Human Rights: A New Standard of Civilization?

Jack Donnelly

Human rights:

a new standard of civilization?

JACK DONNELLY

John Vincent had hoped that his *Human rights and international relations* might make some inroads into Hedley Bull's 'cheerful scepticism about human rights'.[1] This memorial lecture continues to attack the still common scepticism towards international human rights—although from an unorthodox angle. Taking off from the work of another of Bull's students, Gerrit Gong,[2] I will argue that internationally recognized human rights have become very much like a new international 'standard of civilization'.

Civilization and systems of states

Institutionalized relations among separate political units typically rest not only on power and interest but also on a communal bond linked to higher values. A 'moral standard has seemed to underlie international order and to suggest that there is some social cement which helps, however tenuously, to affix a general sense that there is an international community'.[3] Power may make a state part of an international system; collective recognition as part of international *society*,[4] however, appeals to 'principles that prevail (or are at least proclaimed) *within* a majority of the states...as well as in the relations *between*

1 R. J. Vincent, *Human rights and international relations* (Cambridge: Cambridge University Press, 1986), p. viii.
2 Gerrit W. Gong, *The standard of 'civilisation' in international society* (Oxford: Clarendon, 1984). See also Georg Schwarzenberger, 'The standard of civilisation in international law', *Current Legal Problems* 17, 1955, pp. 212–34; B.V.A. Roling, *International law in an expanded world* (Amsterdam: Djambatan, 1960), ch. 4. Vincent addressed related issues in 'The factor of culture in the global international order', *Year Book of World Affairs 1980* (London: Stevens) p. 34; 'Race in international relations', *International Affairs* 58:3 Autumn 1982, pp. 658–70; and 'Racial equality', in Hedley Bull and Adam Watson, eds, *The expansion of international society* (Oxford: Clarendon, 1984).
3 Peter Lyon, 'New states and international order', in Alan James, ed., *The bases of international order: essays in honour of C. A. W. Manning* (London: Oxford University Press, 1973), p. 57.
4 See Hedley Bull, *The anarchical society: a study of order in world politics* (New York: Columbia University Press, 1977), pp. 9–15.

them'.[5] 'Inside' and 'outside', in international no less than national societies, are defined not simply by geography or even by a history of interaction, but by cultural values that make insiders different from, and in many ways superior to, outsiders.

International legitimacy, 'the collective judgment of international society about rightful membership of the family of nations',[6] has many dimensions and sources. I will focus on appeals to high culture or civilization. I start with the fact that in East and West alike, 'civilized' and 'barbarian' peoples and states have typically been treated according to different rules.

China's 'traditional' international relations—somewhat more precisely, Qing diplomatic theory—assumed a world hierarchically ordered under the Son of Heaven, Emperor of the Middle Kingdom.[7] The Emperor, 'far from being the ruler of one state among many, was the mediator between heaven and earth...the apex of civilization, unique in the universe'.[8] To put 'Chinese' before civilization was redundant. Foreigners were by definition barbarians and 'no different from the lower animals'.[9] They were expected to accept subordinate status in relations of tribute and vassalage (as did, at various times, more or less willingly, neighbouring states such as Korea, Assam, Burma and Siam). China also used standard 'realist' tactics, such as policies of deterrence and 'divide and conquer', for 'barbarian management'. Those evil or ignorant enough to refuse to acknowledge 'natural' Chinese superiority were to be kept at a safe distance—preferably behind walls, such as the Great Wall or trading enclaves in Macao and Canton. The civilization-based tributary logic gave a distinctive character to this system of relations, especially in dealings with 'barbarians'.

Civilization, defined in largely religious terms, was also important in the internal and external relations of the Ottoman Empire. Early Ottoman expansion was justified by the idea of *gaza*, an 'ideological complex of heroism, honor, and striving in the name of Islam'.[10] The doctrine of *jihad* (holy war) justified Ottoman relations with Europeans and other infidels. Success in spreading the faith into Europe helped to legitimate Ottoman power both at home and in the broader Muslim world.

---

[5] Martin Wight, *Systems of states* (Leicester: Leicester University Press, 1977), p. 153.

