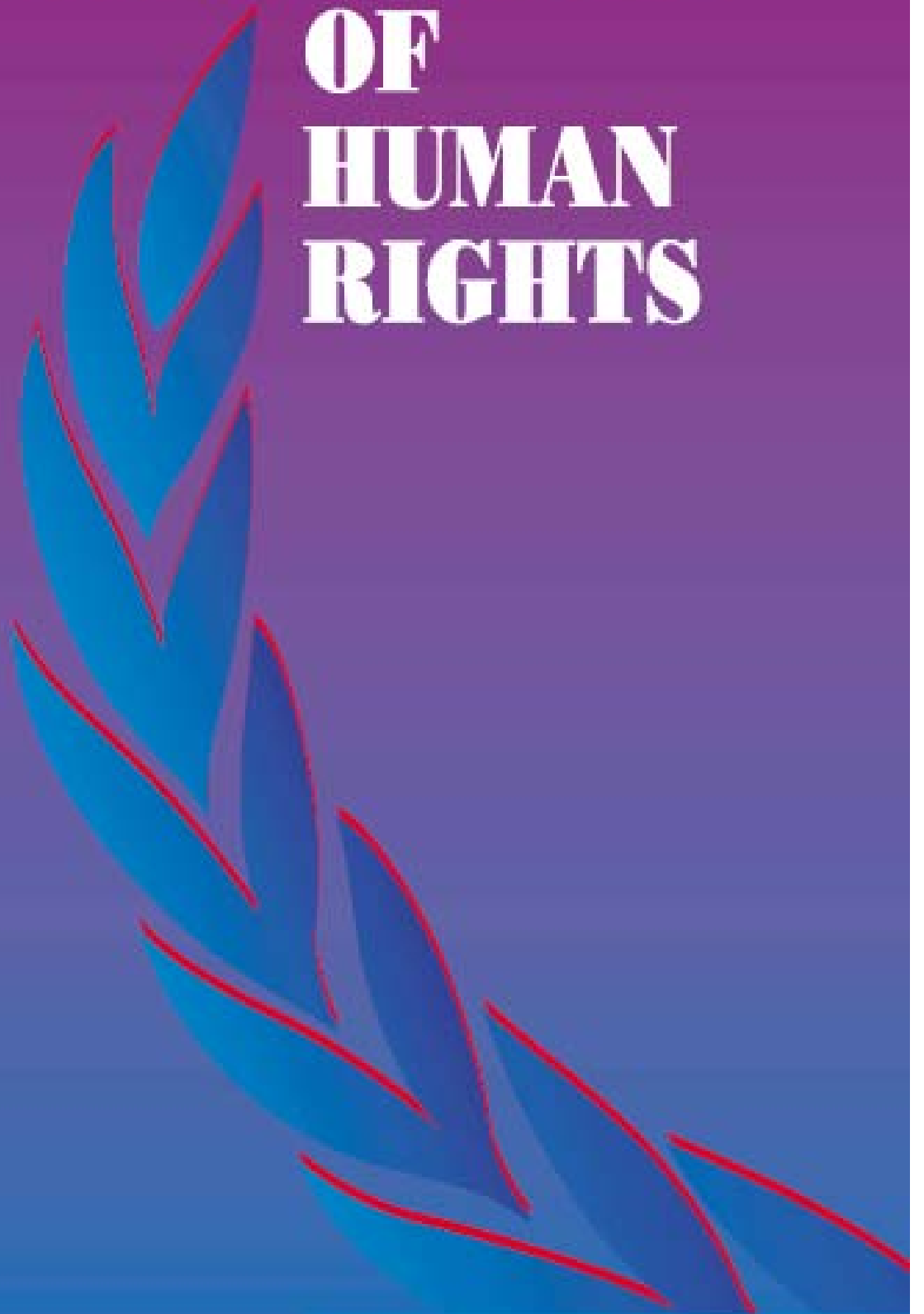


THE GLOBALIZATION OF HUMAN RIGHTS



The globalization of human rights

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Anne-Marie Gardner



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Introduction: Human rights and international order

*Michael W. Doyle and Anne-Marie Gardner*¹

Reflecting on the costly conflicts and international interventions in Kosovo and East Timor, UN Secretary-General Kofi Annan recently declared: “State sovereignty, in its most basic sense, is being redefined . . . States are now widely understood,” he went on to say, “to be instruments at the service of their peoples, and not vice versa . . . [while] individual sovereignty – by which I mean the fundamental freedom of each individual, enshrined in the Charter of the United Nations and subsequent international treaties – has been enhanced by a renewed and spreading consciousness of individual rights.”²

The Secretary-General is clearly identifying a powerful stream in the rethinking of legitimate international order. He also highlights a serious tension between increasingly influential global principles, on the one hand, and the practical difficulty, on the other hand, of implementing them in the face of states reluctant either to abide by the principles of human rights or to commit the resources needed to give those principles impartial and general effect when they are violated. But before these practical dilemmas arise, there are conceptual challenges that should be addressed first.

Is there a sufficient consensus on the content of “individual sovereignty”? What is, what should be, the relation between civil and political individual sovereign rights and social and economic individual sovereign rights? Can individuals suffer desperate material deprivation and still be fully sovereign? Do states across various regions and in different stages

of development – east and west, north and south – share enough of a consensus on the content of those rights to call them legitimate and universal? And if states do share a consensus, is it strong enough to incorporate duties of international distribution to the materially desperate or global obligations to assist in the enforcement of those duties against claims of national sovereignty? These are the questions this volume addresses. But before we do so, we would like to introduce the debate on human rights and address how a concern with international human rights, viewed practically in world politics, fares against the criticisms typically made by the influential, sceptical tradition of realist thought on international relations. Are human rights and international relations compatible?

