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Part I

The foundations

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[More information](#)

1 Introduction: human rights in international relations

Human rights are widely considered to be those fundamental moral rights of the person that are necessary for a life with human dignity. Human rights are thus means to a greater social end, and it is the legal system that tells us at any given point in time which rights are considered most fundamental in society. Even if human rights are thought to be inalienable, a moral attribute of persons that the state cannot contravene, rights still have to be identified – that is, constructed – by human beings and codified in the legal system.¹ While human rights have a long history in theory and even in spasmodic practice, it was the American and French revolutions of the eighteenth century that sought to create national polities based on broadly shared human rights. Despite the rhetoric of universality, however, human rights remained essentially a national matter, to be accepted or not, until 1945 when they were recognized in global international law.

This book is about the evolution and status of human rights in international relations at the start of the twenty-first century. Thus this extended essay is about the effort to liberalize international relations – to make international relations conform to the liberal prescription for the good society. In the classical liberal view, the good society is based on respect for the equality and autonomy of individuals, which is assured through the recognition and application of the fundamental legal rights of the person. In this book liberalism is a synonym for attention to personal rights. But in international relations it has been widely believed that the state, not the individual, is the basic unit. And the core principle has been said to be state sovereignty and non-interference in the domestic affairs of states. In this book realism is a synonym for attention to state interests – foremost among which is security – and state power. The subject of international human rights thus projects liberalism into a realist world – a

¹ Jack Donnelly, “The Social Construction of International Human Rights,” in Tim Dunne and Nicholas J. Wheeler, eds., *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), 71–102.

Cambridge University Press

0521865603 - Human Rights in International Relations, Second Edition

David P. Forsythe

Excerpt

[More information](#)

4 The foundations

world dominated for several centuries by states and their collective interests.² I develop these ideas further in chapter 2.

To paraphrase Charles Dickens, human rights in modern international relations represents both the best of times and the worst of times.³ During the half-century after the Second World War, truly revolutionary developments occurred in the legal theory and diplomatic practice of internationally recognized human rights. Human rights language was written into the United Nations Charter, which was not the case with the Covenant of the League of Nations. Member states of the United Nations negotiated an international bill of rights, which was then supplemented by other treaties and declarations codifying that human beings had certain fundamental legal rights that were to be respected. By the early twenty-first century more than 140 states (United Nations membership was 191 in 2005) had formally adhered to the International Covenant on Civil and Political Rights and the companion International Covenant on Economic, Social, and Cultural Rights. Some regional developments were even more impressive. The Council of Europe manifested not only a regional convention on civil and political rights, widely accepted, but also an international court to adjudicate disputes arising under that treaty. The Western Hemisphere was also characterized by a regional treaty on human rights and a supranational court to give binding judgments. The 1949 Geneva Conventions were formally accepted by virtually all states; they enshrined the view that certain humanitarian values were to be respected even by parties engaged in armed conflict. In the fall of 1993 the UN General Assembly approved the creation of a High Commissioner for Human Rights. In the mid-1990s the UN Security Council created international criminal courts to try individuals for violations of the laws of war, genocide, and crimes against humanity in the former Yugoslavia and Rwanda, thus rejuvenating international criminal responsibility after the Nuremberg and Tokyo trials of the 1940s. In the summer of 1998 a diplomatic conference in Rome approved the statute for a standing international criminal court with jurisdiction similar to the two *ad hoc* courts.

Other developments also indicated the central point that human rights was no longer a matter necessarily or always within state domestic jurisdiction. In principle, states were to answer to the international community for their treatment of individuals. International relations regularly entailed not only subjects like war and trade, but also human rights. Human rights had been internationalized, and at least some attention to

² For an excellent discussion of varieties of liberalism and realism, see Michael W. Doyle, *Ways of War and Peace* (New York: Norton, 1997), especially 41–48 and 205–13.

³ Lynn Miller, *World Order: Power and Values in International Politics*, 3rd edn (Boulder: Westview, 1994), ch. 1.