[6] Ibid. Cf. Thomas M. Franck, *The power of legitimacy among nations* (New York: Oxford University Press, 1990), pp. 189–92.

[7] The following draws heavily on John King Fairbank, ed., *The Chinese world order: traditional China's foreign relations* (Cambridge, MA: Harvard University Press, 1968); and Immanuel C.Y. Hsu, *China's entrance into the family of nations: the diplomatic phase, 1858–1880* (Cambridge, MA: Harvard University Press, 1960). The oversimplified essentialism poses few problems, given my limited, illustrative purposes. James L. Hevia, *Cherishing men from afar: Qing guest ritual and the Macartney embassy of 1793* (Durham, NC: Duke University Press, 1995), provides a more complex, post-structuralist reading that points in a similar direction.

[8] Mark Mancall, 'The Ch'ing tribute system: an interpretive essay', in Fairbank, ed., *The Chinese world order*, p. 63.

[9] Hsu, *China's entrance*, p. 7.

[10] Cemal Kafadar, *Between two worlds: the construction of the Ottoman state* (Berkeley, CA: University of California Press, 1995), p. 120. Shai Har-El, *Struggle for domination in the Middle East* (Leiden: E. J. Brill, 1995), pp. 8–13, briefly discusses the place of Islam in the rise of the Ottoman Empire.

In the West, the ancient Greeks, who saw themselves as distinguished and bound by a common language and culture, applied different rules of war and peace to relations among Hellenes and with barbarians. Christendom, and then the idea of 'Europe', played a similar role in the medieval and modern eras.[11] Appeals to advanced civilization were also common in the march of Western imperialism in Africa and Asia.

I will focus on the change from the late nineteenth-century European imperial standard of civilization to contemporary notions of internationally recognized human rights. At the risk of provoking epistemological and interpretative disputes that I cannot address, I would describe my approach as 'genealogical', in a *very loosely* Foucauldian sense of that term.[12] What follows is a selective, retrospective and episodic account of normative changes that have helped to shape one dimension of our current international society. The evolution I trace was not necessary or foreordained. Other equally good, perhaps even 'more important', stories might be told. For example, my focus on the society of states largely ignores the local actors and social processes by which the changes I chronicle were brought about. Nonetheless, the historical and conceptual linkages to which I draw attention do, I believe, illuminate contemporary practices.

This story also has implications for our understanding of the place of knowledge and values in international relations. Norms almost always appear in international society mingled with power and interest. Nonetheless, as we shall see, they help to define political spaces and shape the character and tone of the international relations of an era. They may even constrain how states pursue their material interests.

The 'classic' (nineteenth-century) standard of civilization

As late as the mid-nineteenth century, positive international law included no explicit civilizational test for membership in (European) international society[13]—probably because the issue had never seriously presented itself. But

---

[11] See e.g. Wight, *Systems of states*, chs 4, 5; Roling, *International law*, chs 2, 3. Vincent's most direct approach to this issue was, 'Edmund Burke and the theory of international relations', *Review of International Studies* 10: 3, 1984, pp. 205–18. See also the work of his student Jennifer M. Welsh, *Edmund Burke and internationl relations: the commonwealth of Europe and the crusade against the French Revolution* (New York: St Martin's Press, 1995), ch. 3.

[12] For an exposition, accompanied by a brilliant application to modern sovereignty practices, see Jens Bartelson, *A genealogy of sovereignty* (Cambridge: Cambridge University Press, 1995). See also Steve Smith, 'Positivism and beyond', in Steve Smith, Ken Booth, and Marysia Zalewski, eds, *International theory: positivism and beyond* (Cambridge: Cambridge University Press, 1996); Cynthia Weber, *Simulating sovereignty: intervention, the state, and symbolic exchange* (Cambridge: Cambridge University Press, 1995), ch. 3. Without directly addressing the theoretical literature on social constructivist approaches, I offer this essay as an example of the insights that may be available from taking ideas and historical contingency much more seriously than mainstream 'positivist' approaches. For an argument that the English School, running from Martin Wight through Hedley Bull and John Vincent, should be seen in largely constructivist terms, see Timothy Dunne, 'The social construction of international society', *European Journal of International Relations* 1, September 1995, pp. 367–89. See also, somewhat less directly, James Der Derian, 'Hedley Bull and the idea of diplomatic culture', in Rick Fawn and Jeremy Larkins, eds, *International society after the Cold War: anarchy and order reconsidered* (London: Macmillan, 1996).

