behavior within states, through the UN Human Rights Commission and other UN

bodies. On the heels of this development came a US congressional focus on rights in reaction to the perceived amoral or immoral American involvement in Southeast Asia. After the Vietnam War came Jimmy Carter, with his rhetoric about human rights that materialized into actual rights policies on a number of questions.

In the meantime the Helsinki Accords of 1975, with their ticking time-bomb of human rights and humanitarian principles, had been signed by thirty-five industrialized states. Nongovernmental human rights agencies such as Amnesty International, Helsinki Watch, and Americas Watch proliferated and increased their visibility, budgets, and level of professionalization. Regional organizations such as the Council of Europe, the Organization of American States, and even the Organization of African Unity expanded their human rights activities.

State behavior confirms that human rights are now widely accepted as a legitimate area of *international* action. As the Permanent Court of International Justice said in the 1920s, what is international and what is not changes over time, depending primarily on the practice of states. When a human rights question arises, the defense of state sovereignty and domestic jurisdiction is increasingly overridden in favor of international involvement—at least in principle. This change is perhaps best symbolized by the growing number of international legal instruments on human rights and the number of states that formally accept those instruments. Formal acceptance, however, should not be confused with actual implementation. A few numbers may be helpful.

Currently, ninety states or 56 percent of those eligible have become party to the UN Covenant on Economic and Social Rights; eighty-six states or 54 percent to the UN Covenant on Civil and Political Rights; thirty-eight states or 23 percent to the optional protocol to that latter treaty, permitting private petitions to an international agency complaining of treaty violation. Moreover, 124 states or 78 percent became parties to the treaty on racial discrimination; eighty-six or 54 percent signed the treaty on apartheid; ninety-three or 58 percent signed the treaty on gender discrimination; ninety-eight or 62 percent signed the genocide treaty; 100 or 65 percent signed the treaty on refugees; ninety-one or 68 percent signed the treaty on labor freedom of association; and 165 or 96 percent signed the treaty on human rights in armed conflict (1949 law).[2]

Numbers like these make it difficult to argue that international concern with human rights is a strictly western notion reflecting cultural imperialism. The broad acceptance of international legal obligations pertaining to human rights by a clear majority of the world's states suggests a recognition of the basic concept of human rights. This is not to deny that governments speaking for states remain highly jealous of their prerogatives, or that formal adherence to concept and principle is frequently combined with actual violation of rights.

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2. David P. Forsythe, *Human Rights and World Politics*, 2nd edition revised (Lincoln, Nebr.: University of Nebraska Press, 1989), Chapter 3 (updated).

Hypocritical lip service to lofty values is a well-known feature of all politics. Nonetheless, never before in history has there been so much evidence that public authorities around the globe officially acknowledge fundamental human rights.

States and other international actors have accepted not only the basic notion of human rights but also a core definition of universal human rights found in the 1948 Universal Declaration by the UN General Assembly and in UN covenants on socioeconomic and civil-political rights. There is, therefore, a formal and broad, if somewhat abstract, contemporary consensus on the meaning of human rights. Events in Central Europe have reinforced this state of affairs and increased possibilities for more effective protection of human rights.

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A paradox arises from the fact that this formal and expanded consensus is combined with continuing controversy about almost every facet of human rights. There is some disagreement over conception and extensive debate concerning implementation. The United States, for example, is not a formal part of the international core consensus. Americans have considerable though not insurmountable difficulty accepting socioeconomic rights as genuine fundamental rights. Social programs such as food stamps are treated by the United States not as rights or entitlements but as *benefits* provided at the discretion of the government. The idea of adequate health care as a human right presents a similar problem for the United States, although some change in attitude may be underway on this issue. A New Jersey court recently held that there was no *right* to shelter in that jurisdiction. Only in Louisiana has a law been passed making access to higher education a right, regardless of ability to pay, for some citizens of that jurisdiction.

Outside the United States, many states are pressing for a conception of rights that goes beyond civil-political and socioeconomic rights. Some of the less-developed states promote the idea of a "third generation" of rights, including rights to peace, to a healthy environment, to economic development, to humanitarian assistance, and to the benefits of an international common heritage. These rights proposals have attracted broader support; the Pope, for example, has urged the revision of the 1948 Universal Declaration of Human Rights in order to incorporate the right to a healthy environment. Other states, while not necessarily objecting to increased public policy to protect

the environment, question whether such protection should be posed in terms of human rights.