The evolution of global human rights

The 1948 Universal Declaration of Human Rights (UDHR), which outlined a “common standard of achievement” for the future of human rights, has become the cornerstone of a burgeoning international human rights regime. The number, scope, and implementation strategies of international human rights treaties and conventions has increased over the past half-century, creating a vast body of human rights law at the heart of a robust regime. Three trends highlight the increased prominence of human rights in international relations and the difficult questions the regime faces for the dawn of the new millennium. First is the proliferation in the number and scope of human rights instruments, expanding across three “generations” of rights. A second trend traces the regime’s increased attention to implementation – evidenced both by mechanisms included within instruments as well as by activities of new actors in the regime. Finally, most scholars agree that the concept of human rights places limits on state sovereignty, but the exact relationship between state sovereignty and human rights, or individual sovereignty, remains a matter of intense debate and continued evolution.

The UDHR was not a binding treaty, but rather a declaration of principles and aspirations. The most visible trend in the development of human rights over the past decades has been in the increased number and range of treaties which elucidate or add to the principles of the UDHR. Most notable are the two international covenants – the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights – which transformed many of the principles of the UDHR into binding treaties when the covenants came into force in 1976. These are supplemented by a vast number of more specific instruments (e.g. the Convention against Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention on the Rights of the Child) and regional conventions (the European Convention on Human Rights in 1953, the American Convention on Human Rights in 1978, and the African Charter on Human and Peoples' Rights in 1983). Scholars often describe three "generations" of rights according to the order in which types of rights gained prominence in the regime: civil and political rights (e.g. right to free speech); economic, social, and cultural rights (e.g. right to education); and group rights (e.g. from minority protection within states to rights to national development within a global order). These generations of rights are illustrated by their inclusion in the three regional conventions – the European Convention includes only civil and political rights, the later American Convention covers first and second generation rights, and the most recent African Charter contains all three.³

Another important evolution in the international human rights regime has been its change of emphasis from promotion of rights (articulation in declarations and conventions) to active protection of rights (mechanisms for monitoring and enforcement).⁴ Many of the conventions specified above establish a special commission or committee designated to monitoring the treaty's provisions (e.g. the Committee on Torture). New actors – in addition to the regional intergovernmental organizations which drafted the regional conventions – have also joined the regime. National governments like the Carter administration in the United States have made human rights an element of foreign policy. A host of new non-governmental organizations such as Amnesty International or Human Rights Watch provide information and lobby governments, highlighting violations and contributing to global protection efforts.

But the most transformative aspect of the human rights regime for the international system is found not in its growth in scope, instruments, implementation, and players but in its impact on a fundamental principle of international relations: state sovereignty. The foundation of the current state system – and a key feature of international relations since the seventeenth century Treaty of Westphalia – is the notion that states enjoy sovereign equality: no state has the right to interfere in the domestic affairs of another state; this is preserved as Article 2(7) of the UN Charter. However, many scholars agree that by granting rights to individuals, the conception of human rights limits state sovereignty – human rights abuses within state borders, even perpetrated by a government against its own people, are no longer matters solely within the purview of domestic affairs. Many noted experts agree with Secretary-General Annan that a state's legitimacy is tied to proper treatment of its citizens and an offending state can no longer hide behind a mantle of sovereignty alone.

This issue – the nature of the relationship between human rights and state sovereignty – lies at the core of many contemporary debates in the field: the cultural relativity of rights, international humanitarian intervention, human rights abuses as underlying causes of conflict, and how to address past abuses in post-conflict peacebuilding.

International scepticism and human rights

Despite the growth of human rights over the past 50 years, much of the discourse on international relations theory is deeply sceptical of the normative weight and practical force of not merely global human rights, but all claims to rights and duties across borders. Some even dispute the role of ethics in politics in general. Statements such as Vaclav Havel's that the war in Kosovo was a (perhaps, he says, *the* first) humanitarian war, a war motivated by ethical concern, strike many scholars and realist practitioners of international politics as strange and mistaken.⁵ Many are much more likely to endorse the words of William Wordsworth, that great earlier poet of democratic revolution, with his ever-so-devastating comment on his times: "Earth is sick; And Heaven is weary, with the hollow words; Which states and kingdoms utter when they talk; Of truth and justice."⁶ Even though Arnold Wolfers, Michael Walzer, Stanley Hoffmann, Hedley Bull, Richard Ullman, and a new generation of international relations scholars have identified important markers for the role of ethical judgment in international relations, the default scepticism must still be addressed.⁷ We need to explore the sceptics' view and explain why international ethics should not and need not be evaded through three classic but dangerous simplifications, each of which serves as an excuse for dismissing ethical judgment.⁸

- Ethics should be limited to private life; supposedly because public political life is necessarily a separate world of dirty hands. This is the Machiavellian problem.
- Ethics should be domesticated, seen as fit only for domestic politics and judged to be inherently absent from, and irrelevant to, international politics, which is the Hobbesian problem.
- Ethics can be dismissed as being inherently a set of hypocritical or merely self-serving political slogans. We could call this Wordsworth's problem.

