

## Introduction

When we think about the relationship between individual rights and international relations we do so in a particular way. We focus on the system of sovereign states, the world of territorially demarcated political units, forged through often violent struggles for political power. We then ask whether the contemporary human rights regime has had any effect on this system; whether it has impacted, in any significant fashion, upon the internal and external conduct of states. For some the answer is positive. Yes, the rules and norms that comprise the regime have been critical resources in struggles to protect individuals from the predations of states, struggles that have yielded significant political change in regions as diverse as Eastern Europe and Latin America.<sup>1</sup> Others are more skeptical, though. The principles that comprise the human rights regime are noble aspirations, but remain marginal to the cut and thrust of real-world politics. Human rights matter when powerful states say they do.<sup>2</sup> Different as these positions are, they start from a common set of assumptions; that the system of sovereign states is a political formation born of war-fighting, economic competition, and narrowly conceived self-interest, and that the politics of rights is pushing, more or less successfully, against the grain of the system's most basic dynamics and constitutive forces.

This book advances a different perspective. Nowhere do I deny that the contemporary international human rights regime seeks to 'civilize' an international system still marred by egregious human rights violations, or that the system is very much the product of recurring struggles for political power. My central claim is, though, that the importance of individual rights is not confined to the efficacy, or lack thereof, of the contemporary human rights regime. Struggles for the recognition

<sup>1</sup> Thomas Risse, Stephen Ropp, and Kathryn Sikkink (eds.), *The Power of Human Rights* (Cambridge University Press, 1999).

<sup>2</sup> Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (Oxford University Press, 2005).

and protection of individual rights, I shall argue, have played a significant role in the historical development of the international system itself. We live in the world's first global system of states: no polities or peoples lie outside its reach; it is multiregional, encompassing Europe, Africa, the Asia-Pacific, and the Americas; and it is multicultural. Five centuries ago the system was very different; its emergent states were confined to Europe and contained within the cultural bounds of Latin Christendom. Only after a series of great expansions did the system globalize, and struggles for individual rights played a key role in this process.

The system's expansion from its original European kernel to 'blanket the Earth' is, as David Armitage rightly observes, 'one of the most overlooked effects of globalization'.<sup>3</sup> Few decades have passed since the system first emerged without a new state celebrating its independence, the most recent being the Republic of South Sudan. Most of the expansion occurred, however, in five great waves, moments when empires collapsed producing not a handful of new sovereign states, but a host. The first accompanied the Peace of Westphalia in 1648, the second came with the independence of Latin America between 1810 and 1825, the third was a product of the Versailles settlement in 1919, the fourth resulted from post-1945 decolonization; and the fifth was a consequence of the collapse of the Soviet Union and the former Yugoslav Federation. Of these, the Westphalian, Latin American, and post-1945 waves had the greatest impact on the system's globalization. Not only did they produce most of today's sovereign states, they gave the system its principal regions: Europe, then the Americas, and in the twentieth century, Asia, Africa, and the Pacific. Were it not for these great waves of systemic expansion, much of what preoccupies students of world politics today simply would not be topics of concern, at least in their present guise – the world of regions, the clash of civilizations, the rise of non-Western centers of power, the problem of failed states, the dilemmas of intervention, to note but a few examples.

The global nature of today's international system is assumed by most International Relations scholars, and the expansionary processes that produced it attract only marginal attention. The vast majority of work in the field assumes the system's existence and focuses on

<sup>3</sup> David Armitage, *The Declaration of Independence: A Global History* (Cambridge, MA: Harvard University Press, 2007), p. 105.

its internal political dynamics. Even when scholars want to understand change, most focus on what Robert Gilpin termed ‘systemic’ change – change within an already existing international system.<sup>4</sup> Realists focus on shifts in the distribution of material capabilities, liberals on international institutional developments and how shifts in domestic regime type affect international political dynamics, constructivists on the development of norms and changing meaning systems, and so on. Even those who consider how the present international system first emerged (what Gilpin called ‘systems’ change) largely ignore its globalization. The victory of the sovereign state over preceding heteronomous forms of political organization is told as though it were a play with one act, the Westphalian moment.