The resurgence of fundamentalist religious movements has led to debate about the wisdom of affirming such civil rights as those guaranteeing freedom of religion and freedom from gender discrimination. While these debates have been pronounced in Islamic nations, they have occurred elsewhere too. A bill defining basic human rights introduced by the Israeli government in 1989 remains stalled in the Knesset because of strident objections by orthodox religious parties.

The matter of proper implementation of human rights regulations is far more controversial than the definition of basic human rights. For decades the Soviet Union formally acknowledged human rights—giving rhetorical priority to the socioeconomic ones—but it insisted that implementation was a choice of the state, not any external force. Other governments took similar self-serving positions. Even states supportive of human rights in principle debated fiercely their implementation in foreign policy. The Reagan Administration, while recording opposition to apartheid, argued for "constructive engagement" with the Pretoria regime in the face of other countries' calls for punitive sanctions.

Even human rights issues from generations past continue to generate controversy. In early 1990 the US Senate was the scene of heated debate over whether to pass a nonbinding resolution noting Turkish genocide of Armenians during 1915–1923. Whatever Senator Robert Dole's motives for sponsoring the measure were—and there is no evidence that he was motivated by anything but a symbolic opposition to genocide or a desire to deter or educate—other senators questioned the wisdom of offending a NATO ally. And indeed, that ally later proved to be important in the Persian Gulf crisis. Still other senators hesitated to focus on ethnic problems when much of Central Europe was gripped by similar rivalries, or preferred to encourage the positive steps that the Turkish government was taking in the area of human rights. The bill never did pass the Senate.

An important question facing the western hemisphere has been whether a democratically elected civilian government should prosecute violators of human rights from the military government it replaced. Answers to this question have varied. Argentina, like Greece, started to prosecute a few of the highest military policymakers; in both states, a civilian president later issued pardons. Uruguay held a referendum on the question and a majority voted not to prosecute but to pursue amnesty and reconciliation. Guatemala has never come close to prosecuting rights violators as its army has never reconciled itself to true civilian control. Chile is still debating, hamstrung by the fact that General Pinochet remains constitutionally protected as head of the military. Despite a general agreement on human rights, these countries face disagreement over proper means of implementation.

Finally, there is the controversy over indigenous populations. There is growing support in the UN for a treaty protecting the collective rights of indigenous peoples, allowing them to operate, at least temporarily, under

different human rights standards. Such a treaty would lead to the suspension of individual rights for some segments of indigenous populations. In the United States, federally recognized Native American tribes have their own jurisdiction and authority in certain matters. Under Indian jurisdiction, civil rights differ from those protected by the US Constitution and by international treaty and customary law binding on the United States. Women's rights, for example, are much less protected in most Native American law than in US law, causing considerable controversy.

In the post-cold war world, this mix of consensus and controversy is unlikely to change. There is likely to be, at a minimum, continuing endorsement of the basic notion of human rights and some expansion of the basic consensus. South Africa is moving toward joining the consensus; a restored Kuwaiti government will be under pressure to do likewise. Some backsliding—perhaps in the Soviet Union—cannot be ruled out, and the international and domestic debate over the proper conception of human rights will continue. Notions such as the right to life are so broad as to encompass many heated disagreements over "proper" interpretation.

Even when rights issues are resolved within national borders, the question of how best to implement rights in foreign nations will remain contentious. While Americans agree that summary execution is a blatant violation of human rights, whether they agree on terminating US assistance to El Salvador because of a pattern of summary executions by governmental forces is clearly another question.

Legal and Moral Legitimacy

Human rights in the post-cold war world will be characterized by competing conceptions of the legitimacy of public authorities. The second paradox is that while the international community continues to recognize the legal legitimacy of state authority by bilateral and multilateral acceptance, it also flirts with the notion of moral legitimacy based on human rights performance.

Before and during the cold war, public authority was *legally* legitimate from the international point of view if it was accepted by the rest of the international community. Acceptance entailed the bilateral process of recognizing a state as representing defined territory with a stable population and a government capable of discharging international obligations. The government was recognized if it was in effective control of "its" territory. This was followed by the multilateral process of admitting states to intergovernmental organizations and approving the credentials of governments within such organizations. The two processes coexisted uneasily, and neither process of recognizing states and governments had anything at all to do with human rights.

