ONE

Human Rights:
Ideology and Aspiration, Reality
and Prospect

LOUIS HENKIN

LOUIS HENKIN is University Professor Emeritus at Columbia University, Chair
of the University's Center for the Study of Human Rights, and Director of the
Human Rights Institute at the Law School, where he previously held chairs in
Constitutional Law and in International Law and Diplomacy. He served as
law clerk to Judge Learned Hand and Justice Felix Frankfurter, worked at the
U.S. State Department as Foreign Affairs Officer, and was Chief Reporter of
the Restatement of the Foreign Relations Law of the United States and Co-
editor-in-chief of the American Journal of International Law. Among his books
are The Rights of Man Today, The Age of Rights, Human Rights (with others),
How Nations Behave, Foreign Affairs and the Constitution, and International
Law: Cases and Materials (with others).

By the end of the twentieth century, human rights, a political-philosophical
idea, had become an ideology, the ideology of our times, achieving near-
universal acceptance, with little dissent. Ours has been described as the Age of
Rights.\(^1\) International human rights—international concern with the condition
of human rights within national societies—was conceived during World
War II, and its normative and institutional foundations were established during the decades after the war. In this chapter I trace the development of international institutions and of the international law of human rights, describe the successes and failures of international human rights during its first half century, and suggest how this edifice of norms and institutions has contributed to the human rights conditions of billions of human beings at the end of the twentieth century. Looking ahead, I offer the outlines of an agenda for the new century.

WHERE AND WHEN WERE INTERNATIONAL HUMAN RIGHTS BORN?

The idea of human rights may be seen as an offspring of the idea of natural rights in the seventeenth century, which became a political ideology on the American continent and in France toward the end of the eighteenth century. International human rights might be said to have been conceived on January 6, 1941, the date of the famous "Four Freedoms" message to Congress by President Franklin Delano Roosevelt (FDR), and born on December 10, 1948, the date on which the Universal Declaration of Human rights was proclaimed by the General Assembly of the United Nations (UN).

Speaking after war had begun in Europe, although before the United States entered the war, Roosevelt said: "In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms": freedom of speech, freedom of religion, freedom from want, and freedom from fear. Shortly thereafter President Roosevelt and Prime Minister Winston Churchill expressed, in the Atlantic Charter, their hope to see established "a peace which will afford assurance that all the men in all the lands may live out their lives in freedom free from fear and want."

FDR spoke of freedoms, in the language of the U.S. Constitution, but he echoed the ideology of rights, found in the writings of John Locke and William Blackstone, in the American Declaration of Independence and the U.S. Bill of Rights, and in the French Declaration of the Rights of Man and the Citizen of 1789. Behind FDR’s words were also 150 years of constitutionalism in the United States and the economic and social revolution of his New Deal. Freedom of speech and of religion derived from the First Amendment to the U.S. Constitution; freedom from fear—fear of enemies and tyrants—was doubtless a response to threats such as those posed by Adolf Hitler. Interesting, but not surprising, was "freedom from want," the promise of FDR’s New Deal, couched as a "freedom" because he had learned that "a necessitous man is not a free man."
In the next section I trace briefly the odyssey of the human rights idea and the shorter story of international human rights.

THE IDEA AND THE IDEOLOGY OF RIGHTS

“Human rights” is common parlance, but not all agree on its meaning and significance. Human rights are related to, sometimes confused with, “the rule of law,” “constitutionalism,” or “democracy.” Sometimes human rights are seen as one element, a key element, in constitutional democracy; sometimes democracy is seen as one human right, a right of individuals to be represented and to vote; sometimes human rights are seen as limitations on democracy, that is, limitations on the will of the majority or on “the public interest” as it is determined by the majority.

The human rights idea declares that every human being, in every political society, has “rights”: recognized, legitimate claims upon his or her society to specific freedoms and other goods and benefits. They are claims “as of right,” not by grace, or love, or charity, or compassion: claims that society is morally, politically, even legally obligated to respect, ensure, and realize. Human rights are claims not only against “bad people” or tyrannical government, but even against bona fide, benevolent, representative legislatures and democratic majorities. Human rights are not absolute and may bow to the public interest, but human rights do not bow lightly; rights may “trump” even a public interest duly determined in a democratic society.

The history of the human rights idea is not straightforward or easy to trace. It is accepted that the human rights idea derives from notions of “natural rights” articulated in the writings of John Locke and of the European Enlightenment. An ideology of rights, traced back to the Magna Carta, was maintained in England by the common law. The rights idea and ideology were adopted and adapted in the eighteenth century in the American colonies and in revolutionary France, eloquently articulated in the American Declaration of Independence (and in the Virginia Bill of Rights and early bills of rights of other states), and in the French Declaration of the Rights of Man and of the Citizen. Between 1789 and 1791 an ideology of rights was established by the Constitution and the Bill of Rights as a core of “constitutionalism” in the United States.

After its famous and revolutionary birth, the ideology of natural, universal rights did not flourish widely. In France the ideology of rights was destroyed in the Reign of Terror, and it was not resurrected under Napoleon or his successors or under the French republics prior to World War II. The British historian Lord Acton later declared that the single page of the French Declaration of 1789 had
been more powerful than all the armies of Napoleon, but within France, the Declaration seems to have been relegated to historic hagiography. Instead, in time, France moved to “parliamentarism,” “progressivism,” occasional “socialism,” without an ideology of rights; rights were, at best, an indirect, unreliable grant from good government.

England did not embrace an ideology of universal natural rights, having fought the French Revolution and rejected its ideology. Instead, England enlarged its parliamentarism; it maintained its commitment to the rights of Englishmen, protected by the common law but subject to parliamentary supremacy. Although England, like France, abolished slavery, it did so not from any general commitment to an ideology of universal human rights but from a mix of moral and economic motives particular to slavery.

In the nineteenth century, English (and Continental) philosophers rejected natural rights. Jeremy Bentham dismissed them as dangerous “anarchical fallacies,” as “nonsense upon stilts.” Among philosophers, the ideology of rights was swept by the winds of “positivism” and challenged by utilitarianism, “progressivism,” and varieties of socialism. The welfare state was born—an idea, it has been said, not Marx but Bismarck’s—with little support from any ideology of natural rights.

There were scattered (and usually temporary) burgeonings of constitutionalism and parliamentary democracy and some respect for rights established by positive law in several countries in Europe and in America, but not much was heard of natural or universal rights.

The United States maintained the commitment to the ideology of rights that had been proclaimed in the American Declaration of Independence. The idea of rights was implied in, and some individual rights were guaranteed by, the U.S. Constitution established in 1789, and rights were elaborated in the “Bill of Rights” added to the Constitution by constitutional amendment in 1791.

But U.S. realization of its avowed rights ideology was hardly complete or exemplary. U.S. constitutional rights suffered “congenital defects”: Slavery was maintained under the U.S. Constitution for three-quarters of a century, while racial and gender equality and the equal protection of the laws were not even whispered in the U.S. Constitution until the Fourteenth Amendment in 1868 and were not held to be constitutionally required of the federal government until nearly a century later. By contemporary standards, early U.S. democracy and representative government were less than satisfactory. Only one branch of Congress was a House of Representatives. The right to vote was far from universal, and even freedom from discrimination in voting on grounds of race or gender required additional constitutional amendment, in 1870 and 1920. The U.S. Bill of Rights did not govern the individual states until long after the Civil War. “Native Americans” were not part of the constitutional order.
The United States maintained its constitutional commitment to rights into the twentieth century, but the realization of that commitment continued to be incomplete and erratic. Constitutional amendment was required to extend the principle of representative government to include the right of individuals to vote for members of the U.S. Senate (Amendment XVII, 1913), and to this day, the president is not elected directly by the people. Universal suffrage was not effectively achieved until the 1960s, and then not from democratic principles but from those of equality: If one person votes, all must be allowed to vote, equally.¹¹

Until 1954 the U.S. Constitution was read to permit racial segregation. For decades U.S. constitutionalism extended the idea of rights to maintain “laissez-faire,” to protect business activities from social legislation, and it required constitutional amendment (Amendment XVI, 1913) to permit progressive taxation and make possible some transition to “the welfare state.” “Political rights,” including freedom of expression, suffered restrictions during the “Red scares” after World War I (and again in the 1950s), and did not see luxuriant development until well after World War II.

Warts and all, however, constitutional rights in the United States were a major—the major—realization of the ideology of rights, and U.S. constitutionalism was not without influence elsewhere. But for the United States, constitutionalism was a domestic ideology and not for active export, not even during periods of U.S. expansion beyond its continental borders. World War I—the war “to make the world safe for democracy”—did not mean a war to convert the world to democracy or to rights.¹² Rights appeared early in constitutions in Latin America and in smaller European countries, doubtless due to the U.S. example and, in some instances perhaps, to the influence of the French Declaration of 1789. But before World War II, U.S. influence did not make a sustained contribution to a general, universal ideology of rights.

The ideology of rights was not encouraged in, and did not spread to, the colonies of the British and French empires. In addition, powerful influential governments in Europe spurned the idea of rights during the early decades of the twentieth century. Rights suffered widely and terribly at the hands of national and international socialism and fascism in the Soviet Union, in Fascist Italy, in Franco’s Spain, and, needless to add, in Nazi Germany.