The first and most prevalent reason why we are told that ethical judgment can be ignored is that it is inapplicable to political decisions. As Dean Acheson, former US Secretary of State, once said, "Moral Talk was fine preaching for the Final Day of Judgment, but it was not a view I would entertain as a public servant."⁹ This is often called the ethics of

public responsibilities. Engaging in politics means, and requires, “learning to be cruel to be kind” (as Shakespeare’s Hamlet intoned).¹⁰ In political theory, this is the Machiavellian problem. “A wise prince,” Machiavelli said, “knows how to do wrong when it is necessary.” And it is often, very often, necessary to act, he adds: “. . . contrary to truth, contrary to charity, contrary to humanity, contrary to religion – if the Prince wishes to sustain his government.”¹¹

Ethics, it is said, is for stay-at-homes, those happy men and women who till their own gardens, secure in the knowledge that they are able to do so safely. But princes, it is added, have no choice but to be like the “ferocious beasts,” for the moral life available to private men and women is neither safe nor sufficient for them. “Princes must be like a very savage lion and a very tricky fox.” But why “must”? First, for themselves: for without beast-like force and fraud, they will be overthrown. And, second and more tragically, for us: for without the political order of government we would all have to be beasts, too, or perish under the attacks of thieves and murderers. Our making ethical judgments of specific political acts is therefore inappropriate and an act of bad faith, so many realists have said.

But this is too simple. Machiavelli knew it was, and so should we. Princes can and should be making moral choices. Not every prince is the leader of a threatened coup, everywhere and with everyone at war. Old, traditional princes would do themselves harm if they acted like new princes, the successful coup masters. Rules and traditions are the bulwarks of traditional princes.

As importantly, we private men and women in our gardens can hardly claim the virtue the political amoralists grant us. Are we, in fact, free from moral conflict? Are we free from contrariness with respect to truth, charity, humanity, and religion? Machiavelli, author of the *Mandragola*, knew we were not. In that racy, sexual comedy, the wily Callimaco, deeply in love, tricks old Nicia into allowing him to sleep with his beautiful young wife Lucrezia. With Lucrezia’s connivance, Callimaco invents a curse that the first man to sleep with her will suffer a painful death. Gullible Nicia allows Callimaco to “suffer” for him. Private men and women – Callimacos and Lucrezias – are as crafty and ruthless as any fox-like public prince.

Machiavelli thus says private life, too, is not without moral corruption and authentic moral conflict. So should we. Moreover, we do. We do not grant our politicians a moral hunting licence. Indeed, we may hypocritically hold them to standards we rarely meet. In short, we share a moral universe with politicians. If we endorse their ability to punish or even kill in the name of the state, it is because we allow ourselves to use force in self-defence. They can be said to do it for us, because we are prepared to

do it for ourselves. We hope they will do it more impartially – for public ends – and are often disappointed. But both public and private individuals can make moral choices and often face dreadful trade-offs. The world often requires some very hard trade-offs where rules of moral conduct confront the moral value of public survival and these are choices both we and our leaders understand.

If all politicians are not inherently different, inherently absent from moral judgment, maybe, say the second set of critics, it is the *international* politicians who fall outside the ethical standard. The minister of health and the town mayor are in the ethical world; Bismarck, Kissinger, the foreign minister, and the secretary of defence are out. This is the Hobbesian problem.

Hobbesians argue that nation states exist in a condition of international anarchy with no superior world state to provide law and order. There follows a general struggle for power – all against all – fuelled by competing desires for scarce goods, by fear of what others might do, by hunger for glory. Internationally, nations have no choice but to compete, because the competition is for survival. Domestically, ethics can be established once a state establishes law and order. Then promises will be enforced, social norms will be decreed, and those norms will be taught to the young. Lacking an international government of law and order, all is uncertain. Anything goes in the struggle for survival. This is the condition of complete struggle that Sherman had in mind when he told the citizens of Atlanta, after he burned their city, “War is cruelty and you cannot refine it.”¹²

But again moral life is not so simple. International politics is not an absolute struggle of all against all. Contemporary relations between the UK and France, Germany and Belgium, and the United States and Canada bear no similarity to that Hobbesian model. Relations are safe from war and shaped by international law.¹³ Even the genuine representation of citizens becomes mixed. Both the US Midwest and Canada cause acid rain, but Ottawa’s greater concern for the consequences may better represent a downwind New Englander than does Washington. Even in war, most states have come to accept the principle that the struggle is not “against all.” Rules of war forbid struggle against non-combatants, against children, against the ill in hospitals. And some modern Hobbesians fail to ask what is the meaning of survival – national or state survival. States are artificial beings, not natural ones. They exist, as Wolfers has noted, for the purposes of their inhabitants, not their inhabitants for states.¹⁴ Some citizens shuck off their sovereign Leviathans as the British did in 1688, the American colonists did in 1776, and the former Soviets did in 1991. Moreover, the moral meaning of survival is frequently contested – up for domestic political competition – as it was in France in

the 1940s. Was France to survive physically and conservatively as it did under Marshall Pétain's Vichy regime or be risked, grandly, as it would be under General de Gaulle's Free French Resistance?¹⁵

States represent, or can represent, not merely our fears (as Hobbes argues) but also our hopes and our ethical commitments. Goals and values therefore define what normal survival means, what is worth protecting in both domestic and international politics. US civilian and military officials, for example, swear to preserve the constitution, a set of principles. Our ends define what is worth sacrificing for and shape even the international behaviour of states.

The third objection to international ethics accepts the view that politicians can be as ethical as we are (or no worse) whether they are engaging in foreign or domestic affairs. But, as the sceptics like Wordsworth have said, politicians regularly – just about always – choose not to be. Their international ethics is all ordinary cynical hype and nothing more. They can be ethical. They choose to be hypocritical, paying the small tribute vice pays to virtue. Preaching ethics to them is thus like preaching chastity in a bordello. In 1949, the Navy decried the A-bomb, then the sole property of the Air Force, as immoral. By 1951, two years later, as the Navy started to assemble its own atomic arsenal and plans for a nuclear submarine force, atomic bombs suddenly became necessary to the survival of the free world. Of course, neither their criticism nor defence was thought convincing.