There are, of course, scholars who have examined the system’s expansion, in particular the collapse of empires into sovereign states. Yet, as Chapter 1 explains, none of their arguments adequately account for the principal waves of systemic expansion. Realists emphasize great power rivalry and imperial weakness, but great powers have often been ambivalent supporters of independence movements in rivals’ empires, fragmentary dynamics have at times emerged in empires at moments of relative strength, and in some cases colonial peoples in perilously weak empires only belatedly chose the road to sovereign independence. World-systems theorists emphasize structural changes in the world economy, claiming that decolonization is more likely under conditions of economic hegemony and global economic expansion. Neither of these consistently coincide with waves of systemic expansion, however. Economic hegemony and global economic expansion correlate with post-1945 decolonization, but not with the independence of Latin America, for example. Scholars of the ‘English School’ stress the gradual incorporation of polities into a rule-governed society of sovereign states, with Western powers defining and codifying that society’s membership rules and non-Western peoples coming to embrace them, and their attendant practices, as their own. Yet this model fits none of the major waves of expansion, ignoring, among other things, the intense political struggles that attended these waves. Sociological institutionalists argue that world society’s modernist culture encouraged the spread of states by transmitting the nation-state

<sup>4</sup> Robert Gilpin, *War and Change in World Politics* (Cambridge University Press, 1981).

model from imperial powers to their dependencies, and by allowing diffusion of decolonization by example. They fail to explain, however, why subject peoples developed an interest in institutional change in the first place, and as we shall see, the sovereign state model did not ‘diffuse’ in the simple manner they suggest.

Diverse as these accounts are, they all lack one thing, a coherent account of the demand for sovereignty, of the reasons subject peoples had for escaping empire and embracing the sovereign state as the institutional alternative. Big material and cultural structures are posited, hegemons, empires, and great powers are ascribed interests (often read off the purported imperatives of the structures), and subject peoples are either written out of the story or cast as passive recipients and enactors of world cultural or international societal norms.

This book provides one account of this neglected demand for sovereignty. I begin in Chapter 2 with an argument about the nature of empires as distinctive forms of rule. Empires are hierarchies in which a metropole exercises political control over peripheral polities. Metropolitan control rests in part on material capacities – guns and money – but also on legitimacy, on the degree to which subject peoples accept imperial hierarchy as right, correct, or appropriate. In this sense, empires are what Weber termed systems of imperative control; they rest not merely on coercion and physical force, but also on voluntary submission. The principal challenge of imperative control within empires is sustaining the legitimacy of the prevailing hierarchical order, an order in which social and political powers are distributed unequally between metropolitan and peripheral peoples and polities. While such legitimacy is sustained in part by the discursive practices of imperial elites and their peripheral counterparts, it is also sustained by institutional structures, the norms of which naturalize imperial hierarchy, making the unequal distribution of social and political powers appear both normal and rightful. The empires that concern us here – the Holy Roman, the Spanish, and Europe’s great nineteenth- and twentieth-century empires – developed idiosyncratic institutional structures. But these were variations of a generic institutional form. Each empire rested on a regime of unequal entitlements; individual elites and subjects enjoyed different social and political powers, grounded in particular transactions and relationships, and these powers were understood as socially sanctioned entitlements, often codified in law.