From Constitutional Rights
to International Human Rights

In our time, “human rights” commonly suggests “international human rights.”¹³ The term is a source of some confusion. Strictly, there are no “international
human rights. No human being claims human rights against some international body. Human rights—like constitutionalism, like democracy—is a political ideology that applies to national political societies. “International human rights” refers to an international movement to promote and protect and assume and assert international responsibility for national human rights, that is, rights within national societies. The international human rights movement has sought to establish an international human rights standard—a minimum standard that national societies are expected to satisfy and by which national human rights are to be judged—and to have states assume legally binding international obligations to live up to the international standards. It has also established and promoted international institutions to encourage, to monitor, and to induce national compliance with those international human rights standards.

The term “international human rights” also calls for explanation of another order. Not long ago it might have seemed contradictory or oxymoronic. Before World War II, how a state treated its own inhabitants was no one else’s business. As a matter of principle, in the absence of special undertaking by treaty, the condition of human rights in any country—even in Hitler’s Germany—was its own domestic “sovereign” affair, not the concern of international politics or of international law. This attitude has been profoundly, fundamentally undermined. The story can be traced from the war aims of World War II and the Universal Declaration of Human Rights, through the “International Bill of Rights,” to what is perhaps the most prominent triumph to date of the international human rights movement: the eradication of apartheid in South Africa.

From War Aims to a New World Order:
Dumbarton Oaks and San Francisco

Glimmers of change, from human rights as strictly domestic to human rights as international concern, appeared early in World War II, heralded by FDR’s Four Freedoms address. After U.S. entry into the war, all of the states declaring war against Hitler adopted the Atlantic Charter as their statement of war aims. It was not commonly seen as a program for the postwar world but rather as a weapon in psychological warfare. “Realists” probably did not take it seriously as policy for the postwar period; surely few had any clear idea as to what such a policy might entail.

At Dumbarton Oaks in Washington, D.C., in 1944, representatives of the Allied powers met to plan the world order following their victory. Records of the conversations at Dumbarton Oaks contain little evidence that the principal participants, in thinking of the world order to follow the war and in planning a
new world organization, thought much about human rights. But eight words appeared among the secondary purposes of the world organization-to-be: "to promote respect for human rights and fundamental freedoms." This was the first use of the term "human rights" in a major international document.¹⁶

Thus, from the Four Freedoms in wartime manifestos, to "human rights" in the new world order, began what might be described as the subversion of state sovereignty as it had traditionally been conceived. Thus Roosevelt's vision was confirmed and extended. How a nation treated its own inhabitants was to be—as a matter of principle—everybody's business: the business of the international political and economic system, the concern of international politics, a subject of international law. In those eight words, I suggest, lay the idea of human rights and a commitment to its ideology, and perhaps, too, a faint promise of a measure of international responsibility to address gross violations of human rights anywhere.

The faint promises embodied in eight words at Dumbarton Oaks led directly to several sentences in the United Nations Charter adopted in San Francisco in 1945.¹⁷ The Charter, a major international treaty, declared it to be one of the purposes of the new United Nations Organization to promote and encourage respect for human rights; this was the first use of the term "human rights" in a major international treaty, the most important treaty of the century. In Articles 55 and 56, all members of the United Nations pledged to take action for the achievement of "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

These few words at Dumbarton Oaks led also to the Nuremberg Charter and the Nuremberg trials, and beyond. The Western Allies, principally the United States, were determined to treat the conquered Nazi leaders not as vanquished, monstrous villains subject to political retribution, but as criminals and violators of law to be tried and punished with due process of law. The Nuremberg Charter established that there existed "crimes against humanity" (distinct from "war crimes," and whether committed in or related to war or not), which constitute violations of international law although not based in any treaty; and that individuals, of whatever rank or office, who perpetrated such crimes might be held personally responsible, brought to trial, and, if convicted, punished and even put to death.¹⁸

Nuremberg led immediately to the Convention on the Prevention and Punishment of the Crime of Genocide, the first international human rights treaty of the new world order.¹⁹ From Nuremberg one can see a direct line, over long delays and formidable obstacles (principally related to the cold war), to the international tribunals established by the UN Security Council in the 1990s to
try crimes against humanity and war crimes committed in the former Yugoslavia and in Rwanda, and to the International Criminal Court launched at Rome in 1998 (discussed further later).

Commitment to human rights in the days of Dumbarton Oaks, San Francisco, and Nuremberg was not unanimous and did not appear urgent. We may assume that President Roosevelt and later President Truman, Winston Churchill, and Charles de Gaulle were firmly committed to human rights; but we need hardly ask about Stalin (or even Chiang Kai-Shek). Moreover, while the United States and the United Kingdom were committed to human rights at home and to imposing them on Nazi Germany and its allies, it cannot be said with confidence that they (and later France) were firmly committed to making international human rights part of the new world order, to giving the term international definition, or to promoting such rights vigorously, everywhere, by all necessary means. Nor were the victorious Allies firmly committed to an international human rights movement: to establishing an international law of human rights applicable to all, including themselves; to assuming international responsibility for human rights violations wherever they occurred; or to creating, and submitting to, effective international monitoring and enforcement.

Dumbarton Oaks and the UN Charter intoned the term “human rights”; they did not define it. To the authors of those instruments, the words doubtless alluded to Hitler’s inefable crimes, to genocide and other “crimes against humanity,” perhaps to concentration camps and systematic racial discrimination. These the powers could condemn and even universalize, without fear or concern that they, too, might some day be charged with such atrocities. But the powers probably did not envisage a universal, comprehensive human rights code that might affect their own societies and judge their own political institutions and systems of justice, the conditions in their jails and the acts of their police, their economic and social policies, their racial iniquities, even their immigration laws and practices. It seems unlikely that they anticipated that they might be called upon to exercise responsibility for human rights everywhere, even at a cost to themselves in resources and human lives.

And yet, I suggest, one can trace a path from the conversations at Dumbarton Oaks in 1944 to a sturdy, multifaceted international human rights system of laws and institutions at the end of the twentieth century; from human rights as psychological warfare to human rights as the idea and ideology of our times; from ringing rhetoric to law; from the universalization of that idea in the Universal Declaration to its internationalization in “the International Bill of Rights” and in subsequent human rights conventions. The path from Dumbarton Oaks led to international commissions and committees and courts, to the UN High Commissioner for Human Rights and the promise of an International
Criminal Court, to the spreading and growing network of nongovernmental human rights organizations—all striving to induce compliance with international human rights standards throughout the world.

One need not insist that international human rights, as conceived in 1944, has seen steady growth and development. Indeed, one finds already present at the beginning, reluctance, weaknesses in commitment, and resistance to major aspects of international human rights by big powers, including the United States. One must ask what it has all meant for the human rights of 6 billion human beings at the end of the century. Yet by any measure, I believe, international human rights at the end of the twentieth century is a remarkable phenomenon. Central to this history is the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights

The Universal Declaration has claim to be one of the most important international instruments of the twentieth century, second only, perhaps, to the United Nations Charter. The significance of the Universal Declaration lies in four achievements:

1. It helped convert a discredited philosophical idea ("natural rights") into a dominant political ideology.
2. It defined a vague colloquialism ("human rights") in an authoritative code, a triple "decalogue" of thirty articles of fundamental rights.
3. It universalized human rights, promoting a constitutional ideology accepted in a few countries into a standard of constitutionalism for all countries.
4. It internationalized human rights, transforming matters that had been subject to exclusive domestic jurisdictions—"sovereignty"—into matters of international concern, putting them permanently on the international political agenda, and providing the foundation for a sturdy edifice of international norms and institutions.

The Declaration established the human rights idea as the ideology of our times. It is the holy writ to which all pay homage, even if sometimes the homage of hypocrisy. Eschewing—in its quest for universality—explicit reliance on divine inspiration or on natural rights, the Declaration provided the idea of human rights with a universally acceptable foundation, a supreme principle, that of human dignity.

The Universal Declaration transformed a phrase and an idea into an authoritative standard and a detailed code. Behind the Universal Declaration
were national bills of rights, but the Declaration bettered their instruction. Notably, it established rights to popular sovereignty, representative democracy, and universal suffrage; it married rights in the liberal state to the benefits of the welfare state and recognized and declared them equally as human rights; it rendered “equality” and nondiscrimination a most insistent theme.

A principal contribution of the Universal Declaration has been the realization of its original purpose, to establish a “common standard of achievement for all peoples and all nations.” The standard it defined is the human rights standard for the world today, incorporated expressly or implicitly, copied and borrowed from, by new and old constitutions and laws around the world.

The Declaration was the first instrument of international human rights. It is the source of the international law of human rights, embodied in the two international covenants now legally binding on the large majority of the countries of the world and in major international conventions on genocide, torture, racial discrimination, discrimination against women, and the rights of the child, all widely ratified and highly influential. The Declaration contributed to a customary law of human rights that is binding on all states, even on those that have not accepted any relevant human rights treaty. The international law of human rights that the Declaration inspired has also brought about important international human rights institutions. The Declaration remains the authoritative articulation of the international human rights standard: the symbol, the representation, the scriptures.