Again we should hesitate to generalize the hypocrisy. Ethical arguments need not be altruistic to be convincing and some seem even to masquerade as self-serving advantage. At the Teheran Conference in 1943, Stalin suggested to Churchill that after the defeat of Hitler, all 50,000 of the German Officer Corps should be summarily shot by the Allies. Churchill replied, "The British Parliament and public will never tolerate mass executions. They would turn violently against those responsible after the first butchery had taken place."¹⁶ Churchill's fear of reprisals from the British public does not wash. Indeed, shouldn't we suspect hypocrisy in reverse? Appalled by the indiscriminate slaughter Stalin proposed, Churchill invents the self-serving logic of electoral advantage and political survival to appeal to the ruthless Stalin and, perhaps, soothe his own discomfort with "moral talk."

A grammar of international ethics and rights

International ethics are therefore not impossible because politicians – unlike us – must be beasts, nor because international politics is a universal jungle, nor because nothing but hypocrisy and partisan advantage can

influence a politician. What then is international ethics? How do human rights incorporate those ethical principles?

Human rights, like all ethical claims, are part of the inescapable judgment that precedes action. Not all judgment, however, is or need be ethical. Prudential judgment prescribes productive strategies in the pursuit of given ends for a given person. Aesthetic judgment asks what is best, good, or beautiful. Ethical judgment combines prescription (like prudence); over-ridingness (what is best like aesthetics), and impartiality – what should be done not just by or for me, but by or for anyone in the same position. You should, as I should, fulfil an ethical duty because it is designed to apply to us all, like the “golden rule” of doing unto others as you would have them do to you.

Three concerns shape ethical judgment. In a fine book on *Nuclear Ethics*,¹⁷ Joseph Nye calls them motives, means, and consequences. Let us call them ends, means, consequences.¹⁸

An ethical end is necessary. Only ends justify, if anything can, the means we employ. In simple terms, it is ends that make some wars just: for example, defensive wars when they seek to protect the borders, the territorial integrity and political independence that allow people to determine their own lives freely. Related ethical arguments can justify some humanitarian interventions across borders to rescue peoples from genocide and other grievous and systematic violations of their basic rights. People can not shape their lives collectively if they are being repressed and slaughtered.

Good ends, however, are not sufficient to justify our acts. The theologian Paul Ramsey has shown why not in a striking parable. If we really, truly, sincerely, deeply wanted to end, once and for all, the deaths and injury to tens of thousands each year in auto accidents – a worthy end surely – there is a simple and sure-fire means. All we have to do is tie, in as comfortable way as possible, babies to the front and rear of our automobiles. Can anyone doubt that, slowed to a fully moral crawl, our cars would successfully avoid thousands of traffic accidents?¹⁹

The problem here is in the means: the anguish to innocent infants, and perhaps even more the anguish to parents, none of whom is individually responsible for the collective tragedy of auto fatalities. Some ethicists have condemned nuclear deterrence for just these reasons: deterrence terrorizes innocent civilians.

Third, even with good ends and acceptable means, we need to consider and anticipate consequences. Our sense of ethical ends (e.g. national self-defence, national self-determination) and ethical means (e.g. in war, respecting non-combatant immunity because non-combatants pose no direct threat) are powerful and inherited and learned intuitions. They are

taught by parents, learned at our mother's knee (or, as Acheson once said, some other low joint). They are part of now-traditional, evolved social conventions.

We need to govern these intuitions or rules by a consideration of consequences. It is wrong to lie in ordinary morality, but only a fool would tell a known murderer the location of his prospective victim. Similarly, even if Kissinger is correct that the United States fought in Vietnam in order to prevent South Vietnam from falling prey to a totalitarian communism from the North²⁰ and if the United States had fought the war justly, minimizing where possible civilian non-combatant casualties; the war could and would have been morally flawed if the United States had failed to consider the suffering that would result from trying to win against a guerrilla movement supported by a large fraction of the population in a culture that the United States did not understand for a local government that had little support from too few of its own people.²¹ A similar moral wasteland was emerging in Serbia in the spring of 1999 when NATO looked at the prospect of destroying, by October or November of that year, tens of thousands of non-combatant Serbs through the disease and medical deprivation that in a modern society accompanies the destruction of electricity, transportation, and trade – all traditionally legitimate targets for bombing. The ends and means were justifiable: rescuing and returning thousands and thousands of non-combatant Albanian Kosovars “ethnically cleansed” from their homes and avoiding in the process as much as was feasible the bombing of non-combatant Serbs. It was the indirect consequences on the ability of the Serb population to provide essential services needed for health that were becoming morally unacceptable. Goals and means become disproportionate when warriors find themselves destroying villages in order to save them or killing more non-combatants in order to save fewer non-combatants. Unavoidably violent means need to be proportionate to legitimate ends. And to do this, we need to consider all the available alternatives and weigh the consequences of each.

How are these ethical principles related to human rights concerns? In order to understand the role of human rights in the international system and the importance of the trends outlined earlier, it is not enough to defuse sceptical arguments and to conceptualize the nature of ethical judgment more generally. One must also delve into the notion of rights. What makes human rights deeply similar to the broad principles of international ethics, yet “strikingly different from the rest of international law,” is that individuals, rather than their states or governments, have *rights*.²² This shifts the focus from state sovereignty to individual sovereignty. What, then, are “rights”? How are they distinguished from other

moral norms? What is the nature of the relationship between rights and duties?

Three aspects distinguish rights from other moral norms: they are expressed in general terms, prescriptive, and non-contextual. First, rights can be expressed in general terms. Following in the tradition of natural rights, rights are usually articulated in a bill or declaration of rights. In the international human rights regime, the UDHR and the two international covenants are collectively referred to as the International Bill of Rights. Though the debate rages over specific hierarchies of rights (do civil-political rights have precedence over social-economic-cultural rights or vice versa), states can agree and articulate in conventions what rights exist and what the gravest breaches are (e.g. genocide, torture).

