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David P. Forsythe

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Part I

The foundations

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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 public authorities should not 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

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.

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world – a world dominated for several centuries by states and their collective interests.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 World War II, 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 first decade of the twenty-first century more than 160 states (United Nations membership was 192 in 2010) 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 (made up of forty-seven states in 2010) manifested not only a regional convention on civil and political rights, widely accepted in that region, 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 all states; they enshrined the view that certain personal protections 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. In 2005 a United Nations summit meeting affirmed the principle of the responsibility to protect (R2P). Henceforth, while sovereign states had the primary responsibility for protecting human rights in their jurisdictions, if states

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 205–213.

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

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proved unwilling or unable to prevent gross violations, outside parties had the responsibility to become involved.

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 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 bipolar, multipolar, or unipolar.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

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 For an introduction, see Andrew Wedeman, "China: The Famine of the 1960s," in David P. Forsythe, ed., *Encyclopedia of Human Rights* (New York: Oxford University Press, 2009), vol. I, 321–328. See further Jasper Becker, *Hungary Ghosts: China's Secret Famine* (London: J. Murray, 1996).

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

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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 In the post-Cold War world, the rise of Islamic jihadists – or militant Islamists if one prefers – seemed to confirm this dark view of the perpetual human condition. 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 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 philosophical 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 World War II, 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

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.

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

way we will pay attention to critiques of liberalism other than realism, such as some versions of 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 holds the promise that it could 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 view even after the events of September 11, 2001, which supposedly ushered in an era of terrorism, leading to tough counterterrorism policies by many states. I believe that the future of human rights in international relations is not predetermined by structural (meaning fundamental or systemic) factors but depends on policy choice by public authorities. In the light of what social scientists call the agent–structure problematique, I believe that agents have some freedom of choice even while structures cannot be discounted.

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 a guardedly optimistic if long-term interpretation about the evolution of liberal 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. But, as never before, to be “sovereign” entails the duty to protect human rights.

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

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).

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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 first and most 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.

Second and relatedly, western power has made a difference. Liberal democracies still constitute the most important coalition in international relations. The affluent liberal democracies which comprise the core 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 the western version of liberalism has been going on for some time, especially when one understands that globalization pertains to social as well as economic issues.

If the Axis powers had won World War II 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 after the demise of Soviet-led communism. 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,

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).

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.

However, the economic and military increase in China's power and the concomitant decline in US economic clout and military effect raise troubling questions about the long-term future of human rights – if China remains authoritarian and if the United States does not make needed adjustments to its power base. Other troubling factors can also be briefly noted – e.g., repressive trends in Russia, the growing power of authoritarian Iran, Pakistan's inability to suppress illiberal Islamist movements, India's colonial experience and hence its distaste for western-inspired review of national policies (not to mention its highly repressive control of Kashmir), and so on. In short, the westernization of international relations may come to an end by 2050 if not before.¹⁶

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

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

¹⁶ See further Gideon Rachman, "American Decline: This Time It's for Real," *Foreign Policy Flashpoints*, January–February 2011, www.foreignpolicy.com/articles/2011/01/02/think_again_american_decline.

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all persons have a drive to be respected, and that the ultimate form of personal respect finds satisfaction in the idea of human rights.¹⁷ 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 Sukarno's Indonesia or Khomeini's 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 third 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.¹⁸ Several western observers are also critical of the extent of individual rights found especially in the United States.¹⁹ Some

¹⁷ 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).

¹⁸ 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).

¹⁹ 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