One might trace a path from the Declaration to historic developments in the second half of the century: to the end of colonialism and the proliferation of new states, to the end of communism and the establishment of democracy as the prevailing ideology for the twenty-first century. One can even see a path—circuitous, not unbroken, but traceable—from the Universal Declaration to what is to date perhaps the most glorious, single, international human rights triumph: the eradication of apartheid and the birth of a new democratic South Africa.

The Universal Declaration is a remarkable, radical achievement, and its successful birth is not easy to explain. It emerged from a new committee, the UN Commission on Human Rights, in a new world organization. The Declaration was completed after the new “One World” was already divided in cold war. The members of the commission and other principal participants included strong personalities of diverse political persuasion: France (René Cassin) and Canada (John Humphrey) vied in claims of parentage; the United States nominated Eleanor Roosevelt, chair of the commission, and keeper of the spirit of FDR; Charles Malik of Lebanon had powerful claims, he and P. C. Chang may have dominated the commission. Other remarkable individuals may have been equally influential: Carlos Romulo of the Philippines, Ricardo Alfaro
of Panama, and others from countries later characterized as the “Third World.” The representative of the Soviet Union (USSR) was not a positive influence, and the USSR and its bloc (along with Saudi Arabia and South Africa) abstained in the vote on the resolution proclaiming the Declaration.

To many in the human rights movement, the Declaration was something of a disappointment. There was disappointment in its uncertain character—a “universal declaration” instead of an international treaty, a “standard of achievement” instead of binding norms—principally as a result of the reluctance and unreadiness of the great powers. “Idealists” who had entered the U.S. Department of State and other Western foreign ministries during the war and had helped plan and implement the postwar order, representatives of smaller countries and of nongovernmental organizations, concerned citizens in many countries—all had hoped for an international bill of rights, a treaty that governments would ratify and that would be legally binding on them, with effective institutions to implement and enforce it. There was disappointment that some important rights were not recognized: The Declaration includes no general commitment to individual “liberty” and autonomy. Some rights were declared in ambiguous terms, with differences papered over. For example, to some, the right to work (Article 23) meant only freedom to choose one’s employment if one can find it, while to others it placed an obligation on government and society to provide employment. The right to “receive” and to “enjoy” asylum (Article 14) did not clearly declare that states have an obligation to grant asylum. The Declaration did not even call on states to prepare a bill of rights and to assume human rights obligations, nor did it provide or call for effective means for enforcing the rights recognized.

The International Bill of Rights: From the Declaration to the Covenants

The disappointments of 1948 tended to depreciate the significance of the Universal Declaration when it was adopted; they were not wholly assuaged when—after eighteen years of slow, difficult negotiation—the Declaration was finally converted into binding norms in two international covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Delay was built into the process and into the subject. Governments that were committed to rights and to the Declaration as a “standard of achievement” were cautious about making promises in a binding international covenant. Even governments that did not contemplate adhering to a binding human rights agreement may have wished to forestall the elaboration of a treaty
that they could not comfortably ratify some future day, or a treaty that established international norms by which conditions in their countries might be judged morally deficient.

One cause of delay was the gradual end of colonialism and the consequent proliferation of new states, each of which, as it joined the international system, claimed its right to participate in the negotiation process. The new states also sought to develop independent positions on human rights. In particular, they pressed for the addition of a right to self-determination and a right to economic self-determination. (These rights became part of Article 1 of each Covenant.) They chose to emphasize economic and social rights, while the developed states stressed civil and political rights. The result was the bifurcation of what initially had been intended as a single covenant into two, a division that the Universal Declaration had avoided and that continues to trouble international human rights today.

Some provisions in the Covenants were especially controversial, and some rights recognized in the Universal Declaration were not included in either Covenant, notably, the right to property and the ambiguous declaration of a right to receive and enjoy asylum. The Universal Declaration had recognized, in effect, that some limitations on rights in the public interest were inevitable and permissible (Article 29); The Covenant on Civil and Political Rights does not contain such a general limitations clause, but expressly authorizes some limitations on some freedoms, and even requires states parties to prohibit some “free expression” such as war propaganda and “hate speech” (Article 20).

The International Covenant on Civil and Political Rights authorizes a state party to derogate from most rights in public emergency (Article 4), a provision perhaps inevitable but threatening no matter how carefully circumscribed. The addition, at the insistence of developing nations (with Soviet bloc support), of an undefined right of “peoples” to “self-determination” and to “economic self-determination” threatened to discourage adherence by the developed Western powers. All rights in either Covenant were apparently subject to reservations, and there was no provision explicitly barring withdrawal from the Covenant after ratification.21

The greatest disappointment was the system of implementation. Governments were unwilling to submit to effective intrusive monitoring or to complaints before impartial bodies. They were unwilling to scrutinize or to complain against others or to expend their political-diplomatic capital and trouble their international relations on behalf of anonymous victims in other countries.

The principal enforcement system that emerged was essentially dependent on self-reporting by states parties, followed by scrutiny of the reports and some cross-examination by the Human Rights Committee established under the ICCPR.22 Some expressed doubt whether such a system would deter, prevent,
terminate, or remedy violations. Provisions for complaint to the Human Rights Committee by another party to the Covenant (Article 41) could be heard only if the state accused had expressly submitted to that procedure in advance, on a reciprocal basis. A procedure for complaint to the Committee by individual victims was relegated to an Optional Protocol, requiring separate agreement.25

The International Covenant on Economic, Social and Cultural Rights contained its own disappointments. By that Covenant a state party undertakes only “to take steps” toward achieving the realization of the rights recognized by the Covenant “progressively,” and only “to the maximum of its available resources” (Article 2). Understandably, poor countries might be unable to guarantee the full panoply of economic and social rights immediately, but the obligation to do so only “progressively” has lent itself to circumvention and has made bona fide compliance difficult to monitor and to judge. That Covenant does even provide for a monitoring committee comparable to the Human Rights Committee established pursuant to the Covenant on Civil and Political Rights.

Despite their deficiencies, the Covenants were welcomed, although they did not inspire enthusiasm. Ratifications of the Covenants were slow in coming. Major powers, notably the United States, did not hasten to ratify, and many states ratified with important reservations. (When the United States finally ratified the International Covenant on Civil and Political Rights in 1992, it did so with an array of debilitating reservations, understandings, and declarations that collectively amount to unilateral American amendments and interpretations of the text.) The Human Rights Committee had only limited authority, and for years it was cautious and hampered by cold war divisions. Members from the Soviet bloc insisted on the narrowest interpretations of the Committee’s authority to interrogate representatives of reporting states, to seek evidence of violations from sources other than the state’s reports, or to interpret the provisions of the Covenant. Increasingly, states were delinquent in filing the required reports, and some of the states that filed resisted the Committee’s criticism and recommendations for improvement.

Yet the human rights movement survived, and even flourished. As of 1999, some 140 to 145 states (of the near 190 members of the United Nations) have adhered to each of the two Covenants, albeit in some cases with significant reservations. Contrary to expectations and earlier trends, about as many are parties to the Covenant on Civil and Political Rights as to the Economic and Social Rights Covenant. As of early 2000, most of the states party to the ICCPR have adhered to the Optional Protocol, thereby subjecting themselves to the complaints of individuals.

The Human Rights Committee has gained confidence and respect. With the end of the cold war, the Committee has been less fractured and has asserted
greater authority to probe for violations. It has scrutinized and criticized the reports of leading countries (including the United States). The Committee has learned to use its authority under Article 40 to make “general comments” as a means of issuing advisory opinions on the meaning of provisions in the Covenant, so as to influence human rights behavior by parties to the Covenant and by states generally. Pursuant to the Optional Protocol, the Committee has issued what are in effect judgments against violating states.

Many states have adhered also to the conventions on particular rights adopted and promoted by the United Nations, including the Genocide Convention, the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention Against Torture (CAT), and the Convention on the Rights of the Child (CRC). The maturing of the Human Rights Committee and the growing appreciation and experience of other treaty committees—for example, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee Against Torture, and the Committee on the Rights of the Child—have dissipated some of the skepticism that surrounded their birth and have contributed to confidence in “treaty committees” generally.

In addition to “universal” treaties (treaties open to all states), groups of states have developed important regional systems for the protection of human rights. In Europe and in the Americas, regional human rights have had solid growth, including strong normative human rights codes comparable to the Universal Declaration and the International Covenant on Civil and Political Rights, as well as institutions for enforcing the norms, such as commissions and courts, that have had impressive success. The African states have established a Charter on Human and Peoples’ Rights with a normative code including civil-political as well as economic-social rights, some people’s rights, and a small chapter on individual duties. An African Commission established pursuant to the African Charter on Human and Peoples’ Rights has become increasingly “activist,” and an African Court is in the making. Regional human rights jurisprudence has enriched international human rights law generally; international and regional human rights also have provided a standard for rights in national constitutions.