Second, rights are prescriptive. They grant the rights-holder an entitlement, an empowerment to press claims, or grounds to demand action.²³ They are not favours bestowed by others; they invoke indignation when not upheld or honoured. Human rights specifically may connect to the legitimacy of a state: traditional notions of state sovereignty alone are not enough to confer legitimacy if a state ignores the prescriptions of the human rights regime and offends the basic rights of its citizens.

Finally, rights are to some extent non-contextual. Under classic theories of natural rights, any human being, by virtue of his/her potential to exercise rational choice, has rights.²⁴ Rights are thus grounded in human dignity and are only limited primarily by others making similar rights claims. One scholar goes so far as to describe rights as trumps, which outrank any other interests and override utilitarian calculations of community benefit.²⁵ Human rights are rights of the highest order – the final resort in the realm of rights.²⁶

If rights are expressed in general terms, prescriptive, and non-contextual, what can we conclude about their relationship to duties? While some early political and legal philosophers argued that every right had a correlative duty, most scholars now agree that the relationship is more complex than this simple reflexivity. Some rights do have a correlative duty; however, some rights (like the right to pick up a dollar bill off the sidewalk) have no corresponding duty and some duties (like giving to charity) are not reflected in a reciprocal right.²⁷ One noted scholar argues that basic human rights escape this intellectual morass because they always trigger three kinds of correlative duty: the duty to avoid depriving, the duty to protect from deprivation, and the duty to aid the deprived.²⁸ It is the role of ethical judgment in international relations to determine when and how to enforce universal human rights principles and to determine what duties – and to whom – are attendant with individuals possessing rights.

International human rights and international order

If the arguments above hold water, then international ethics and international human rights are not impossible intrusions in international relations. Ordinary ethical judgment, moreover, is identifiable and applicable and, following the arguments of two authors in the volume (Ruth Gavison and Claire Archbold), necessary to decide on the just content of human rights. Why then, so regularly, do we find such a gap between human rights principles and actual behaviour in foreign relations?

The simplest reason is that the behaviour may or may not in particular instances be motivated by human rights. More troubling is that even when it is (and we often have little reason to assume not) it does not have the same civilizing effects as ethical behaviour in domestic politics. It is much more constrained because international politics is conflictual, confused, and uncontrolled. There are at least four reasons for this unfortunate outcome:²⁹

- (a) anarchy – no enforcement
- (b) moral diversity – conflicting values
- (c) uncertainty – as to adversary, intentions
- (d) uncertainty and lack of control over our responses.

International anarchy does not make ethical behaviour impossible. As noted, statesmen are moral and immoral beings like the rest of us, but it does make ethical behaviour difficult and the international good problematic. The lack of a world government capable of enforcement means unethical behaviour lacks adequate punishment, and evil is insufficiently deterred. Many criticized the US war in Vietnam as an unjust war, one that was either a violation of the independence of a singular Vietnamese people fighting a local civil war or a disproportionately conducted campaign in an interstate war between North and South Vietnam, or a complicated mix of both. And Idi Amin met with widespread moral condemnation in Africa in the 1970s for his human rights violations. But as long as Washington was a superpower and Amin controlled the Ugandan army, arresting war criminals or correcting wrongs meant war. Intervention against the United States was suicidal. Intervention against Uganda was unacceptable as long as invading Uganda was unacceptable to Ugandans and to Uganda's African neighbours. Until 1979, that is, when Amin finally provoked Tanzania – provoking in the process international enforcement by an African neighbour.

International enforcement is not totally absent. The tribunals for the former Yugoslavia and Rwanda are enforcing international norms on the perpetrators of gross abuses. The problem is that international enforcement is not comprehensive. It rarely impacts the powerful or their friends

and therefore suffers from charges of bias even when the case in point (as with the two tribunals) is fully justified. Another effect of international anarchy is that even ethically motivated states need to take measures of self-help to defend themselves. These measures restrict the resources that might be otherwise spent in aiding the poor economically – upholding social and economic rights – or helping to enforce just behaviour among states.

Second, complicating international anarchy is moral diversity. There is not a practical international consensus on right and wrong. There are some nearly universally recognized values, including human dignity; various human rights specified in the UDHR; and, in practice, avoiding nuclear war. But they are thin. States have diverse ideologies and values and these lead to conflicts.³⁰ Fundamentalist Islam is said to be in a “clash of civilizations” with the Christian West.³¹ Even if exaggerated in its impact, differences between Islam and the West over women’s rights and freedom of the press clearly occasion strife. How extensive these differences in fact are and how consequential for international order are the subjects of the papers by Tatsue Inoue and James Mouangue Kobila in this volume.

Even with a wider consensus on principles, ethical conflicts over application of human rights can be extreme, when social and environmental circumstances differ and when power and authority become involved. Traditionally, when a group of desperately poor immigrant farmers seeks to settle in the seemingly less than fully used lands of a society of nomadic hunters, both have and, perhaps, justly can claim group social rights: the farmers to settle and hunters to resist the destruction of their hunting and way of life. As Locke once said, in these circumstances one “appeals to heaven” and thus wars ensue. In much less extreme circumstances, the differences between the two International Labor Organization (ILO) Conventions on the rights of indigenous peoples are telling. The first (No. 107 in 1957) focused on “progressive integration” of indigenous peoples into the larger state structure while the second (No. 169 in 1989) urged governments to “protect rights and guarantee respect.” This marked an evolution in application from stressing assimilation and equality as the ultimate right to emphasizing the right to preserve the indigenous culture; but conflicts continue between these first and third generation rights.