In their twilight years the Holy Roman Empire, the Spanish Empire, and Europe's nineteenth- and twentieth-century empires all suffered severe crises of legitimacy. Political systems experience such crises when support among those subject to their rule collapses, forcing elites to engage in either practices of relegitimation or coercion.<sup>5</sup> In each empire, imperial legitimacy eroded as the prevailing regime of unequal entitlements came under challenge. New, distinctly modern ideas about individual rights took root in each context, and as they spread, were interpreted, reconstituted, and embraced as legitimate, subject peoples reimagined themselves as moral and political agents, developed new political interests in the recognition and protection of their rights, challenged established regimes of entitlements, and sought institutional change. In each case, they tried first to reform imperial institutions, but when these systems proved incapable of accommodating their rights claims, subject peoples turned from 'voice' to 'exit'.<sup>6</sup> Without exception it was the sovereign state they turned to as the institutional alternative to empire. This is partly because centralized, territorially bounded political units promised the universal regime of law needed to recognize and protect the new individual rights. It is also because they promised protection from the kind of transnational authorities subject peoples were escaping. But in addition to this, over time the sovereign state came to be seen as the only other game in town. This is not to say, however, that sovereignty norms simply diffused, passively internalized by subject peoples. In each wave of expansion, gaining sovereignty meant fighting not only the empire in question, but in some cases prevailing conceptions of legitimate statehood, and almost always the notion that sovereignty was a privilege of the 'civilized'. Through their struggles, subjects peoples helped transform the norms they embraced.

The traditional entitlements that cemented imperial hierarchy were 'special', in the sense that they arose out of special transactions between individuals or out of special relationships in which they stood.<sup>7</sup> They were also differential; they were allocated to individuals unequally,

<sup>5</sup> Christian Reus-Smit, 'International crises of legitimacy', *International Politics*, 44.2–3 (2007), 166–7.

<sup>6</sup> On this terminology, see Albert O. Hirschman, *Exit, Voice, and Loyalty* (Cambridge MA: Harvard University Press, 1970).

<sup>7</sup> H. L. A. Hart, 'Are there any natural rights?' in Jeremy Waldron (ed.), *Theories of Rights* (Oxford University Press, 1984), p. 84.

on the basis of social role, position, or status. The individual rights that animated struggles for imperial change differed markedly from these older entitlements. They were ‘general’ not special; individuals had them not because of particular transactions or relationships, but because they were thought to constitute integral moral beings. Furthermore, the new rights were equal not differential; everyone considered an integral moral being held them without distinction. Each of the rights discussed in following chapters had these characteristics, but in different imperial contexts different rights were operative. While problematic in several respects, the classic distinction between negative and positive rights is useful here. In the crisis that befell the Holy Roman Empire, a negative right – the right to liberty of religious conscience – was key. In the Spanish Empire’s crisis, a positive right – the right to equal political representation – was critical. And in the crisis of Europe’s nineteenth- and twentieth-century empires, a bundle of negative and positive civil and political rights was at work.

These new rights not only varied substantially, in terms of what they were rights ‘to’, but also regarding their ‘zone of application’. In the twentieth century we became accustomed to thinking of individual rights and human rights as synonymous – individuals have certain rights because they are moral beings with certain capacities that need protecting or satisfying, and since all human beings (regardless of class, sex, or race) have these qualities, individual and human rights are taken to be one and the same thing. Yet for most of the political history of individual rights, no such association has existed. Individuals have repeatedly asserted rights on the grounds that they are fully developed moral and political agents while simultaneously denying such status and rights to other human beings. As we shall see, Protestants struggled for liberty of religious conscience while denying the same to Jews, Muslims, atheists, and various heretical sects. Similarly, Creoles (Spanish Americans of European descent) struggled for equal political representation within the Spanish Empire for themselves, Indians, and freed slaves, but not for women or slaves. Only in the last of our three cases, post-1945 decolonization, did the perceived ‘zone of application’ of rights come to encompass all human beings, irrespective of race, religion, gender, or civilization. At this point, and at this point alone, is it reasonable to speak of the individual rights that concern us as ‘human rights’. From this perspective, the last century of human rights politics is but the most recent

phase of a longer, more variegated history of individual rights in world politics.