**HOW AND WHY DID IT HAPPEN?**

How, and why, did international human rights emerge, survive, and flourish as a shared ideology in the latter half of the twentieth century? The reasons can be found in national and international political forces, notably in the actions of the
United Nations, U.S. influence, the cold war and its end, the influence of the Third World and of regional organizations, and, finally, what has been called the mobilizing of shame. First, perhaps, the abiding and ineradicable memory of the Holocaust has made it impossible for any state to insist that, in principle, how it behaves toward its own people is no one else’s business. The long campaign to end apartheid in South Africa, supported by virtually all states, dealt a fatal blow to attempts to invoke “sovereignty” to defend against charges of gross violations of human rights; no one heeded protestations by the South African government when other states generally cooperated to help end its “sovereign right” to maintain apartheid. By 1993 attempts by China and others to invoke “sovereignty” to prevent international monitoring of human rights rang hollow and evoked little sympathy at the Vienna Conference on Human Rights. In several instances, the UN Security Council found that gross violations of human rights by particular states constituted threats to international peace and security that warranted even military intervention. These political events have virtually swept away “sovereignty” as a bar to international attention to gross human rights violation, at least when the leading powers insist on such attention.

Human rights successes in some countries and in some regions of the world, notably the European human rights system and the inter-American system, also have contributed to the health of international human rights generally. Nongovernmental bodies, unilaterally or in cooperation with one another or with friendly governments and with dedicated intergovernmental bodies, have had growing influence. The press and other information media have brought pictures of terrible atrocities into millions of homes, making it impossible for governments and others to ignore them. The power of the human rights idea itself is difficult to weigh and to appraise, but is not to be underestimated. Institutions and norms have influenced how governments behave, and dominant political forces in the postwar world have helped entrench the human rights idea. Among these, the United Nations, the influence of the United States, the cold war and its end, the Third World, and regional human rights activities deserve particular consideration.

The United Nations

After 1945 the Allies sought to establish their victory and build strong institutions to maintain international peace and security under the control of the great powers, principally through the United Nations and the UN Security Council. But the other institutions and organs they built, notably the General Assembly, included many and increasing numbers of other states. Largely excluded from the Security Council and its concerns with peace and security, the smaller states sought to use those institutions that were under their control
to promote the social and economic purposes of the UN Charter, including human rights. Smaller states pressed for an international bill of rights and for stronger UN human rights institutions under the control of the General Assembly and its subsidiary organs. The great powers, reluctant to assume international human rights obligations and responsibilities, did not lead the internationalization of the human rights ideology, but they did not oppose human rights initiatives in the UN forum by others.

Thus, human rights have been on the UN agenda throughout the half century of its existence. Of course, the UN is a political body, and it has reflected the complex politics of the international system, including the politics of human rights enforcement. Especially during the cold war, political UN organs judged and acted politically. The United Nations could not respond early and effectively even to genocide and similar mass atrocities (in Cambodia, Equatorial Africa, Rwanda, the former Yugoslavia). In some cases, UN bodies applied double standards and “selective targeting.” For thirty years the Soviet Union and a willing coalition opposed the establishment of a UN High Commissioner for Human Rights; with the end of the cold war, such an office was established, but its mandate was weak and its resources limited. The United Nations has not overcome the reluctance of states to monitor and be monitored. Within bodies such as the UN Human Rights Commission, influential countries still resist international scrutiny, as by the appointment of a “rapporteur” (a UN representative who would report on compliance with international human rights instruments and on alleged abuses). Such resistance often has succeeded, as by China in 1998 and 1999, and again in 2000.

But, for all its inadequacies, the United Nations represents and concentrates international concern over human rights. It put human rights on the world agenda a half century ago and has kept it there. It developed the international law of human rights, including the Universal Declaration, the Covenants, and numerous conventions. It concentrates the world’s attention on human rights problems that cry for attention. The very existence of the United Nations—its network of organs, its relations to governments and nongovernmental bodies, and its myriad activities—serves to “promote universal respect for, and observance of, human rights and fundamental freedoms,” as the Charter declared in 1945.

The Influence of the United States

The United States has been a major influence in the spread of the human rights ideology and a principal contributor to the international human rights movement. U.S. influence is commonly misunderstood and misconstrued. The United States has been widely—and not unjustly—criticized for crucial failures
to support and participate in international human rights. The United States, it has been said, has not been a pillar of the human rights church, but only a flying buttress that supports it from the outside. It is frequently pointed out that by subscribing to the UN Charter and to the Universal Declaration and its progeny, the United States made a broad commitment to promote respect for human rights, not just international human rights for others, and not just when it did not cost the United States much to do so. The United States, we are frequently reminded, has continued to resist ratifying covenants and conventions and has loaded those it has ratified with reservations, understandings, and declarations. It has not yet ratified the International Covenant on Economic, Social and Cultural Rights, nor has it ratified the Convention on the Elimination of All Forms of Discrimination against Women. The United States is almost alone in its failure to ratify the Convention on the Rights of the Child. It is reluctant to lead or to bear the costs of leadership in collective implementation of human rights norms. U.S. resistance to an effective international criminal court has been discouraging. Although human rights are generally protected within the United States, contrary to the international trend, the country has significantly increased the imposition of capital punishment. Prison conditions are sometimes bad, police misbehavior is not uncommon, racial equality is still elusive, federal and some state governments have cut back on economic and social commitments to citizens, and U.S. immigration laws and policies are erratic and sometimes inhumane.

Yet, indisputably, the United States has contributed to international human rights in important ways. Principally, perhaps, it has helped to spread the ideology of human rights by its example as a viable constitutional order committed to individual rights. In its international relations—from the Four Freedoms through Dumbarton Oaks, San Francisco, and Nuremberg, and in the United Nations—the United States has supported and promoted the universalization of human rights as well as its internationalization. It played a major role in the preparation and proclamation of the Universal Declaration and of the Covenants and Conventions that followed. The United States proposed—indeed, it imposed—an ideology of human rights on the countries defeated and occupied after World War II and through those states spread the human rights gospel far beyond. The imposition of the ideology of rights on Germany led to contemporary Germany’s role as a model of constitutionalism and human rights for other countries in Europe and beyond. The United States used commitment to human rights as an important weapon in the cold war, promoting respect for rights by our allies and would-be allies (although too often it accepted “anticommunism” as a substitute). The United States helped use respect for human rights as the motor of “the Helsinki process” and of its contribution to
constitutionalism and democracy, including respect for human rights, in Eastern and Central Europe.  

Cold war considerations aside, foreign governments generally have recognized that favorable human rights conditions at home contribute to favorable political and economic relations with the United States and that serious human rights violations threaten those relations. U.S. presidents often have declared that promoting respect for human rights around the world is an important element in U.S. foreign policy. Notably, for example, President Jimmy Carter has been credited with helping to end killings and disappearances during the “dirty war” in Argentina and elsewhere in Latin America. Few would doubt that a desire to improve relations with the United States is part of what impelled China, on October 5, 1998, to sign the International Covenant on Civil and Political Rights, thereby extending the promise of international human rights to almost a billion human beings.

The U.S. Congress has sought to promote respect for human rights in other countries by enacting laws of promotion or of sanction. Congress has, since the 1970s, been responsive to constituencies that are sensitive to human rights in foreign countries generally, or in particular countries. It has maintained sanctions, prohibiting the sale of arms or denying financial assistance to governments guilty of “consistent patterns of gross violations of internationally recognized human rights,” and it has required U.S. delegates to international financial institutions to exert influence against international assistance to governments guilty of such violations. At various times, concern over the condition of human rights in particular countries—in Poland or Greece, in the Soviet Union, in some countries in Latin America—has led Congress to impose “country-specific” sanctions; best known perhaps were those against South Africa during apartheid and the Jackson-Vanik Amendment denying trade benefits to the Soviet Union unless it permitted its citizens to emigrate. During the 1970s, Congress mandated the establishment of a human rights bureaucracy in the Department of State, and its detailed annual reports on the condition of human rights in every country of the world have helped establish the human rights ideology in international life. These State Department Country Reports have provided a framework for discussion by U.S. ambassadors with foreign governments, mostly confidential but often influential. As a result of one such conversation, a foreign government discontinued police torture; in another instance, a foreign government improved conditions in its prisons and kept them clean. Sanctions imposed by Congress have led to the cancellation of U.S. assistance to foreign security forces charged with gross violations of human rights. In October 1998 Congress enacted the International Religious Freedom Act, which its proponents believe will contribute to respect for religious freedom in many countries.
U.S. courts, too, have exerted some influence against human rights violations in other countries, by entertaining civil suits against foreign officials for torture, killings, disappearances, and other violations of human rights. The cases are comparatively few and monetary judgments ordinarily remain unpaid, but such proceedings serve to increase awareness, to judge, to record, and, perhaps, in some measure even to deter, if only by denying gross violators and their assets a haven in the United States.

The Cold War and Its End

The cold war, which had begun even before the Universal Declaration was proclaimed, fractured the unanimous commitment by the victorious Allies to promote human rights. In time, however, each side saw in the human rights idea an important focus of policy and a powerful ideological weapon. During the decades of their confrontations with communism, the United States and the other Western powers proclaimed their commitment to authentic democracy, to freedom, and to human rights as the hallmark of their ideology, what they stood for, and what distinguished them from their cold war adversaries. They used respect for human rights as a touchstone for friendly relations and alliances, for trade, and for financial assistance. For its part, the Soviet bloc insisted, to its own people and to the unaligned world, that it alone had authentic democracy and that only the socialist ideology represented a sincere commitment to authentic human rights, especially to economic and social rights, and to the right of peoples to self-determination and economic self-determination.