Cambridge University Press

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David P. Forsythe

Excerpt

[More information](#)

internationally recognized rights had become routinized. International relations involved aspects of governance in the sense of public management of policy questions.⁴ Attention to human rights was part of this international governance. Concerns about the equal value, freedom, and welfare of individuals had long affected many national constitutions and much domestic public policy. From 1945 those same concerns about individual autonomy and respect and welfare also began to affect international relations in important ways – regardless of whether the distribution of power was bi-polar, multi-polar, or uni-polar.⁵

The other side of the coin, however, merits summary attention as well. Perhaps no other situation captures so well the inhumanity that occurs in the world as the famine in China between 1958 and 1962, induced by Mao's regime, that claimed approximately 30 million lives.⁶ Not only did the international community not respond, but also many outsiders even denied that a catastrophe of major proportion was occurring or had occurred. If one judges events by number of human lives lost, Mao's famine made him a greater mass murderer than either Hitler or Stalin. The twentieth century, with its record of mass murder and mass misery, was plainly not a good era for the practice of liberal values in many ways. It has been estimated that some 35 million persons were killed in armed conflict during the twentieth century; but perhaps 150–170 million persons were killed by their own governments through political murder or mass misery that could have been ameliorated.⁷ The journalist David Rieff was quite perceptive when he wrote that the twentieth century, by comparison to those that came before, had the best norms and the worst realities.⁸

Even after the collapse of European communism and the demise of communist economics in other places like China and Vietnam, a number of persons embraced the traditional view that international relations remained a dangerous game, and that those who wanted decisive international action for human rights were naively optimistic.⁹ Thus the end of the Cold War did not mean the demise of “realists” who argued that pursuit of human rights in international relations had to take a back seat to

⁴ James N. Rosenau and Ernst-Otto Czempiel, eds., *Governance Without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992).

⁵ Lea Brilmayer, *American Hegemony: Political Morality in a One-Superpower World* (New Haven: Yale University Press, 1994).

⁶ Jasper Becker, *Hungary Ghosts: China's Secret Famine* (London: J. Murray, 1996).

⁷ R.J. Rummel, *Death by Government* (Somerset, NJ: Transaction Publishers, 1996).

⁸ *A Bed for the Night: Humanitarianism In Crisis* (New York: Simon & Schuster, 2002), 70.

⁹ E.g., John Mearsheimer, “Disorder Restored,” in Graham Allison and Gregory Trevorton, eds., *Rethinking America's Security: Beyond Cold War to New World Order* (New York: Norton, 1992), 213–237.

Cambridge University Press

0521865603 - Human Rights in International Relations, Second Edition

David P. Forsythe

Excerpt

[More information](#)

6 The foundations

the self-interested pursuits of the territorial state. It was ironic but nevertheless true that democratic realists like Henry Kissinger, however much they might be liberals at home in their support for democracy and human rights, were prepared to sacrifice foreign rights and foreign democracy to advance the interests of their state. Democratic societies surely had a collective right to defend themselves. The rub came in whether a democratic society should sacrifice the human rights of others to advance its own security and prosperity. Even commentators sympathetic to universal human rights agreed that anarchical international relations, without central government, meant that it was not easy to interject human rights considerations into the small policy space left over from intense national competition.¹⁰

This book, focusing on human rights in international relations since the Second World War, will present an analysis of competing liberal and realist perspectives. It will also chart the enormous gap between legal theory and political behavior, as public authorities both endorsed human rights standards and systematically violated – or failed to correct violations of – the newly emergent norms. The following pages will explain why legal and diplomatic progress transpired, analyzing both moral and expedient influences. It will also outline major sources of opposition to the consolidation of the legal-diplomatic revolution. The analysis will hence trace the successes and failures of international action for human rights, with the latter being frequently more visible than the former. Along the way we will pay attention to critiques of liberalism other than realism, such as feminism and Marxism.

The long-term vision that emerges from the pages that follow is guardedly optimistic, even if the short-term balance sheet is rather pessimistic. We should keep in mind that contemporary international relations is characterized by much turbulence, with ample evidence of contradictory findings and trends.¹¹ Nevertheless, for pragmatic liberals such as the author who regard international human rights as good and proper, but whose application must be matched to contextual realities thus leading to difficult policy choices, the twenty-first century should be better than the twentieth. Like other observers, but for different reasons, I am cautiously optimistic about a liberal world order in the long term.¹² I hold to this

¹⁰ Stanley Hoffmann, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse: Syracuse University Press, 1981).