There have been exceptional cases in which recognition was given to "governments in exile" not in control of "their" territory. In the United States and the western hemisphere, moral or ideological fervor occasionally has gained the upper hand, resulting in the denial of recognition to a government espousing some version of Marxism or coming to power through violence.

From 1949 to the 1970s, when the United States refused to recognize the government of the People's Republic of China and sought to deny it a role at the United Nations, it is questionable whether the government in Beijing used more force and repression to maintain itself than the government in Moscow, which the United States had recognized in 1933. Even if bilateral recognition and UN credentials were seen most fundamentally as political acts in a bargaining process not governed by legal rules, this did not change the fact that human rights behavior had little influence on these decisions.

Since World War II, the United States has refused to recognize the Baltic Republics as a legal part of the Soviet Union, despite effective Soviet control over them. The United States did not adopt a similar policy toward Soviet Moldavia, which was also incorporated into the Soviet Union by force. Ironically, as the possibility of independence for the Baltics increased in the late 1980s and early 1990s, the United States, without exactly renouncing its policy, chose to downplay the question in order to reduce the difficulties facing a beleaguered Gorbachev. However, the actual human rights situations in both the Baltics and Moldavia weighed little in US calculations. Legal legitimacy, or its absence, was the result of either accepting existing power or political bargaining.

Increasingly a *moral* legitimacy based on human rights performance has been weighed against legal legitimacy. Private human rights groups, of course, stress the moral source. State attitudes toward legitimacy are sometimes another matter. Put differently, there are at least two sources of international legitimacy—legal and moral—and it is not clear which source is consistently more important.

This distinction is well-illustrated by Kuwait. The Bush administration referred to the legitimacy of the *state* of Kuwait, using traditional criteria such as the presence there of a US embassy and Kuwaiti membership in the United Nations. Bush also spoke of restoring the legitimate government, meaning the Al-Sabah family. But Senator Dole and others questioned the legitimacy of the *government* because of its lack of democracy and its discrimination on the basis of religion, gender, and national origin. Amnesty International reported a pattern of torture of Yemeni expatriates in Saudi Arabia at the same time the United States deployed thousands of troops to defend the Saudi government. Those opposed to the president's policy questioned governmental legitimacy on human rights grounds, de-emphasizing Kuwait's legal legitimacy derived from international acceptance.

During the Panamanian crisis, roles were reversed. The president argued that the Noriega regime was illegitimate on human rights grounds for being repressive and undemocratic, and therefore was subject to armed overthrow from abroad. Critics of presidential policy emphasized legal legitimacy, speaking of the norm of nonintervention among recognized states, regardless of the political character of the controlling government. Complicating the picture was the fact that the Reagan-Bush team had found Noriega quite legitimate when enlisting his help against Castro or the Sandinistas.

The point was reached where prominent scholars like W. Michael Reisman of Yale,[3] and high US officials like Jeane Kirkpatrick,[4] came to argue that human rights violations so delegitimized a government that unilateral use of force from abroad could be considered legal, even against a recognized state. For them, legal legitimacy derived from international acceptance was no barrier to unilateral use of force in the name of implementing human rights. This same argument of correcting human rights violations provided justification for US intervention in places like Panama, Grenada, and Nicaragua.

For several decades now human rights behavior has been affecting the legitimacy of public authorities. Violations of universal human rights erode the legitimacy of governments—and such would-be governments as guerrilla or insurgent movements. It is remarkable that "unofficial" armed forces such as the IRA in Northern Ireland, the *contras* in Nicaragua, UNITA in Angola, SWAPO in Namibia and the ANC in South Africa felt the need to address charges of human rights violations. The status of these groups as legitimate contenders for governmental authority has been compromised by credible reports of human rights abuses.