Then, in 1975, at Helsinki, the Soviet bloc, which had abstained when the General Assembly proclaimed the Universal Declaration, made a clear commitment to human rights. It did so as the price of détente and in exchange for commitments by the West not to seek to push back the postwar frontiers in Eastern and Central Europe (including the division of Germany). It explicitly committed itself to the principles of the Universal Declaration; it agreed to abide by international human rights treaties, including the covenants and conventions that it had ratified but ignored; and it acknowledged the right of all "to know and to act upon their rights." As a result, Helsinki monitoring groups grew up and provided the foundations and the legitimacy for an ever-spreading network of nongovernmental human rights monitoring organizations.

The end of the cold war had particular resonance for human rights in the Soviet Union and in its former empire. The Helsinki Accords were incorporated into wider commitments among the parties, set forth in documents emerging from conferences in Paris, Vienna, Bonn, and especially Copenhagen and Moscow. These documents elaborated a shared commitment to human
realizing human rights in important detail and specified democracy as an important human right and a foundation for other human rights. Thus, the human rights ideology spread to countries in Eastern and Central Europe. Later, political and economic developments in Western Europe, as part of progress toward European Union, attracted “applications” from countries in Central and Eastern Europe and from other neighbors that required of them commitment to and acceptance into the European human rights system. In 1997–1998, an enlarged and restructured European human rights system that included Eastern and Central European states strengthened the commitment to human rights in that region and lengthened the reach of its influence beyond its borders.47

Acceptance of the ideology of international human rights throughout the international political-economic system expanded with the end of the cold war. The end of apartheid soon followed, along with the revival of the UN Security Council, enabling it to act against gross violations of human rights that threatened international peace and security, as in the former Yugoslavia and in Rwanda, and the establishment of ad hoc international tribunals to try war crimes and crimes against humanity.48 Sharp divisions within the Human Rights Committee softened, allowing it to put some teeth into its monitoring process. A parallel Committee on Economic and Social Rights, which had been established in 1985 by the UN General Assembly, also began to wield influence. Ratifications of the Covenants increased steadily, as did ratifications of the Genocide Convention, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture, a new Convention on the Rights of the Child.

The Third World

The end of colonialism, the proliferation of new states, and the emergence of the Third World and its transformation after the cold war into the “developing world” may have complicated the politics of human rights, but they also contributed strength to the human rights movement. The multiplication of states as a result of rapid decolonization had slowed the conversion of the Universal Declaration into covenants and conventions, but the Third World—although sometimes resenting Western self-righteousness—made its own commitment to the human rights ideology, and sometimes its members were able to exploit the cold war for particular human rights interests they favored. They added a right to self-determination and a right to “economic self-determination” to both Covenants and pursued a particular interest in supporting economic and
social rights, both as a contribution to their own development and as a basis for seeking international financial assistance.

Through the Third World’s commitment to particular rights and its insistence on equality and nondiscrimination, its general commitment to international human rights helped these to emerge as principal norms in covenants and conventions. Because the countries of the Third World considered apartheid in South Africa a major affront, they joined—and led—the fight against it, and moved to create and strengthen international human rights institutions as a weapon against it. What began as a step aimed at apartheid resulted in the establishment of a subcommission of the UN Commission on Human Rights to consider evidence of consistent patterns of gross violations of human rights generally. The successful pressure for sanctions against apartheid became a precedent for sanctions against other gross violations. At Vienna in 1993, when a few countries sought to dilute the human rights idea by appealing to “cultural relativism” and “Asian values,” others, including some Asian governments and Asian nongovernmental organizations (NGOs), insisted on the universality of human rights and supported the affirmation of the human rights idea. During and after the 1993 conference, Third World countries were generally less defensive of their “sovereignty” than were the bigger powers, such as China, Russia, and even the United States.

Regional Human Rights

The international human rights movement also was richly enhanced by the growth of regional human rights norms and institutions. The European human rights system was born during the early days of the Universal Declaration, from common sources and out of some shared ancestry. The European Human Rights Convention developed in stages, adding protocols as member states gained confidence in each other, in their common enterprise, and in the institutions they had created. The European system developed an effective European Commission of Human Rights and a prestigious Court of Human Rights, which in time produced a rich, eclectic jurisprudence. Major member states, even those with their own rich rights tradition, such as the United Kingdom, submitted to judgment and mended their ways. For example, in a series of cases, the United Kingdom was ordered to respect the freedom of the press of The Sunday Times; to halt degrading treatment in a mental hospital; to discontinue and forbid corporal punishment of schoolchildren. The European Court held invalid British laws in Northern Ireland prohibiting sodomy; it prohibited extradition of a person from Great Britain to the state of Virginia for trial because if convicted he might spend long periods on death row, which, in the circumstances, would
Realizing Human Rights

violate the provision against torture or cruel, inhuman, or degrading treatment or punishment. In these and other cases, the United Kingdom agreed to change its behavior and to reform its practices. The success of the European system has led to its expansion, on the eve of the new century, into an expanded full-time court. The European countries also produced a European Social Charter, which has contributed to economic and social rights.52

Political and economic developments in Europe, including Eastern and Central Europe after the cold war, brought additional states into the European human rights system and expanded its institutions. At the same time, the European Economic Community, moving steadily toward European Union, developed particular economic and social human rights, notably in respect of the right to work and free movement of persons among states. The European Court of Justice in Luxembourg added its own independent jurisprudence of human rights.53

The states of the Americas, with their own human rights convention and their own institutions, paralleled the experience of Europe, slowly and steadily—although no doubt the inter-American system of human rights has been hindered in its growth because the participation of the United States has been only marginal.54 The inter-American system—the American Convention on Human Rights, implemented by the Inter-American Commission on Human Rights, and the Inter-American Court, under the authority of the Organization of American States—also has contributed to human rights. The Inter-American Court held Honduras responsible for the abduction and disappearance of a citizen and ordered compensation to survivors.55 It advised that the extension of the death penalty by Guatemala to additional crimes violated the American Convention. Both governments have listened and obeyed.56

The African Commission also has been making some moves toward implementation of human rights. The African states are in the process of establishing an African Court of Human and Peoples' Rights.57

Mobilizing Shame

The various influences that induce compliance with human rights norms are cumulative, and some of them add up to an underappreciated means of enforcing human rights, which has been characterized as “mobilizing shame.” Intergovernmental as well as governmental policies and actions combine with those of NGOs and the public media, and in many countries also public opinion, to mobilize and maximize public shame.

The effectiveness of such inducements to comply is subtle but demonstrable. Why did China go to such lengths in the 1990s, and again in the year 2000, and
expend so much diplomatic capital, to avoid having the UN Human Rights Commission designate a rapporteur to investigate the condition of human rights in China? Why do more than 100 governments become parties to covenants and conventions, oblige themselves to report on human rights conditions, resist and respond to criticism by international bodies and other governments and by NGOs and the media, rather than suffer criticism for failure to participate in international human rights arrangements? Indeed, why do countries such as the United States refrain from assuming human rights obligations, or do so with embarrassing reservations, rather than court criticism and obloquy for violating obligations they have assumed?

**HAS IT MADE A DIFFERENCE?**

When front pages and television news continue to report grave human rights violations, including genocide and other crimes against humanity; when there are daily reports of torture, prolonged arbitrary detention, racism, abuse of women, exploitation of children—one cannot escape asking: What has changed? Are the human rights of human beings respected better than they were a half century ago, before the advent of the age of rights?

At the end of the twentieth century, human rights, essentially as defined in the Universal Declaration, is a universal ideology. Under international influence, the ideology of human rights has been “constitutionalized” in almost all countries. And virtually all countries are now committed internationally to respect and ensure the human rights of their citizens. International institutions monitor and criticize, often supported by governments with blandishments, carrots, and occasional sticks. Intergovernmental and governmental activities combine with those of NGOs and the media to mobilize and maximize “shame,” in efforts to deter, terminate, and remedy human rights violations.

The human rights ideology has helped shape world events. International human rights ended apartheid. International human rights helped end colonialism and achieve the present world system of nearly 200 states. International human rights had an important role in ending the cold war and in bringing human rights and the seeds of democracy to the former Soviet empire and beyond. “Dirty war,” disappearances, and extrajudicial killings in Latin America ended in substantial measure through the influence of international human rights. An international tribunal in the former Yugoslavia has indicted a head of state, and there and in Rwanda tribunals have convicted people of genocide and related crimes. A former head of state, Augusto Pinochet, was arrested for extradition to stand trial for the torture and murder of many citizens during his
“reign” in Chile (although he was not brought to trial due to poor health). International human rights bodies, notably the European human rights system, have addressed and remedied violations by powerful member states. The domain of international and regional human rights bodies continues to expand.