¹¹ James N. Rosenau, *Turbulence in World Politics: A Theory of Change and Continuity* (Princeton: Princeton University Press, 1990).

¹² Max Singer and Aaron Wildavsky, *The Real World Order: Zones of Peace, Zones of Turmoil*, 2nd edn (Chatham, NJ: Chatham House Publishers, 1996).

Cambridge University Press

0521865603 - Human Rights in International Relations, Second Edition

David P. Forsythe

Excerpt

[More information](#)

view even after the events of September 11, 2001 that supposedly ushered in an era of terrorism, leading to tough counter-terrorism policies by many states.

In addressing this subject, one has to admit that the topic of human rights in international relations is too big and complex for one macrothesis – aside from an optimistic if long-term interpretation about the evolution of ideas. Four smaller themes, however, permeate the pages that follow. The first is that international concern with human rights is here to stay. The second is that one should appreciate human rights as important and pervasive soft law, not just the occasional hard law of court pronouncements. The third is that private parties merit extensive attention, not just public authorities. The fourth is that the notion of state sovereignty is undergoing fundamental change, the “final” form of which is difficult to discern.

Human rights as end of history?

There is no reasonable prospect of a return to the international relations of, say, the early nineteenth century. As mentioned above, and as will be shown in some detail in chapters 2 and 3, human rights standards and basic diplomatic practices have been institutionalized in international relations.¹³ The simple explanation for this is that there are now so many treaties, declarations, and agencies dealing with internationally recognized human rights that especially the last fifty years of international interactions cannot be undone. But there are deeper and more interesting explanations, some accepted, some debated.

Liberal democracies constitute the most important coalition in international relations. The affluent liberal democracies of the Organization for Economic Cooperation and Development (OECD) constitute not only a caucus or interest group. These states also exercise considerable military, economic, and diplomatic power. They constitute the current motor to a process that has been going on for several centuries: the westernization of international relations.¹⁴ In general, these states and the non-governmental actors based within them have been introducing human rights into world affairs especially since 1945. The globalization of liberalism has been going on for some time, especially when one understands that globalization pertains to social as well as economic issues.

¹³ David P. Forsythe, “The United Nations and Human Rights at Fifty: An Incremental but Incomplete Revolution,” *Global Governance*, 1, 3 (September 1995), 297–318.

¹⁴ Theodore H. Von Laue, *The World Revolution of Westernization: The Twentieth Century in Global Perspective* (New York: Oxford University Press, 1987).

Cambridge University Press

0521865603 - Human Rights in International Relations, Second Edition

David P. Forsythe

Excerpt

[More information](#)

8 The foundations

If the Axis powers had won the Second World War, or if the communist alliance had won the Cold War, international relations would be different than it is today – and much less supportive of human rights. In broader retrospective, if conservative Islamic actors had proved dominant over the past four centuries, and not western ones, human rights would not have fared so well. I do not mean that each liberal democracy has been genuinely supportive of every human rights issue that arose in international relations. Clearly that was not the case. France and the United States, the two western states most prone to present themselves to the rest of the world as a universal model for human rights, have compiled a quite mixed record on the practice of human rights in international relations. France actively supported various repressive regimes within its former African colonies, even in the 1990s. During the Algerian war of 1954–1962 it operated a torture bureau as part of its military structure. The United States, to put it kindly, did not always interest itself in various individual freedoms in Central America during much of the Cold War. In places like Guatemala, Nicaragua, and El Salvador Washington was indirectly responsible for many political killings and other forms of repression. It is quite clear that during the Cold War, the democratic West, to protect its own human rights, supported the denial of many human rights in many parts of the world many times. It has proved all too possible for liberal democracies at home to manifest less than liberal foreign policies abroad.