A strict reading of extant international law confirms an emphasis on legal legitimacy via bilateral recognition and multilateral acceptance in intergovernmental organizations. Deference to legal acceptance implies no intervention even to correct human rights abuses. That is why Charles de Visscher wrote that peace takes precedence over justice.[5] Correction is to be pursued via peaceful measures, as the International Court of Justice stated in its 1986 ruling that US sponsorship and use of force against Nicaragua was illegal.[6]

But contemporary state practice leaves open some question on this matter. West African states collectively intervened with force in Liberia to stop an internal armed conflict whose continuation was in clear violation of the right to life and other universal human rights. United States' self-serving practices aside, might not *collective* intervention be legal to correct gross violations of human rights, even if not consented to by the recognized government? How would interpretation of state practice have changed on this question if the Soviet Union had intervened for the democratic movement in Romania with US agreement, as apparently almost happened in 1989? In the post-cold war world there will be a need to resolve the question of when international action to correct human rights abuses can override the wishes of a recognized or controlling government.

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3. Michael Reisman, editorial comments, *American Journal of International Law* Vol. 84, No. 4 (October 1990): 866–77.
4. Louis Henkin et al., *Right v. Might: International Law and the Use of Force*, (New York: Council on Foreign Relations, 1989), Chapter 1.
5. Charles de Visscher, *Theory and Practice in Public International Law*, (Princeton: Princeton University Press, 1957), 328.
6. *Judgment in International Legal Materials* Vol. 25 (1986): 1023.

State Authority and Restrictions on States

As a result of growing international consensus on the importance of human rights, and consequent international action to help implement these rights, state sovereignty has been restricted. Yet the continued emphasis on legal legitimacy gives offending states considerable room to maneuver. Moreover, calculations of relative power remain decisive. Even if the InterAmerican Commission on Human Rights and the Organization of American States regard the death penalty as a violation of human rights, the United States has the political and resource power to resist regional pressure on this matter.

The third paradox is that the making and implementing of international public policy is still basically characterized by a system of territorial states, even though the territorial state is no longer completely free to treat persons, even within its jurisdiction, as it wishes. It is increasingly legally obligated, and politically pressured, to treat persons in accordance with universal (and regional) standards of human rights. In a formal sense the state is still sovereign, but increasingly its *use* of sovereign authority is limited on human rights grounds.

It bears emphasizing that it is still the state, through its government, that possesses ultimate formal authority. States negotiate human rights treaties and must formally adhere to them before being legally bound. States construct and maintain intergovernmental organizations, and state power primarily determines what international steps to defend human rights will succeed. In the Council of Europe, which features regional international law on human rights supported by supranational adjudication, state cooperation and commitment are essential to the effectiveness of the system. From 1967–1974, when Greece was governed by a military junta unsympathetic to human rights, the regional machinery was unable to protect rights. Even this most authoritative international regime for making and protecting human rights was stymied by state attitudes and power.

Questions of jurisdiction, authority, and power can not only become complicated but also abstract, especially when global generalizations are sought. Currently in the Sudan, all international parties attempting to provide assistance to the thousands of people dying from famine and war have to contend not only with the Sudanese state as a geo-legal entity, but also with the existing government in Khartoum. Relief workers must take seriously the Sudanese government's power to militarily interdict unauthorized activity on behalf of persons in need. The government had in fact shot down aircraft carrying humanitarian relief and had bombed relief areas thought to be supportive of the rebel side.

On the other hand, the Sudanese government is under international pressure, as is the rebel side, to exercise its authority within its jurisdiction (or, for the rebels, within the territory they control) in accordance with universal standards of human rights. Both the United States and the European Community made their economic assistance conditional upon effective and impartial delivery of humanitarian relief. Likewise, the UN and private organizations

like the International Committee of the Red Cross pressed both fighting parties to permit "humanitarian corridors" for nutritional and medical relief.

The formal territorial jurisdiction of the Sudan was penetrated—with varying degrees of success—by the activities of public and private relief agencies. Sudanese sovereignty was limited in practice by its need to respond on some level to international concern for starving civilians. If outside parties were not free to disregard the jurisdiction and authority of the Sudanese government, or the de facto jurisdiction and authority of the rebel side in certain areas, likewise the de jure and de facto authorities in the Sudan were not free to disregard the views of outside parties concerned with human rights.

A similar situation existed in El Salvador. Outside parties were not free to disregard the state as a geo-legal entity, nor the authority of the government as the voice of the state. Outside parties at the same time had to acknowledge the de facto authority of the rebel side if they wanted to achieve respect for the principles of the Geneva Conventions or a negotiated end to the conflict.

States are increasingly pressured to treat persons in accordance with universal standards of human rights. In a formal sense states are still sovereign, but increasingly their *use* of sovereign authority is limited on human rights grounds.