[13] Gong, *Standard of 'civilisation'*, pp. 4–6, 25–35.

as the Ottoman Empire was dragged into the European balance of power, as China and Japan grappled with the terms of their relations with an increasingly assertive and powerful West, and as Africa became an arena of European great power rivalries, what I will call the 'classic' (late nineteenth-century European) standard of civilization emerged.

Colonialism and extraterritoriality: two imperialist logics

Sub-Saharan African peoples and states typically were both weak and, to Western eyes, unusually 'savage'.[14] European international society thus restricted itself to regulating African territorial acquisitions, most notably at the Berlin and Brussels conferences. As John Westlake put it, 'of uncivilised natives international law takes no account', leaving their treatment 'to the conscience of the state to which the sovereignty is awarded'.[15] China, however, could not easily be colonized, pushed aside, or ignored. And even nineteenth-century Europeans, despite their contempt for many particulars of China's civilization, could not dismiss the Chinese as 'savages'. For example, Lord Lugard began his famous book on British Africa by noting that 'Africa has been justly termed "the Dark Continent" in contrast to Persia, Assyria, Arabia and China, which were the seats of ancient civilizations, some of them highly developed'.[16] Notwithstanding this distinction, Europeans could not conceive of allowing China full membership in 'the family of nations'.

Relations with such more than savage but less than fully civilized states relied heavily on the practice of extraterritoriality. China, Japan and the Ottoman Empire were recognized as sovereign states but not full members of international society.[17] Their authority over their own people was acknowledged, and generally respected. But Westerners, in those countries, refusing to submit themselves to 'Asiatic barbarism', were placed under the extraterritorial jurisdiction of their own consuls.[18] Although abusive and discriminatory, the resulting 'unequal treaties' recognized and limited, rather than extinguished, local sovereignty.

The test of the classic standard of civilization was 'government capable of controlling white men [and] under which white civilisation can exist'. 'If even the

---

[14] On the category of 'savage', see Gong, *Standard of 'civilisation'*, pp. 55–8.

[15] L. Oppenheim, ed., *The collected papers of John Westlake on public international law*, (Cambridge: Cambridge University Press, 1914), pp. 138, 145.

[16] Lord Lugard, *The dual mandate in British tropical Africa* (Edinburgh: William Blackwood & Sons, 1922), p. 1.

[17] Relations with the states of South and South-East Asia, despite their inherent interest and obvious relevance, are beyond my scope, largely out of an ignorance that limitations of space have allowed me to leave unremedied.

[18] China also faced increasingly onerous international legal 'servitudes', involving (more or less) permanent *territorial* rights of foreign sovereigns, including railway and telegraph rights, military garrisons and special rights for Christian missionaries. In addition, trading privileges, which initially were voluntarily granted, became increasingly involuntary. Westel W. Willoughby, *Foreign rights and interests in China* (Baltimore, MD: Johns Hopkins University Press, 1927), vol. II, provides an extensive summary.

natives could furnish such a government after the manner of the Asiatic empires, that would be sufficient...[and] the law of our own international society has to take account of it.'[19] In principle, only the minimum interference necessary to ensure the prospering of '[white] civilization' beyond Europe was allowed.

Power, knowledge, and universal morality

The Ottomans, Chinese and Japanese, like the Europeans and Americans, saw themselves faced with not merely hostile force but 'uncivilized barbarians'. Power decided which standards governed relations between civilizations, often with devastating human consequences. The suffering of China in the century following the Opium Wars and the brutal colonial penetration of Africa are tragic examples of non-Western peoples being forced to endure the most savage barbarities in the name of superior civilization.