And despite a broad consensus on basic human rights and the efficacy of market economies, the threat of foreign imposition – Washington dominance or neocolonialism, as many rights are argued to be of Western origin – sometimes leads to strife over national honour and independence. In the contemporary international economy, large and (some say) growing inequalities present significant moral challenges (as our authors

Pierre de Senarclens and Henry Shue argue) to the practical fulfilment of duties of just distribution.

Third, international politics, even more than domestic politics, is full of uncertainty. In one gruesome example, the casualties at Hiroshima and Nagasaki were five times more than expected partly because US planners expected that the cities would take the protective measures other Japanese cities had taken when they were first bombed. But the lone atomic bombers failed to trigger the protections.³² Given the wartime passion, the United States probably would still have bombed, but the arguments made at the time in favour of a warning explosion were weakened by the false lower estimates of Japanese casualties. Given the actual outcome, some have clamoured for the action to be declared a war crime, as the destruction wrought disproportionately affected defenceless civilians.

Sometimes we do not know whether to support or oppose or ignore possible human rights abuses not merely because other principles may be disputed, but also because the facts are unclear. Neither states nor individuals who violate human rights readily volunteer evidence against themselves; witness the difficult task of war crimes investigators in the former Yugoslavia attempting to reconstruct events in order to identify, indict, and prosecute offenders. Non-governmental organizations (NGOs) have been particularly active in some cases trying to overcome this obstacle. The activities of Amnesty International in Argentina helped bring political disappearances and other violations of human rights to light and spurred other states to take enforcement action.³³

Even when the facts are known, outsiders are often uncertain how to interpret them. Liberal observers can wonder whether Cuba or China or Eritrea are people's democracies (as some of their apologists claim) suffering trying times and tolerating restrictions on freedom such as those that characterized US politics between 1776–1781 and 1861–1865. Or are they dictatorships of the left consolidating autocratic rule by abusing civil and political rights? Or something else altogether? In order to address human rights issues in a particular context, policy makers must wade through sometimes scant and sometimes conflicting information regarding a state's actions and the political context in which those actions occurred.

And fourth, states do not control their internal responses or coordinate their international actions very well. When states wind up trying to punish the behaviour of other states that elements of their own bureaucracies have provoked, ethical behaviour loses its effectiveness, even its meaning. If the US Congress supported aid to the Contras in Nicaragua because and only because the Contras could help deter the Nicaraguans from external attacks on Honduras (where the Contras were based) and if it did not know that a CIA operation funded the Contras and directed

the Contras in cross-border raids against Nicaragua, then the first action (supporting Honduras), justifiable as it may be on its own terms, is undermined ethically by the covert actions that accompanied and preceded it; for the Nicaraguans were engaged in just reprisals when they crossed the Honduran frontier. In addition, if one assumes that eliminating Iraq's nuclear, biological, and chemical arsenal is a legitimate response to Iraq's aggression against Kuwait, who is at fault for trampling on the social and economic rights of ordinary Iraqi citizens? Is it the United States and United Nations for instituting sanctions and tolerating covert operations against Iraq, the Iraqi government for withholding allowable aid, or Hussein himself for hiding biological and chemical weapons programmes?

Plan of the volume

As a step toward clarifying the debate over human rights and international order, we have invited the authors to address the relation between civic and political rights on the one hand and social and economic rights on the other. They will investigate whether the first set of rights entails the second and whether duties and obligations extend across borders. The project will examine these issues at three different levels: domestic, regional, and international.

We have commissioned authors for two papers to address these questions at the domestic level and both emphasize that particular human rights regimes are politically constructed. Ruth Gavison of Tel Aviv University in the first paper focuses on philosophical issues such as whether the political and civil and economic and social sets of rights are linked in theory and whether they entail each other. According to Gavison, three issues underpin the human rights debate: (1) which civil-political or socio-economic concerns rise to the level of rights, (2) which of those rights constitute the basic core of human rights, and (3) what, if any, measures ought to be taken to protect those rights. These issues should be decided on the basis of normative and political considerations, *not* analytic ones. She suggests that rights claims, and in particular human rights claims, are inherently controversial – the subject matter of rights accommodates a variety of different legitimate positions on the core issues above. She rejects several common arguments which give primacy to either civil and political or economic and social rights and argues that whether or not intervention on behalf of human rights is justified is something to be determined by the nature of particular cases, not by an a priori philosophical analysis of the concept of a human right.

In the second paper, Claire Archbold examines the current practice of incorporating various combinations of rights in domestic law. She

analyses the distribution of three classes of rights (civil and political, social and economic, and group rights) in the constitutions of Canada and South Africa, and the United Kingdom and Northern Ireland. Comparison across the three examples highlights differences in the political process of constitution writing, in the generations of rights included in the final document, and in the role of the constitution in reflecting an existing or defining a new human rights consciousness. From this survey, Archbold concludes that the form and content of a Bill of Rights will reflect the political and social history of the nation for which it was written and the document will arise from a process of compromise between fundamentally opposed points of view as to the value of various rights. As a compromise it is imperfect, but she concludes that “the document’s significance is that it is agreed. The nation-building power of a widely-agreed Bill of Rights was acknowledged in South Africa and in Canada, and has yet to be tested in Northern Ireland.”

At the regional level of analysis, our focus is on the comparative practice of human rights. The volume makes two different cross-regional comparisons: North-South and East-West. James Mouangue Kobilá addresses the first theme and Tatsuo Inoue tackles the second.