But a larger point remains valid. Dominant international norms and central international organizations reflect to a large extent the values of the most powerful members of the international community. The OECD coalition has been the most powerful, and particularly in terms of basic norms and diplomatic practices, OECD states, along with certain other actors, have made a liberal imprint on international relations. At least in this one sense, and for limited purposes, it is correct to view international relations sometimes as a clash of civilizations.¹⁵ For all their domestic imperfections and imperialistic foreign policies, the liberal democracies have advanced the notion of the equal autonomy of and respect for the individual. History does not move in straight lines, but certain ideas do advance. Should an authoritarian China come to dominate international relations, the place of human rights in world affairs would change. But for the foreseeable future OECD power will be generally dominant and thus generate important pressures in favor of human rights.

There is a more intriguing but debatable explanation for the staying power of human rights in world affairs, beyond these first two and related

¹⁵ Samuel P. Huntington, "The Clash of Civilizations," *Foreign Affairs*, 72, 3 (Summer 1993), 22–49; Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

Cambridge University Press

0521865603 - Human Rights in International Relations, Second Edition

David P. Forsythe

Excerpt

[More information](#)

factors: the weight of international institutions (meaning the cumulative weight of international law and organizations), and the political influence of the most powerful states. This third factor pertains to political theory and personal values. Francis Fukuyama argues that all persons have a drive to be respected, and that the ultimate form of personal respect finds satisfaction in the idea of human rights.¹⁶ Stated differently, Fukuyama argues that the process of history drives persons toward acknowledgment of human rights, since the *ideal* of human rights (rather than its imperfect practice) constitutes the most perfect form of contribution to human dignity. In this Hegelian interpretation of purposeful or teleological world history, liberal democracies have been instrumental to the institutionalization of human rights less because of their military and economic power, and more because they have adopted an ideology of human respect that cannot be improved upon. Or, liberal democracies exert influence for human rights because they reflect an appealing way to legitimate power. Liberal democracies stipulate that power must be exercised in conformity with, primarily, individual civil and political rights. Other states, such as Indonesia or Iran, may temporarily achieve popular goals such as economic growth or conformity with fundamentalist religious principles. But in the long run they suffer a crisis of legitimacy, because they have an inferior way of trying to justify their power. In this view, accepting human rights is the best way to legitimate power. Thus human rights becomes a hegemonic idea with staying power because of its theoretical or ideational supremacy. We have the “end of history” and have seen the “last political man” because the formal-legal triumph of human rights cannot be improved upon as legitimating ideal. Never mind for now that human practice fails to fully implement the theoretical ideal.

It is true that a number of authoritarian governments especially in the Islamic world and also in Asia criticize the view that Fukuyama personifies. These governments and more broadly many elites in the non-western world see a smug self-satisfaction in his argument. They are inclined to argue that in particular the US model of human rights is overly individualistic, causing great damage to a sense of community and perhaps even to order. This view is sometimes presented in the form of the superiority of certain Asian values.¹⁷ Several western observers are also critical of the

¹⁶ Francis Fukuyama, *The End of History and the Last Man* (New York: The Free Press, 1992). Fukuyama has not changed his views, except to say that if medical psychology could change the nature of man, his theory would have to be revisited. See Fukuyama, “Second Thoughts: The Last Man in a Bottle,” *The National Interest*, 56 (Summer 1999).

¹⁷ See further among many sources Joanne R. Bauer and Daniel A. Bell, eds., *The East Asian Challenge for Human Rights* (New York: Cambridge University Press, 1999).

Cambridge University Press

0521865603 - Human Rights in International Relations, Second Edition

David P. Forsythe

Excerpt

[More information](#)

10 The foundations

extent of individual rights found especially in the United States.¹⁸ Some critics argue there is too much western emphasis on civil and political rights, and not enough emphasis on the economic, social, and cultural aspects of human dignity, which after all is the commonly agreed end product. Others argue that Fukuyama's view of human rights is too secular as well as too universal, and thus too demeaning to local cultures and religions that give fundamental meaning to many people.¹⁹ Some observers saw socio-economic globalization giving rise to a particularistic and fundamentalist backlash that was the antithesis of the triumph of the idea of universal human rights.²⁰ Even many pragmatic liberals said that human rights is only one means, and not necessarily always the most significant one, for achieving human dignity.²¹