My engagement with this history begins with the long century of religious conflict that culminated in the Westphalian settlement of 1648. A veritable industry of scholarship now surrounds this ‘Peace’, with scholars divided over both its causes and significance. I cut into the story from a different angle to most, however, leading me to a different understanding of what the settlement ‘did’. Chapter 3 reaches back well before 1618 and the start of the Thirty Years’ War, back to the first decades of the sixteenth century and the origins of the Protestant Reformation. It is here that we find the ideas that sparked a century of religious conflict, that stymied repeated efforts to resolve these conflicts, and that, in the end, the Peace of Westphalia recognized and accommodated, undercutting the Holy Roman Empire and seeding a nascent system of sovereign states.

Contained within Reformation theology was a conception of individuals as integral moral agents, whose capacities for faith gave them unmediated access to the grace of God, and through this, salvation. For Protestant intellectuals, it was this moral individualism that distinguished Protestantism from Catholicism. And because individuals could gain salvation through faith alone, freedom of religious belief was considered a fundamental entitlement. It was these ideas that fueled the conflicts that engulfed the Holy Roman Empire, challenging as they did the Roman Church’s role in mediating the individual’s relationship with God, and the empire’s status as the guardian of Latin Christendom. More than this, they repeatedly proved key stumbling blocks to the peaceful resolution of these conflicts. Seeking to reunite Latin Christendom, Charles V convened the two Diets of Regensburg (1541 and 1546), but both foundered on the issue of ‘justification’, on how individuals gained salvation. Was it through faith alone, or did the Catholic Church play a mediating role? The Diet’s failure produced a decade of war, temporarily resolved by the Peace of Augsburg (1555). Reuniting Latin Christendom was no longer an option; instead, Augsburg imposed a highly unstable form of statist pluralism, founded on the principle of *cuius regio, eius religio* (whose rule, his religion). While the treaty recognized the fact of religious diversity within the empire (or more correctly, the existence of Catholics and Lutherans), it granted liberty of religious conscience to only a few individuals – the lay princes of the empire. Individuals, more broadly, had no such liberty; they had

to embrace the religion of their prince, or leave his territory. Not surprisingly, the settlement soon collapsed, its pluralism challenged by the Counter-Reformation, its statism by persecuted Protestants and Catholics. It would be almost another century before the Treaties of Westphalia brought a lasting settlement to Europe's religious wars. They succeeded where Augsburg failed because they did two things that together addressed the central issue of liberty of religious conscience. They licensed the creation of a host of confessionally independent states, endowing them with the political rights we now associate with sovereignty. They 'compromised' this sovereignty, however, by granting individuals freedom of religious conscience. Protestants living in Catholic states and vice versa were to 'be patiently suffered and tolerated', and princes who changed their religion, or acquired regions of a different religion, could not require their subjects to convert (a right they enjoyed under the Peace of Augsburg).

The second wave of systemic expansion occurred with the collapse of Spain's empire in the Americas (1810 to 1825). As Chapter 4 explains, the collapse was precipitated by Napoleon's usurpation of the Spanish crown in 1808, an event that provoked insurgencies across the empire. On both the Iberian Peninsula and in the Americas, Spanish subjects interpreted the crisis through the lens of traditional Spanish theories of sovereignty. Sovereignty was ordained by God, but it was granted first to the people, who then invested authority in the monarch. With the usurpation, Spain was left without a legitimate monarch, thus returning sovereignty to the people. This begged two crucial questions, though; questions that would divide the empire: Who were the people? And how should they be represented politically? On the first of these, 'Peninsulares' and Spanish Americans disagreed fundamentally. For the former, the empire was one, a single people, a single kingdom. For the latter, the empire comprised several peoples and kingdoms (a claim they justified with reference to the original papal grant of the Indies to the crowns of Castile and Leon). This did not, however, amount to a claim for independence. The reformers, who were at first ascendant, wanted the empire preserved, but only if Spanish Americans were equally represented within reformed political institutions. It was on this issue, however, that Peninsulares and Spanish Americans divided irrevocably. Their divisions came to the fore in the negotiations leading to the 1812 Spanish Constitution, which took place at the insurgent General Cortes (or parliament) convened in Cádiz between