I want to draw attention, however, to a less sinister, and in many ways attractive, side of the classic standard of civilization. Power and control over territory were held to be insufficient for full membership in the society of states. Even undertaking international legal obligations and participating in the (European) practices of diplomacy were not enough. Outlawing 'uncivilized' behaviour placed substantive moral restrictions on the actions of sovereign states, including Western states, and established explicit ethical principles within the mainstream of positive international law. 'Civilized' states were expected to conform to the laws of war.[20] 'Civilized' states were expected to protect the rights of aliens to life, personal dignity, property, and freedom of commerce and religion. 'Civilized' states were also expected to prohibit shockingly 'uncivilized' practices such as slavery, piracy, polygamy, infanticide and 'barbaric' penal practices. Economic interests, power politics, and a host of related ideas and interests coalesced into a distinctive imperial system of what Foucault called power/knowledge[21] that had as one of its more striking elements the classic standard of civilization. The Gramscian idea of hegemony[22] points to a similar mixture of economic interests, military might and ideas. For example, British attitudes towards overseas territorial acquisitions changed from sceptical

[19] Oppenheim, *Papers of John Westlake*, pp. 145, 143–4. Compare Schwarzenberger, 'The standard of civilisation', p. 221, and L. Oppenheim, *International law: a treatise*, 3rd edn (London: Longmans, Green & Co., 1920), vol. I, p. 32.

[20] I will largely ignore issues of civilized warfare, however, because this story is relatively well covered in the international legal literature and because this body of norms developed largely independently of those connected with colonialism and extraterritoriality.

[21] See e.g. Michel Foucault, *Power/knowledge: selected interviews and other writings 1972–1977* (New York: Pantheon Books, 1980).

[22] Gramsci's own discussion is scattered through (and can be roughly followed using the index in) *Antonio Gramsci, Selections from the prison notebooks*, eds, Quintin Hoare and Geoffrey N. Smith (New York: International Publishers, 1971). See also Stephen Gill, ed., *Gramsci, historical materialism and international relations* (Cambridge: Cambridge University Press, 1993); Robert Cox, *Approaches to world order* (Cambridge: Cambridge University Press, 1996), chs 6, 7.

resistance to enthusiastic embrace.[23] The very meaning of the term 'empire' changed, its principal referent moving from the British Isles[24] to Britain's overseas colonial holdings. Social Darwinism and 'scientific' racism[25] gave an 'objective' 'scientific' basis to the superiority of Western culture, making Western dominance a necessary expression of scientific laws rather than an accident of power politics. More generally, the Enlightenment idea of progress, along with liberal ideas of the pacifying and civilizing influence of trade, provided an integrative intellectual context.

In international theory, positivism decisively displaced natural law jurisprudence, which had been associated, at least in theory, with a more humane attitude towards savage and barbaric peoples. Although justifying rule by 'superior' civilizations, the natural law tradition—running from Las Casas through Grotius and Vattel, and expressed with special vigour in Burke's writings and political activity on India—emphasized common humanity, rejected colonial exploitation, and stressed the natural obligations of alien rulers to protect and improve 'inferior' subject peoples. Positivism stripped these concerns from the classic standard of civilization by restricting legal obligations to those voluntarily incurred by states,[26] making international law more a dimension of power politics than a potential challenger.

Even as the classic standard of civilization was being imposed on resistant African and Asian peoples, however, it appealed to (allegedly) universal moral values. And those values were more than a cover for the pursuit of self-interest. Although an integral part of a system of imperial domination, the classical standard of civilization was not *only* a 'hook for interests'.[27] Campaigns against the slave trade and for penal reform had only modest connections with material interests. The laws of war, beyond their instrumental political and military value, reflected the idea that

[23] See C. A. Bodelsen, *Studies in mid-Victorian imperialism* (Copenhagen: Gyldendalske Boghandel, 1924); J. R. Seeley, *The expansion of England* (London: Macmillan, 1883) is a classic expression of the new imperial ideology. By contrast, Ronald Hyan and Ged Martin (*Reappraisals in British imperial history* (London: Macmillan, 1975), ch. 5) stress continuities between the old imperialism and the new.

[24] See Richard Koebner, *Empire* (Cambridge: Cambridge University Press, 1961).

[25] See Mike Hawkins, *Social Darwinism in European and American thought, 1860–1945: Nature as model and Nature as threat* (Cambridge: Cambridge University Press, 1997), ch. 8; H. W. Koch, 'Social Darwinism as a factor in the "New Imperialism"', in *The origins of the First World War*, 2nd edn (London: Macmillan, 1984).