Fukuyama is correct, however, when he notes that as of the end of the twentieth century, neither the Chinese model of society, nor the Iranian, nor the Sudanese, nor the Libyan, nor the Cuban, nor any other illiberal society has proved broadly appealing. Liberal democratic state capitalism, as practiced by the OECD states, has. One has only to compare the numbers seeking entrance to OECD states with those seeking to enter any of the states mentioned above. This is not to say that the OECD states do not present problems of material consumption, ecological overload, democratic deficits, and a host of other problems. The perfect society has yet to manifest itself. Nevertheless, liberal democratic state capitalism is associated with a broadly appealing series of human rights centering on civil and political rights, including a right to private property. (Left open is the question of whether modern capitalism based on private property causes or reinforces liberal democracy based on human rights beyond property rights.) Most OECD states other than the USA have added the conception of economic and social human rights to their view of the fundamental entitlements of the individual in society. This OECD model has indeed proved broadly attractive even beyond the western world. Many

¹⁸ Michael Hunt writes of those critics of the USA who worried about its "aggressive and asocial individualism," in *Ideology and US Foreign Policy* (New Haven: Yale University Press, 1987), 44 and *passim*. Rhoda Howard, *Human Rights and the Search for Community* (Boulder: Westview, 1995), believes that the US version of human rights has undermined a sense of community but suggests that Canada's version has not.

¹⁹ Michael J. Perry in *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 1998) argues that religion is a necessary base for human rights.

²⁰ Benjamin R. Barber, *Jihad v. McWorld* (New York: Ballantine Publishing Group, 1995).

²¹ See further Herbert C. Kelman, "The Conditions, Criteria, and Dialectics of Human Dignity: A Transnational Perspective," *International Studies Quarterly*, 21, 3 (September 1977), 529–552; and Harold K. Jacobson, "The Global System and the Realization of Human Dignity and Justice," *International Studies Quarterly*, 26, 3 (September 1982), 315–332. And see below, especially ch. 4.

Cambridge University Press

0521865603 - Human Rights in International Relations, Second Edition

David P. Forsythe

Excerpt

[More information](#)

“have nots” in places like Asia, the Arab world, Africa, etc. do indeed accept the superiority of the idea of respect for human rights, and they are active in organizing groups to pursue that goal. Some non-western elites, too, have endorsed the human rights model in places like Japan and South Korea. Just as the originally western notion of state sovereignty has been widely accepted, so the once western notion of human rights has found broad acceptance especially during the past fifty years of world history. This stems in part from western military and economic achievements. But it also stems in part from an intellectual or ethical hegemony as outlined by Fukuyama. The *idea* of individual human rights has proved broadly appealing. Even those like Stalin, who denied most human rights in practice, wrote liberal constitutions and organized elections so as to pretend to recognize human rights.

It bears stressing that Fukuyama’s argument in support of human rights is mostly about political theory. One of the points emphasized in this book is that western states, including the USA, can greatly benefit from a more serious consideration of how internationally recognized human rights might improve their societies.²² Ultra-nationalists like former US Senator Jesse Helms resist international review of the racist strains and other imperfections in American society, as shown especially in chapters 4 and 6 of the present volume. A certain intellectual isolationism persists among some US policy makers and voters. They easily accept the notion that because the US constitution is revered, and because the United States manifests an independent and powerful judicial system, American society has no need of international standards or international review of human rights practices. Their intellectual or cultural isolationism causes them to overlook much pertinent evidence.

During the Cold War the Council of Europe was made up of only liberal democracies (excepting Greek and Turkish governments during certain periods). Yet human rights violations by these liberal democracies, under the European Convention on Human Rights, as reviewed by the European Commission on Human Rights and the European Court on Human Rights, were not few. As will be noted in chapter 5, the case load at the European Court on Human Rights was such that procedures had to be changed to accommodate the large and growing number of cases. Against this background, it is difficult to sustain the view that the US constitution and Bill of Rights emphasizing the American version of human rights could not benefit from further international review. It is perfectly clear

²² See further David P. Forsythe, *Global Human Rights and American Exceptionalism* (Lincoln: University of Nebraska, University Professor Distinguished Lecture, 1999); and Forsythe, ed., *The United States and Human Rights: Looking Inward and Outward* (Lincoln: University of Nebraska Press, 1999.)