Undeniably, there have been terrible human rights failures—in Cambodia, Bosnia, Rwanda. There, and elsewhere, national constitutions and international norms failed to deter; international institutions and powerful governments failed to respond promptly and adequately. (The expectation that they would fail to respond no doubt contributed to their failure to deter.) But international human rights may be credited with whatever responses there have been, however inadequate, however delayed; and international human rights inspired all subsequent and continuing efforts to address the terrible violations. The major powers have sometimes declared gross violations of human rights to be “threats to international peace and security” and made them the responsibility of the UN Security Council, leading to international sanctions (and even to military intervention, as in Kosovo in 1999). International tribunals are sitting to bring gross violators to trial; a permanent international criminal tribunal to adjudicate crimes of genocide, war crimes, and crimes against humanity is being created. Various governments have moved to support international human rights and made their bilateral and multilateral influence an established force in international relations.

Some human rights failures reflect the character of the international system and its deficiencies. The human rights ideology and human rights institutions can address only violations for which established societies and governments can be held responsible. They do not—cannot—address terrible violations of human life and welfare that occur as a result of wars (including civil wars) or massive violations of human rights by mobs or terrorists. But even in situations such as those in the former Yugoslavia, in troubled parts of Africa, in East Timor, the international community cannot escape responsibility.

In some countries the culture of human rights has met resistance from an older societal culture, a culture of gender inequalities and mistreatment of “others.” For some governments international human rights has met resistance from a culture of “sovereignty” that dies hard. But the fruits of international human rights are to be judged by transformations in domestic society and their consequences in the lives of human beings. In sum, by the end of the twentieth century many more societies than before 1948 are societies with human rights systems; there are fewer patterns of gross violation, and institutions exist that help deter, prevent, and remedy abuses. Societies where these systems are absent or deficient are now considered “abnormal,” in “emergency,” and are under continuing pressures to change and to remedy deficiencies.
Every human being in every country now has claim to the freedoms, protections, and benefits of the human rights ideology. Each has claim to those rights against his or her own society. Every human being’s rights now have claim on international responsibility and protection. No country can now say that the human rights of any human being subject to its jurisdiction is no one else’s business. The world and its institutions may or may not respond, but responsibility persists. If there are periods of international neglect or indifference, governments remain ever subject to challenge and to change.

Many hundreds of millions—even billions—of human beings who enjoyed no human rights half a century ago now live under human rights regimes. Increasing numbers of countries provide constitutional protection for individual rights; increasing numbers of countries have accepted international obligations and are subject to some international monitoring and scrutiny. But much depends—will depend—on vigilance, by national bodies, by other governments that care, by international institutions, by nongovernmental organizations and by the press.

AN AGENDA FOR THE NEXT CENTURY

International human rights are here to stay, but its agenda needs serious attention for the new century. Norms and institutions have to be reappraised. There is a need to address the full responsibility of states toward the human rights of their inhabitants; the responsibility of other states, especially of other parties to human rights agreements; the responsibility of international institutions and of their state members (including especially members of the UN Security Council); and the responsibility of other nonstate actors.

Some urgent items for that agenda include: reviewing the international norms and strengthening international human rights institutions; attending to the weaknesses of norms and institutions in safeguarding the rights of women and of minorities; considering the rights of neglected people and categories of people, such as refugees; addressing concerns arising from new economic and social developments; building bridges between the human rights movement and the religious realm; and addressing issues of religious freedom arising out of differing religious identities.

Political developments in the latter years of the twentieth century have thrown up new human rights issues and others not previously addressed or recognized. These include human rights and “transitional justice,” and the claims of justice, of truth, and of history, such as have been pursued in South Africa, the former Soviet empire, Cambodia, Argentina, Chile, El Salvador,
Guatemala, and Haiti. They also include human rights issues of collective humanitarian intervention, as in Kosovo in 1999, and human rights in times and places of United Nations peacekeeping, as in East Timor.

**Women**

Prominent on the human rights agenda for the future must be the achievement of the equality of women promised in many instruments and essential to human dignity and to development. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), modeled after the Convention on the Elimination of All Forms of Racial Discrimination (CERD), has attracted numerous reservations, reflecting deeply ingrained historical, cultural, and religious attitudes. The treaty body monitoring compliance with CEDAW has weaker powers than the committee monitoring CERD, differences that must be eliminated.

Obstacles to be overcome in the pursuit of equal rights for women are reflected in some of the unusual provisions in CEDAW. Article 5(a) requires state parties to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles of men and women.” But such unusual provisions are frequently subjected to reservations. The Convention is silent on the serious problems of violence against women and of unequal relations in the home. Equal rights for women will require concerted efforts by all elements in the international human rights movement to eliminate reservations and to have the provisions of CEDAW carried out in good faith and largeness of spirit.

**Minorities**

Post–World War II inattention to the problem of minorities must be repaired. In 1945 the UN Charter, and in 1948 the Universal Declaration, apparently assumed that the special protection of minorities, once perceived to be essential for maintaining peace in Europe, was no longer necessary: Peace would be maintained by the UN Charter and the Security Council, while minority groups would be protected by protecting the human rights of their members, the human rights of all.

Later, the international Covenants established the rights of peoples to political and economic self-determination. But the rights of minority groups, of their members as members of the group, even of individual members in relation
to the group, have remained inconclusive. The plight of minorities and its relation to internal and international peace, remains a source of grievous concern for human rights as well as for international peace and security.

The tragedy of the former Yugoslavia, in Bosnia and in Kosovo, suggests the need for earlier, planned, coordinated, collective intervention under UN and regional auspices to prevent conflict and crimes against humanity, and to do so by any necessary means, both to maintain peace and to promote amicable relations among ethnic and religious communities. All of the facilities of the United Nations, regional bodies, and more developed nations must be coordinated to that end. Of particular urgency is the long-neglected plight of the Roma (Gypsies).

Human Rights and Religion

Article 18 of the Universal Declaration of Human Rights and the comparable Article 18 in the ICCPR recognize rights to freedom of thought, conscience, and religion. But some religions have resisted some freedoms for other religions, including, for example, the right to change one’s religion or the right to proselytize.

The world of religion and the world of human rights have not always coexisted comfortably. Religion, and some particular religions, have not been comfortable with human rights as an autonomous ideology that is not necessarily rooted in religion. The human rights ideology, on the other hand, has resisted the claims of some religions to disregard the claims of other religions. Some religions have invoked religious dogma to justify distinctions based on religion, gender, or sexual orientation, distinctions that may be contrary to the human rights idea. The rise of “fundamentalism,” sometimes brigaded with political authority, has weakened adherence by some governments to the human rights ideology and to international covenants and conventions, notably, the ICCPR andCEDAW. Representatives of human rights and of religion, and of particular religions, must enter into dialogue, to develop understanding and cooperation in the new century.

Refugees

The international system failed refugees before World War II, and it has not done enough for them since. Even the Universal Declaration of Human Rights has failed refugees: It seems to recognize an individual’s right to seek political asylum and to enjoy it, but it does not clearly recognize a right to receive asylum so it can be enjoyed, and it does not address the rights of refugees or
of persons displaced within their home territories who are not fleeing political repression. Nor did the 1951 Convention Relating to the Status of Refugees give to any refugee a right to asylum. An incidental provision committing states to non-refoulement—not to send a refugee to a country where their life or freedom would be threatened—falls short of giving a refugee a right to be admitted somewhere for haven. The Refugee Convention, like the Universal Declaration, draws understandable lines between political and other refugees, between refugees outside their country and internally displaced persons; but having drawn such lines, it does not attend adequately to people on either side of those lines.

The refugee remains the stepchild of the human rights movement. Refugees are left to the heroic efforts of the UN High Commissioner for Refugees and to the mercies of governments. At the end of the twentieth century, many millions of refugees and displaced persons are victims of “compassion fatigue.” There is no sign that the international system is mobilizing itself to address their tragedies by developing programs for discouraging refugee flow, for example, by monitoring and improving human rights conditions in countries from which they might flee; by providing foreign assistance to discourage an exodus of economic refugees; by developing a legal right of asylum for at least some refugees and imposing obligations on states to share the burdens of asylum; and by encouraging states to see that they have a human, even a national interest, in recognizing and respecting the human rights of refugees. Asylum apart, the human rights movement must consider the human rights of refugees and displaced persons wherever they find themselves.

Realizing Compliance with Human Rights

It is time for the international community to review the norms and institutions of international human rights, to help improve national institutions on which individual rights depend, and to strengthen international institutions and enable them to monitor and improve human rights conditions wherever they are troubled.

There is much to be done to make compliance with international human rights norms real: to move states beyond nominal commitment to authentic commitment; to make the reporting system required by covenants and conventions more meaningful; to enhance the authority of the treaty committees; and to move beyond voluntary reporting by states parties to include international monitoring, investigation, and judicial protection, as some regional human rights systems have done.

It is time for the human rights treaty system to address and sharply reduce reservations to human rights covenants and conventions. In the past, in order
to encourage ratification, the international community was prepared to accept reservations liberally and with hardly a question. The community saw virtue in promoting adherence to treaties even if it was only nominal and even essentially hypocritical. The international community must begin to insist on bona fide compliance with covenants and conventions, with their spirit and purpose.