Likewise, both the government and the rebels were not free to disregard the concern for human rights expressed by outside parties. The US Congress made foreign assistance to El Salvador conditional upon the upholding of minimum human rights standards. The International Committee of the Red Cross at one point threatened to withdraw its presence from the state if certain improvements were not forthcoming from the government side. Such a withdrawal would have had a profound impact on congressional critics. At one point the United Nations Human Rights Commission appointed a rapporteur to compile information on the human rights situation in the country—itself a type of diplomatic pressure.

The rebel side was under analogous pressure. Each reported rebel atrocity caused the US administration to ask Congress for an increase in military assistance to the government side. The rebels' killing of US airmen who were *hors de combat* led to rebel promises of punishment for those responsible.

The formal jurisdiction of the Salvadoran state was penetrated and the authority of the government limited by public and private organizations concerned with human rights. The rebel side was also not free to wage war without restraint if it wished to be viewed as a responsible political actor worthy of support. For both sides moral legitimacy was linked to human

rights behavior. This led to practical penetrations of de jure or de facto jurisdiction, and to limitations on the exercise of de jure or de facto sovereignty.

The objection might be raised that examples to this point have been drawn from weak governments in less-developed countries that have much need of international support. Let us now turn to the case of the Soviet Union in the 1980s. The formal jurisdiction and sovereignty of this military superpower was not questioned through the mid-1980s, yet the Soviet government was not impervious to international concern for human rights in the exercise of this sovereignty. If the Soviet central authorities wanted to be accepted as a legitimate European government and proceed with détente, they could not continue with the repression associated with Stalinism. If they wished to avoid sanctions from the World Psychiatric Association, they had to reform their practice of political psychiatry. If they wished to avoid damaging reports from Helsinki Watch and the subsequent criticism of foreign governments, the Soviets had to change their policies.

Likewise, the United Kingdom was compelled to alter its security policies in Northern Ireland not only because of domestic criticism, but also because of rulings by the European Commission and Court on Human Rights. British territorial jurisdiction was penetrated by the functional jurisdiction of the Council of Europe and its human rights machinery. The British actually limited their own sovereignty by helping to establish a supranational authority capable in law and practice of compelling change in national policies.

It would be naive to think that international attention to human rights is strong enough or singularly focused enough to curtail gross violations of human rights in the 160 states of the world. Some states, or rather the governments that speak for them, are largely impervious to international criticism and concern—at least in the short run. On the other hand, international pressure in support of human rights may be largely absent.

After the 1979 revolution in Iran, the Iranian government operated under the assumption that outside voices did not matter; it was prepared to endure, at least for a time, the almost total isolation brought about by its religious fanaticism and brutal policies. This orientation has gradually been replaced by a growing awareness of the need for international contact and intercourse. Military authorities in Myanmar (Burma) are still operating under the assumption that they can ignore the results of free and fair elections, and can endure whatever international isolation that policy brings about. Chinese authorities appear to believe that their repression of the democracy movement in June 1989 will eventually be forgotten by foreign critics. The United States has fed this assumption in exchange for Chinese support for US policies in the Persian Gulf. For economic reasons Japan resumed its economic aid and trade with China rather quickly after the Tiananmen Square incident.

The United States, too, may fairly be placed in that category of states that frequently disdains international comment on its human rights record. The tradition of American exceptionalism, the notion that Americans constitute an exceptionally good people with much to teach the world, has led to a type

of intellectual or moral collective egocentrism that disparages international influences on American society. Moreover, US economic and military power has reinforced this American tendency to think of international relations as a one-way street, in which influence flows from us to "them."