James Mouangue Kobilá’s paper compares the evolution and practice of human rights in the North and South, and describes obstacles to the implementation of human rights in the South as well as offering some recommendations for surmounting these obstacles. He looks specifically at various human rights commissions, human rights courts, and domestic practices and as well as responses to calls for regional arrangements. Kobilá argues that both civil and political rights as well as economic, cultural, and social rights have seen greater implementation in the North than in the South. In advocating the universality of human rights, he rejects particularistic claims and argues for progressive development of universal human rights in the South, paralleling his description of how such rights developed in many Northern countries. Kobilá concludes with an extensive list of obstacles to implementation of human rights in the South (including the lack of public order or weakness of the rule of law) and proposes some recommendations to overcome the obstacles – such as the development of democratic institutions, greater and more efficient development aid, greater protections for the press, ratification of human rights instruments, and more rapid development of regional human rights arrangements.

In his chapter, Tatsuo Inoue presents two main criticisms of the “Asian values” critique of civil and political rights. The first criticism is that this critique is, ironically, dominated by “West-centrism” in that it borrows the Western vocabulary of political morality, namely state sovereignty and socio-economic rights. Inoue argues that sovereignty is in-

voked as a trump against rights when, in fact, the two are inextricably intertwined in the history of the West. He also disagrees with the view that Asia can and/or should pursue socio-economic rights prior to personal, civil, and political ones; rather, civil-political rights should come first on practical rather than moral grounds. Backing his charge of West-centrism, Inoue also notes that the very categories of “Orient” and “Occident” are Western constructions. Inoue’s second criticism of “Asian values” is his view that Asia has “endogenous” reasons to accept civil and political rights. Not only is constitutional democracy superior to any non-democratic method of managing Asia’s ethnic tensions (e.g. authoritarianism), but civil-political rights are necessary for achieving communitarian as well as liberal ends. Civil rights, he concludes, are a precondition for civil society and for the rich communal life valued by communitarians, whether East or West.

Finally, a third section focuses on two issues at the international level: implementation and distributive justice. The first paper, by Pierre de Senarclens of the University of Lausanne, highlights the status of international human rights and their enforcement since the World Conference on Human Rights in Vienna (1993). His analysis stresses the fundamental linkage between economic, social, and political aspects of human rights, noting that they must be addressed in concert in order to achieve real progress. He also recognizes that the structure of the international system, in the form of state sovereignty and power politics, limits the effectiveness of mere paper agreements – the world is still ideologically and politically divided when it comes to the interpretation and practical implementation of human rights norms. Implementation of human rights through institutional reforms and projects, de Senarclens argues, should be grounded in a better understanding of international political economy – recent global economic trends have done very little to bring prosperity to the least developed nations while neither rich Western industries nor the autocratic governing elites of poorer nations find the protection of basic economic rights to be in their immediate interests. Thus, problems faced by the poorest nations might be best addressed by states working in regional unions and by the institution of more effective regulatory structures at the international level, of which he offers several examples. He concludes that the political sovereignty of states must be defended in order to provide opportunities for social protection, economic regulation, and distributive justice that are “the foundations of our modern conception of citizenship.”

Henry Shue explores whether there is a right and duty of humanitarian economic assistance across borders. Shue begins with the assumption that there are economic rights and that someone must bear the concomitant duties to ensure that those rights are fulfilled. He argues that such

duties are, or can be, transnational in nature because of the “deep indirect connections through the institutional structure of the international system in which all human individuals live.” He dismisses “causal dissipation” (that one bears no responsibility toward most of humanity because one does not touch most of humanity) by noting that individuals do not exist in asocial space, but are embedded in thick transnational webs of institutions and the underlying principles that shape the institutions. We have a transnational duty to stop imposing severe economic distress caused by shared institutions that produce and maintain radical inequality. Shue concludes by challenging the idea of principled communitarianism (under which transnational duties can be rejected in favour of higher priority duties owed to fellow members of more limited communities), arguing that the inhabitants of rich states bear transnational duties because they are beneficiaries of an international system which has disabled the bearers of the “primary duties.”

Together the volume’s authors struggle with the most controversial questions of fundamental human rights and human dignity. In the conclusion by Jean-Marc Coicaud of the United Nations University we draw the strands of controversy together to assess where “individual sovereignty” and global differences stand today.

Notes

1. This introduction draws on material delivered as the Benjamin Meaker Professorial Lecture at the University of Bristol, UK, on 6 June 1999, by Michael Doyle. We want to thank Ruth Gavison and the anonymous reviewers of the volume for their suggestions on an earlier draft of this chapter.
2. Kofi Annan, “Two Concepts of Sovereignty,” *The Economist*, 18 September 1999.
3. The African Charter is also unique in that it articulates individual duties – to the state and to family – as well as rights.
4. See David P. Forsythe, *The Internationalization of Human Rights*, Lexington Books, Lexington, MA, 1991.
5. Vaclav Havel, President of the Czech Republic, commented, “This is probably the first war that has not been waged in the name of national interests but rather in the name of principles and values. Kosovo has no oil fields to be coveted . . . [NATO] is fighting out of the concern for the fate of others.” *Boston Globe*, 5 July 1999, p. A14. And in a speech before the Canadian Parliament, he added, “Decent people cannot sit back and watch systematic, state-directed massacres of other people. Decent people simply cannot tolerate this, and cannot fail to come to the rescue if a rescue action is within their power.” *Toronto Sun*, 2 May 1999, p. 38.
6. William Wordsworth, *Excursion*, London, Edward Moxon, 1836.
7. The group is becoming increasingly substantial. Among these contributions are Mervyn Frost, *Ethics in International Relations*, Cambridge, Cambridge University Press, 1996; Andrew Linklater, *Men and Citizens in the Theory of International Relations*, London, Macmillan, 1990; David Lumsdaine, *Moral Vision in International Politics*, Princeton