It is time to remind all states, again and again, that the condition of human rights everywhere is their business, that gross violations anywhere are detrimental to the national interests of all. It is time for all to recognize the relation of human rights violations to domestic peace and security and to international peace and security. It is necessary to achieve commitment by the big powers—the United States, Europe, Japan—and by others in Asia, Africa, and the Americas, to take steps against gross violations. It is time to recognize the responsibility implied in any multilateral convention, that every state party should hold other parties to their commitments, if necessary by pressing complaints before committees, commissions, courts, and tribunals; by various carrots, if necessary by various sticks.

Human Rights and Globalization

Today's world is not that of 1948; human rights were a radical advance in, and for, the world of fifty years ago. Now the human rights idea and ideology call for adaptation to a changed new century. Half a century ago the human rights movement, seeking acceptance of the rights ideology in a political system constituted by states, persuaded them that "sovereignty" and other "state values" are not the ultimate values, that state values have to serve human values, the values of billions of human beings. Now the human rights movement must adapt to the age of globalization, "the market," and cyberspace. International human rights eroded the "sovereignty" of states by subjecting human rights conditions at home to international scrutiny and by imposing responsibility on states regarding violations by other states. But where is sovereignty and where is responsibility for human rights in the coming age? In particular, who is responsible for violations of human rights by global companies?

Even in the age of globalization, legal responsibility in a state system remains in the states. But states, singly or jointly, can impose obligations on private entities, including multinationals, to respect human rights, and the international system should monitor and enforce such obligations. States can impose obligations on companies to respect and ensure the human rights of human beings on whom their global activities impinge. They have, perhaps, already begun to do so: The International Covenant on Civil and Political Rights commits states parties "to respect and ensure" the rights recognized in
the Covenant. There would seem to be an obligation on states parties to ensure that companies subject to their control and jurisdiction, wherever they operate, refrain from using slave labor or child labor; avoid complicity in torture, mistreatment, and other repressive measures; and support economic and social rights for the people among whom they operate. The responsibility of states and of companies has still to be clearly recognized and vigorously implemented.  

PROSPECTS:
THE FUTURE OF THE HUMAN RIGHTS IDEOLOGY

Changes in the international political system suggest that the coming century will be even more receptive to the human rights ideology than was the past half century. After World War II, the human rights ideology strove to achieve universality and acceptability to both sides in the cold war and to all economic systems, to socialism as well as to capitalism and to all their variants. The end of communism and of the Soviet empire eliminated an ideology inconsistent with the human rights ideology, and no new alternative secular ideology is on the horizon. In the twenty-first century, I am persuaded, the human condition will be judged, at home and abroad, by the human rights ideology. I do not expect any essential dissolution of the marriage of the Liberal State and the Welfare State, which the Universal Declaration consecrated; the commitment to both civil-political rights and economic-social rights will remain the human rights legacy for the new century.

The degrees of individual enterprise and of public enterprise, of economic freedom and of governmental regulation, will continue to differ in place and in time. Countries will continue to differ in what limitations on rights are required in the public interest and in how much derogation from rights is permitted during public emergency. There will be advances in human rights, and some retreats. One cannot expect an end to terrorism and disorder and internal wars, nor a guarantee against massive refugee flows and more genocide. But the ideology of human rights, and the related ideology of constitutionalism, I am persuaded, will remain the universal ideology, while the world continues its struggle with poverty and underdevelopment.

In the new century, every human being in every country of the world now has a claim against his or her society to the freedoms, protections, and benefits of the human rights ideology. Every human being's rights now have a claim to international responsibility and protection. But the human rights that are enjoyed by individual human beings will depend on maintaining a human rights
culture, which depends in turn on the commitment and responsibility of governments and institutions, nongovernmental organizations, and each of us.

NOTES

1. The reader may find exposition and explanation of unfamiliar terms in a growing number of books and articles including some devoted specifically to human rights, among them: Louis Henkin, Gerald Neurun, Diane Orentlicher, and David Leinbrook, Human Rights (New York: Foundation Press, 1999); and Henry Steiner and Philip Alston, eds., International Human Rights in Context (Oxford: Clarendon Press, 1996). There are also periodicals devoted entirely to human rights—for example, Human Rights Quarterly—and human rights law reviews associated with law schools; the American Journal of International Law regularly addresses human rights issues and developments.

2. 87 Congressional Record 44, 46-47 (1941).


4. The Atlantic Charter was issued on August 14, 1941, in a joint statement by President Roosevelt and Prime Minister Churchill. After the United States entered the war, the Allies, on January 1, 1942, signed the United Nations Declaration in which they pledged their adherence to the principles of the Atlantic Charter. For the text of the Atlantic Charter, see United States Department of State Executive Agreement Series No. 236, Cooperative War Effort (Washington, DC: U.S. Government Printing Office, 1942).


6. For a more detailed story, see Henkin et al., Human Rights, part I.


8. Writing after the rebirth of the ideology of rights in the mid-twentieth century, an American philosopher observed: "Certainly there was, just a relatively few years ago, fairly general agreement that the doctrine of natural rights had been thoroughly and irrevocably discredited." Richard Wasserstrom, "Rights, Human Rights and Racial Discrimination," Journal of Philosophy, Vol. 61, No. 20, October 29, 1964, pp. 628-41.

9. This commitment to the ideology of rights also appeared in the bill of rights of Virginia and in other early state constitutions. See generally Henkin et al., Human Rights, part II.

10. The United States also early established "judicial review" of the actions of the legislative and executive branches, which was to become the hallmark and bulwark of constitutional human rights.


13. For the origins and growth of "international human rights" generally, see Henkin et al., Human Rights, part III.

14. Examples of such undertakings include early bilateral treaties for reciprocal religious or ethnic toleration, minorities treaties before and after World War I, or the conventions promoted by the International Labour Office affiliated with the League of Nations after World War I.
15. The "International Bill of Rights" is not a formal designation but is now commonly used to refer to the Universal Declaration together with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), described more fully below.


17. The principal organs of the United Nations, as set out in Article 7(1) of its Charter, include the Security Council, the General Assembly, the Economic and Social Council (ECOSOC), the Trusteeship Council, the International Court of Justice, and the Secretariat. Article 68 of the Charter directed the Economic and Social Council to set up commissions in economic and social fields "and for the promotion of human rights." The UN Commission on Human Rights was the first commission set up by ECOSOC and the Universal Declaration of Human Rights was the first product of that Commission. The UN organization, its organs and suborgans, have lives and agendas of their own. The UN General Assembly, a principal organ, has promoted human rights resolutions, declarations, treaties, and other norms, has considered particular human rights problems, and has sometimes recommended actions to alleviate them. The UN Human Rights Commission, in addition to drafting the Universal Declaration and a number of human rights treaties, has helped to develop subsidiary bodies and procedures for monitoring the condition of human rights and responding to human rights violations. See generally, Henkin et al., Human Rights, p. 689.


19. The principles of the Nuremberg Charter were unanimously approved by the United Nations General Assembly; see G.A. Res. 95, U.N. doc. A/236 (1946). Their status as international law is not in doubt.

20. See Vratislav Pechota, "The Development of the Covenant on Civil and Political Rights," in Louis Henkin, ed., The International Bill of Rights: The Covenant on Civil and Political Rights (New York: Columbia University Press, 1981). International human rights agreements are generally drafted by committees acting under the auspices of the UN General Assembly, then submitted for comment to all the members of the United Nations. The final drafts are adopted by the General Assembly and submitted to member states of the United Nations, inviting them to become parties. The United Nations Organization is not a party to such agreements but provides administrative and financial services for the preparation, conclusion, and implementation of the agreements. Conventions, conventions, and protocols are all international agreements, binding on the states that become parties to them by procedures indicated in the particular treaty, usually by signature subject to subsequent ratification. Between signature and ratification, a state is not legally bound by the terms of the treaty but is deemed to have an obligation to proceed to ratification within a reasonable time and not to act contrary to the spirit of the agreement in the interim. See the Vienna Convention on the Law of Treaties, U.N. Doc A/CONF. 39/27 (1969), Article 18. Usually a state also may become a party to the treaty by depositing an "instrument of accession" instead of signing and ratifying.

21. The Human Rights Committee charged with monitoring the ICCPR, in a "general comment" interpreting the Covenant, has declared that states parties to the Covenant do not have a right to withdraw. See General Comment No. 26, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1997).

22. The Human Rights Committee established pursuant to ICCPR, Part IV, is not to be confused with the UN Commission on Human Rights, the body that drafted the Universal Declaration and the Covenants and is a suborgan of the UN Economic and Social Council. The Human Rights Committee is a "treaty body" established by the states-parties to the
HUMAN RIGHTS: IDEOLOGY AND ASPIRATION, REALITY AND PROSPECT

35

ICCPR. The members of the Committee are elected by and responsible to the states parties to that Covenant, performing the tasks assigned to it by the Covenant. But the United Nations provides financial and administrative support for the Committee. Comparable "treaty bodies" have been created by conventions adopted by the UN General Assembly on particular human rights. The ICESCR did not establish a "treaty body," but following the successful development of the Human Rights Committee under the ICCPR, the Economic and Social Council, pursuant to a 1985 resolution, established the Committee on Economic, Social, and Cultural Rights to provide supervision in respect of the ICESCR. See ECOSOC Res. 1985/17. The Committee on Economic, Social and Cultural Rights has advised the creation of an Optional Protocol to the ICESCR, modeled after the Optional Protocol to the ICCPR, by which states parties would agree to have the Committee consider communications by individuals concerning compliance with the Covenant.