1810 and 1814. The Cortes was dominated by liberals, from both the peninsula and the Americas, and there was broad agreement that it was individuals who merited political representation, not the traditional estates or corporate bodies. They disagreed, however, over who among the many inhabitants of the empire constituted ‘individuals’ – fully rational moral beings – deserving the right of political representation. For the Spanish Americans, Creoles, Indians, and freed slaves had such a right, but for the Peninsulares, only those of Spanish blood qualified. As we shall see, passionately as the Americans argued, they were repeatedly outvoted by their peninsular counterparts, the net result being the 1812 Constitution that, despite its otherwise liberal characteristics, systematically discriminated against non-Creoles. It was this failure to gain equal political representation within a reformed empire that radicalized the Spanish-American insurgencies, empowering the revolutionaries and turning the reformers from ‘voice’ to ‘exit’.

Our final case is that of post-1945 decolonization, the fourth great wave of systemic expansion. My argument here runs counter to the widespread denial that decolonization had anything to do with human rights,<sup>8</sup> and to the longstanding view that colonial and postcolonial peoples have consistently prioritized social and economic rights, as well as group rights, over the civil and political rights of individuals. This wave differs from the previous two, as not one but several empires imploded simultaneously, replaced by multiple sovereign states. And where particular empires fell into crisis in previous cases, after 1945 the institution of empire itself was under challenge. In the Westphalian and Spanish-American cases, new ideas about individual rights motivated and justified struggles for imperial reform and, in the end, revolutionary change. As we shall see in Chapter 5, similar dynamics were at work in a number of twentieth-century imperial settings. The weight of my argument rests, however, on the role that rights politics played at the international level, in the delegitimation of empire as an institutional form (a critical factor, I shall argue, in the wholesale dismantling of Europe’s colonial empires). Central to this delegitimation was the reformulation and reassertion of the collective right of self-determination. After Versailles, this was defined as a right of ethnically defined nations, and non-European peoples were explicitly excluded

<sup>8</sup> For a recent example, see Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge MA: Harvard University Press, 2010), pp. 84–119.

from its purview. This understanding of self-determination did not survive World War II. The Nazi Holocaust was seen as a logical, if perverse, consequence of the principle that ethnically defined nations had special sovereign rights, and as then formulated, it was a principle unhelpful to the non-European peoples struggling for independence after 1945, almost all of whom were ethnically heterogeneous. After 1945, newly independent postcolonial states, working within the nascent human rights forums of the United Nations, engaged in a two-step process of reconstruction. They first played a central role in negotiating both the Universal Declaration of Human Rights and two international covenants on human rights, consistently prioritizing civil and political over social and economic rights, and supporting stronger implementation mechanisms than their Western counterparts. They then effectively grafted a reformulated right of self-determination to these emergent human rights norms, arguing successfully that self-determination was a necessary precondition for the protection of civil and political rights. Through this process, early postcolonial states not only undercut the moral foundations of empire as a legitimate institutional form, licensing the rapid and wholesale decolonization that would follow, they also played a crucial, though largely unsung, role in the development of the international human rights regime.

In each of these waves of systemic expansion, struggles for the recognition of individual rights were a necessary but insufficient cause. Historical transformations such as these are complex phenomena, the product of multiple, interwoven factors. No single cause is ever sufficient, and rights struggles are no exception. They were, however, necessary causes, in the sense that without them history would have been different, and significantly so. In the Westphalian case, the issue of liberty of religious conscience lay at the heart of the confessional struggles that wracked the Holy Roman Empire for more than a century. It was this issue that stymied attempts to reunite Latin Christendom at the Diets of Regensburg, and that undermined the statist pluralism of the Peace of Augsburg. It was also this issue that shaped the Westphalian settlement, in ways largely ignored in conventional accounts. To resolve the religious wars, the treaties not only created a nascent sovereign order, but also ‘compromised’ the authority of the emergent states with provisions protecting the individual’s right to liberty of religious conscience. Without the struggle for such liberty, the Holy Roman Empire may well have collapsed, but the story and