- NJ, Princeton University Press, 1993; Christopher Brown, *International Relations Theory, New Normative Approaches*, Columbia, NY, Columbia University Press, 1992; Roger Spegele, *Political Realism and International Theory*, Cambridge, Cambridge University Press, 1996; Martha Finnemore, *National Interests in International Society*, Ithaca, NY, Cornell University Press, 1996.
8. For extensive discussions of scepticism in international relations see Marshall Cohen, "Moral Skepticism in International Relations," *Philosophy and Public Affairs* 13(4), Fall 1984, and Charles Beitz, *Political Theory and International Relations*, Princeton, Princeton University Press, 1979, chs. 1–2.
 9. As quoted in Amy Gutmann and Dennis Thompson, *Ethics and Politics*, Chicago, Nelson Hall, 1997, p. xi.
 10. This is also Max Weber's argument from "Politics as a Vocation. For this issue see Michael Walzer, "Political Action, The Problem of Dirty Hands," *P&PA* 1, Winter, 1972, pp. 160–180.
 11. Machiavelli, *The Prince*, translated by Harvey Mansfield, Jr., Chicago, University of Chicago, 1985, p. 14.
 12. William T. Sherman, *Memoirs*, New York, 1875, pp. 119–120 and see Michael Walzer, *Just and Unjust Wars*, New York, Basic Books, 1977, pp. 32–33 for discussion.
 13. Anne-Marie Slaughter, "Law among Liberal States, Liberal Internationalism and the Act of State Doctrine," *Columbia Law Review* 92(8), December, pp. 1907–1996; and Richard Ullman, *Securing Europe*, Princeton, NJ, Princeton University Press, 1991.
 14. Arnold Wolfers, "Statesmanship and Moral Choice," in *Discord and Collaboration*, Baltimore, Johns Hopkins University Press, 1962, ch. 4.
 15. Marc Bloch, *Strange Defeat*, London, Oxford University Press, 1949, translated by Gerard Hopkins.
 16. As quoted by Hans Morgenthau, "Human Rights and Foreign Policy," in Kenneth W. Thompson, ed., *Moral Dimensions of American Foreign Policy*, New Brunswick, Transactions Press, 1984.
 17. Joseph Nye, *Nuclear Ethics*, New York, Free Press, 1986. Other valuable introductions to the topic include *Ethics and International Affairs* by J. E. Hare and Carey Joynt, New York, St. Martins, 1982.
 18. Motives are crucial for assessing moral character, but they are not quite the same as ends. My dentist may be motivated only by money when he drills my teeth, but what distinguishes him from the torturer also motivated by a generous salary is the end of the act he is performing – fixing cavities rather than coercing confessions.
 19. The example is Paul Ramsey's from *The Just War*, New York, Scribner's, 1968.
 20. Henry Kissinger, *The White House Years*, Boston, Little, Brown, 1979, p. 228; and see William Shawcross, *Sideshow*, New York, Simon and Schuster, 1979, for an extensive moral criticism of US policy in Southeast Asia.
 21. This is part of Michael Walzer's criticism of US intervention in Vietnam, from *Just and Unjust Wars*, New York, Basic Books, 1977, pp. 188–196.
 22. Roslyn Higgins, *Problems and Process in International Law*, Oxford, Clarendon Press, 1993, p. 95.
 23. See Jack Donnelly, *Universal Human Rights in Theory and Practice*, Ithaca, NY, Cornell University Press, 1989, pp. 9–12.
 24. David Sidorsky in Henry J. Steiner and Philip Alston, eds., *International Human Rights in Context*, Oxford, Oxford University Press, 2000, p. 170.
 25. Ronald Dworkin, as explained in R. J. Vincent, *Human Rights and International Relations*, Cambridge, NY, Cambridge University Press, 1986, p. 17.
 26. Donnelly, p. 12.

27. Vincent, p. 9.
28. Vincent, p. 11.
29. We draw these distinctions from Locke and his discussion of the troubled “state of nature”; for discussion see Doyle, *Ways of War and Peace*, New York, Norton, 1997, ch. 6. For a thoughtful analysis raising similar points see Stanley Hoffmann, “International Law and the Control of Force,” in *The Relevance of International Law*, ed. Karl Deutsch and Stanley Hoffmann, New York, 1971, and his recent essay, “The Politics and Ethics of Military Intervention,” in *World Disorders*, Lanham, MD, Rowman and Littlefield, 1998, pp. 152–176.
30. Michael Walzer discusses the implications of thin and thick moral conventions in *Thick and Thin, Moral Disagreements at Home and Abroad*, University of Notre Dame Press, 1996.
31. Samuel Huntington, *Clash of Civilizations and the Remaking of World Order*, New York, Touchstone, 1996.
32. Hare and Joynt, p. 90.
33. See Kathryn Sikkink, “Human Rights, Principled Issue-Networks, and Sovereignty in Latin America,” *International Organization* 43(3), Summer 1993, pp. 411–441.

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The Globalization of Human Rights addresses a set of questions focusing on the imperatives of justice at the national, regional, and international levels. The examination of these imperatives of justice is conducted through an analysis of rights, both civil and political, and economic and social.

Any search for justice is based upon identifying values, including relationships with others, that are viewed as so critical to the well-being of humanity and the character of being human that they are eventually institutionalized as rights. Such rights become the basis upon which claims are made, as well as the horizon of justice to which society and institutions try to conform.

The international community has embarked on an unprecedented effort to map out the requirements of justice for all mankind, providing normative guidelines as well as goals. The core of this effort has been to reach a more ethical understanding and arrangement of relations between individuals and the institutions governing them. The end of the Cold War and the normative and political changes that have ensued at the international level in recent years have reinvigorated the critical importance of this effort and the discussion to which this volume makes an important contribution.

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