26. Ratifications and accessions of various human rights treaties as of November 1, 1999: Convention on the Prevention and Punishment of the Crime of Genocide, 78 United Nations Treaty Series [UNTS] 277 (December 9, 1948), 130 parties; International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (December 21, 1965), 156 parties; Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180 (December 18, 1979), 165 parties; Convention Against Torture and Other Cruel, Inhuman, or Degrading Punishment, G.A. Res. 39/46 (December 10, 1984), 119 parties; Convention on the Rights of the Child, G.A. Res. 44/25 (November 20, 1989), 191 parties. Not unrelated are the Geneva Conventions (not developed under UN auspices) establishing humanitarian law. At one time "human rights law" was distinguished and separated from "humanitarian law" dealing with the laws of war. Increasingly, the line between these two fields has blurred. At Nuremberg, the Nuremberg Charter dealt both with violations of the laws of war and with crimes against humanity. With the extension of humanitarian law to include crimes not during war, but also in internal wars and nonwar situations, the international norms have ceased to observe a sharp distinction between these two fields. In the case of the former Yugoslavia and the forthcoming International Criminal Court, norms and institutions have dealt with subjects from both fields. For example, the International Criminal Court will have jurisdiction over war crimes as well as crimes against humanity. The "Landmine Convention" also has been seen as a human rights agreement, especially as it affects civilian populations before, during, and apart from war. This Convention was not prepared under the auspices of the United Nations, but the Secretary-General of the United Nations is the Depository and state parties must inform the Security Council of their intent to withdraw from the treaty. See The Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on Their Destruction (also known as the Ottawa Convention), 36 International Legal Materials [ILM] 1507 (September 8, 1997), signed by 135 countries and ratified by 76.

27. For example, the Committee Against Torture was given some authority to receive complaints and to initiate "confidential inquiry," which may even lead to a visit to the
REALIZING HUMAN RIGHTS

territory of a state suspected of treaty violation. See Convention Against Torture, art. 20. There is no "treaty body" to implement the Genocide Convention, which was adopted before the Covenant and its method of implementation were adopted.

28. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 22; American Convention on Human Rights, Nov. 22, 1969, 9 I.L.M. 673, 683. The European states also have adopted the European Social Charter. The European system was established under the authority of the Council of Europe, which continues to exercise governing authority over the system. On the European system, see chapter 5 in this volume; on the inter-American system, see chapter 6.


31. In 1948 the Republic of South Africa established apartheid, a comprehensive system of racial separation and discrimination with an exclusively white government. Apartheid became a target of international condemnation led by Third World states, joined by virtually all other states; a system of sanctions against South Africa grew in scope and intensity. The United Nations also adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid, by General Assembly Resolution 3068 (XXVI) of November 30, 1973. Apartheid was abolished in 1989, and a democratic government was established in 1994. See chapters 9 and 13 in this volume.

32. See, for example, the U.S. Reservations, Understandings and Declarations to the ICCPR, 138 Congressional Record S4781-01 (1992), quoted in Henkin et al., Human Rights, p. 784.

33. The International Covenant on Economic, Social and Cultural Rights (ICESCR) was signed for the United States by President Jimmy Carter on October 5, 1977, with proposed reservations, understandings, and declarations. In 1994 the Foreign Relations Committee of the U.S. Senate recommended that the Senate consent to U.S. ratification of the Convention on Discrimination Against Women, but as of May 2000 the Senate had not acted on the recommendation.


35. The United States has been called a "world leader in executing juveniles." Report of Human Rights Watch Children's Rights Project (March 1995). Executions for crimes committed by a person under the age of 18 are inconsistent with Article 6(5) of the ICCPR, but the United States has entered a reservation to that Article.

36. "The participants were content with the non-binding character of the [Helsinki] accord; for the United States it also obviated the need to seek consent of the U.S. Senate." See Louis Henkin, International Law: Politics and Values (Boston: M. Nijhoff, 1995), p. 181. Although not legally binding, the accord was an important human rights instrument during the cold war and laid the groundwork for the growth of constitutionalism in the former Soviet Union and in Eastern and Central Europe. Henkin et al., Human Rights, p. 355.

37. See Henkin et al., Human Rights, pp. 816 et seq.


40. See Henkin et al., Human Rights, p. 841 et seq.
41. See chapter 12 in this volume.
44. The onset of the cold war is commonly associated with the communist takeover of Czechoslovakia in early 1948. The Universal Declaration was completed during 1948 and was proclaimed by the United Nations General Assembly in December 1948.
46. See Ibid., p. 91.
48. The tribunals were established by resolutions of the UN Security Council under its authority to address threats to international peace and security. See UN Security Council Resolution 827 (1993) establishing the International Criminal Tribunal for the former Yugoslavia, and UN Security Council Resolution 955 (1994) establishing the International Tribunal for Rwanda. See also Henkin et al., Human Rights, pp. 618-629; and chapter 9 by Richard Goldstone in this volume.
50. Economic sanctions under the authority of the Security Council were also imposed against Libya, the former Yugoslavia, Somalia, and others. See Henkin et al., Human Rights, p. 695. On the degree to which economic sanctions contributed to the end of apartheid, see Ibid., p. 704, and chapter 13 in this volume.
51. See Henkin et al., Human Rights, pp. 112-16.
53. The European Court of Justice, sitting in Luxembourg as the Court of the European Community, now the European Union, is to be distinguished from the European Court of Human Rights, which sits in Strasbourg, and which was established under the authority of the Council of Europe. See chapter 5 in this volume; and Henkin et al., Human Rights, p. 599.
54. The United States is a member of the Organization of American States and thereby committed to the American Declaration of the Rights and Duties of Man, adopted in May 1948. The United States signed the American Convention of Human Rights in 1978, subject to reservations, understandings, and declarations but, as of early 2000, the United States has not ratified the Convention. See chapter 6 in this volume. For further information on the American Convention generally, see Scott Davidson, Inter-American Human Rights System (Brookfield, VT: Dartmouth Publishing, 1997); Henkin et al., Human Rights, pp. 342 et seq., 525 et seq., 784 et seq.
55. In the Velásquez Rodríguez Case, 4 Inter-Am. Ct. H.R. (1998, ser. C), the American Court found the Honduran government responsible for the abduction and disappearance of
Velasquez Rodriguez and that the legal process of Honduras was ineffective to provide a remedy. Several witnesses had been either harassed or assassinated. The Court ordered the Honduran government to pay compensation to the abduction victim’s next of kin. See Henkin et al., Human Rights, p. 525.


57. See chapter 7 in this volume.
59. The example of Pakistan is described in chapter 2 in this volume.

60. The U.S. Supreme Court has declared that the obligation of non-refoulement applies only to refugees already in a state’s territory and does not prohibit reaching outside its territory, for example to the high seas, to return a refugee even to oppression or death. Salo v. Haitian Ctr. Council, Inc., 509 U.S. 155 (1993).

61. There is also, and in particular, an agenda for the United States. History and national interest call for a leading role for the United States in shaping the international human rights agenda and in ensuring "constitutionalism." International human rights often have been declared a keystone of U.S. foreign policy. In a letter to Benjamin Galloway, in 1812, Thomas Jefferson wrote: "I hope and firmly believe that the whole world will sooner or later feel benefit from the issue of our assertion of the rights of man." The Writings of Thomas Jefferson, Memorial Edition, eds. Andrew Lipscomb and Albert Bergh, (Washington, DC: Thomas Jefferson Memorial Association, 1903) Vol. 13, p. 130. But unless the United States moves to the forefront of international human rights—by adhering to the principal covenants and conventions (avoiding or abandoning reservations), by submitting to scrutiny and judgment by international institutions, by assuming responsibility through international institutions to ensure respect for human rights where it is grossly jeopardized, the United States will not earn leadership in international human rights over the twenty-first century.
Human Rights:
Not Merely an Internal Affair

Wei Jingsheng

Wei Jingsheng was one of the leaders of China’s democracy wall movement and the author of an article entitled “The Fifth Modernization” on the indispensability of democracy to Deng Xiaoping’s proposed “Four Modernizations.” In October 1979 he was convicted for fomenting “counterrevolution” and served fourteen years in prison. Released in 1993, Wei was rearrested in March 1994 and held prisoner until September 1997, when he was removed from his cell and forced to board a plane bound for the United States. He currently serves as a visiting scholar at Columbia University’s Center for the Study of Human Rights. While he was in prison he was awarded the Olaf Palme Memorial Prize in 1994, the Robert F. Kennedy Memorial Human Rights Award in 1996, and the National Endowment for Democracy Award for 1997. He was also nominated several times for the Nobel Peace Prize. His prison letters were published in the West in the spring of 1997 as The Courage to Stand Alone (trans. Kristina M. Torgeson).

Many of my ideas about society’s obligation to protect the basic human rights of its citizens crystallized in 1966, when I came face to face with unspeakable poverty during a trip to northwestern China. I had joined the Red Guard in