A particularly offensive version of American exceptionalism was cited by Paul Gordon Lauren in his review of US Senate debates regarding US participation in the League of Nations. Said Senator James Reed of Missouri in 1919: "Think of submitting questions involving the very life of the United States to a tribunal on which a nigger from Liberia, a nigger from Honduras, a nigger from India . . . each have votes equal to that of the great United States."[7] Is this view so different from those of Jesse Helms, Strom Thurmond, Orrin Hatch, and others who insisted that a "sovereignty package" be attached to US consent to ratification of the Genocide Treaty? Is it so different from the "sovereignty proviso" linked to US ratification of the UN Torture Treaty? In both cases, the US Senate sought to render the original treaties and related monitoring mechanisms meaningless. Said Jesse Helms in 1990 during the debate on the UN torture treaty:

> Our Constitution is unique. It does and must take precedence over any other international legal regime. . . . I believe that the Bush administration has made a serious mistake by dropping [the] reservation [against the UN Torture Committee]. To see why this is a mistake one only has to look at the current membership of the Committee on Torture, which includes a representative from the Soviet Union and Bulgaria. The Soviet Union and Bulgaria have their own particular expertise in the matters of torture. . . . One could well say in this case that the lunatics are indeed running the asylum. I do not want those folks poking their noses into the operation of the US legal system. . . . I take it as a given principle that the underlying object of US diplomacy is to protect and enhance, both in the short run and in the long run, the sovereignty and independence of the United States.

Similarly, in the US Supreme Court case *Thompson v. Oklahoma,* questioning the applicability of the death penalty to juvenile offenders, Justice Antonin Scalia castigated some of his colleagues who looked to international community standards in defining the concept of cruel and unusual punishment. It was of no import to Justice Scalia that the Geneva Conventions for protection of victims of war stipulated that the death penalty could not be applied to war criminals under the age of eighteen, or that other democratic states had laws specially protecting juvenile offenders. He wanted no such international considerations to muddy the purity of strictly US jurisprudence.[8]

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7. Paul Gordon Lauren, *Power and Prejudice: The Politics and Diplomacy of Racial Discrimination* (Boulder, Colo.: Westview Press, 1989), 113.
8. 108 Supreme Court 2687, 1988, 2696.

To summarize this third paradox, while it is true in general that state jurisdiction is being increasingly penetrated and state authority increasingly restricted by concerns for universal human rights, different states at different times on different issues vary with regard to their susceptibility to international thinking and action on human rights. State independence coexists with restrictions on that independence.

A Concluding Synthesis

The status of human rights in the post-cold war system of world affairs is very complex and difficult to specify. First, there is growing consensus in support of the notion and core definition of *universal* human rights, along with growing acceptance of the desirability of some *international* action in their behalf. But controversy continues over both conception and proper implementation. Second, there are competing conceptions of the legitimacy of public authorities in the international system, with the traditional *legal* sources being impacted by new *moral* sources based on human rights performance. Positive international law emphasizes the former; but state claims and practice are increasingly emphasizing the latter. Third, state jurisdiction and authority are being challenged in the name of international concern for universal human rights. Yet state jurisdiction and sovereign authority are still central to the international system. The impact of international concern for human rights on national policy varies with states and issues.

There will continue to be growing emphasis on human rights in world affairs, but in a jagged or zig-zag progression. Advances in human rights promotion and protection will be accompanied by setbacks. This trend is but a continuation of the past, affected—at least temporarily—by events in Central Europe. An incremental revolution will continue. There are too many laws and agencies devoted to human rights, and there is too much conscience-raising rhetoric and activity, for the process to be reversed or ignored in general.

As repressive systems of rule, such as those in Eastern Europe, crumble, new human rights problems will emerge to test the wisdom and capability of national and international policymakers. The demise of Stalinism has been accompanied not only by increased attention to civil and political rights, but also by genocidal attacks, racism, minority grievances, anti-semitism, and issues of individual and collective self-determination. Some of the former Stalinist states have become parties to international human rights treaties and even applied for membership in the Council of Europe. Some of them have become very active in UN human rights proceedings. But there are also European elements deeply opposed to these trends, especially in the Soviet Union, as well as fears that economic hardship will undermine the advances in civil and political rights since 1985. Nevertheless, out of a variety of situations one could chart over time growing international attention to human rights and an increasing sensitivity of many governments to that international sentiment, despite state concerns about sovereignty, security, and material

well-being. A useful summary is provided by Thomas Buergenthal, a Holocaust survivor and now a judge on the InterAmerican Court of Human Rights: "At no other time in the history of mankind have more human beings believed that they are entitled to the enjoyment of human rights than today. The yearning for a society in which human rights are respected has become a universal phenomenon of our times."[9]

9. Thomas Buergenthal, "International Human Rights Law and Institutions: Accomplish and Prospects," *Washington Law Review* Vol. 63, No. 1 (January 1988): 1.