[26] C. H. Alexandrowicz stressed the importance of the rise of legal positivism in late nineteenth-century imperialism. See *An introduction to the history of the law of nations in the East Indies* (Oxford: Clarendon, 1967), pp. 149–56, 235–7; 'New and original states', *International Affairs* 45, July 1969, pp. 466–71. Gong challenges a causal connection (*Standard of 'civilization'*, pp. 9–10, 41–5, 239–40, 247) which even Alexandrowicz admits (*Introduction*, p. 156) is unclear. My argument is more limited, namely, that there is a clear correlation and a mutually reinforcing interaction between the rise of legal positivism, the classic standard of civilization, and the 'new imperialism' of the nineteenth century.

[27] This phrase is Stephen Krasner's. See his 'Westphalia and all that', in Judith Goldstein and Robert O. Keohane, eds, *Ideas and foreign policy: beliefs, institutions, and political change* (Ithaca: Cornell University Press, 1993) for an argument that ideas are largely generated to justify material interests (although Krasner does allow that once ideas have entered politics, they may then exert a secondary impact). This realist logic is similar to his well-known account of international regimes as 'intervening variables'. See 'Structural causes and regime consequences: regimes as intervening variables', *International Organization* 36, Spring 1982, pp. 185–206.

war is not hell but a social practice subject to moral evaluation.[28] Even extraterritorial jurisdiction to protect aliens appealed to the morally attractive notion of international safeguards of basic rights.[29]

These potentially progressive elements of the classic standard of civilization came into play primarily in the twentieth century. But even in the late nineteenth century they could have surprising results.

The end of extraterritoriality in Japan

Although largely imposed by force, extraterritoriality was not seen by Europeans as inconsistent with the legal equality of states. The treaty rights of Westerners in China and Japan allegedly rested on the obligation of every member of international society to abide by minimum rules of civilized behaviour as a condition of membership. For example, Article 1 of the Treaty of Nanking (1842), the cornerstone of the system of unequal treaties, guaranteed Chinese and British subjects 'full security and protection for their persons and property within the dominions of the other' state. China's profound lack of interest in obtaining such rights was conveniently overlooked, and extraterritoriality was justified by appeals to 'reciprocal' enjoyment of 'universal' minimum standards of legal fairness. 'Failure to meet this obligation is a delinquency which justifies interposition of the alien's government to secure redress.'[30] But when 'those duties of jurisdiction which are required of every independent State'[31] could be discharged by the local sovereign, international law required that jurisdiction over aliens be returned to local authorities. The discrimination implicit in extraterritoriality was presented as a regrettable, but necessary, temporary deviation from the overarching ideal of sovereign equality.

China, which saw sovereign equality as an affront to the 'natural' Sinocentric world order, resisted even the forms of (Western) diplomacy into the early twentieth century.[32] Declining power, however, brought China constantly esca-

---

[28] Even arch-realist Georg Schwarzenberger presented the rules of war as 'the result of a tug-of-war between two major formative agencies: the necessities of war and the requirements of the standard of civilisation', *International law*, vol. II: *The law of armed conflict*, 3rd edn (London: Stevens & Sons, 1968), p. 4. Cf. pp. 10, 110–11.

[29] In a lovely paradox, the sovereignty of barbarous states denied to their citizens the 'universal' rights enjoyed extraterritorially by aliens. Aliens, but not nationals, had international legal rights, because uncivilized behaviour was a legitimate international concern only when internationalized by the involvement of aliens. To treat one's own citizens barbarously was, strictly speaking, not a matter for (positive) international law.

[30] Ellery C. Stowell, *International law: a restatement of principles in conformity with actual practice* (New York: Henry Holt, 1931), pp. 367–8 (and, more generally, Part iv, chs 2, 3). Cf. Oppenheim, *International law*, 3rd edn, vol. I, pp. 495–6, and Edwin DeWitt Dickinson, *The equality of states in international law* (Cambridge, MA: Harvard University Press, 1920), ch. 6.

[31] Charles Cheney Hyde, *International law chiefly as interpreted and applied by the United States* (Boston, MA: Little, Brown & Co. 1922), p. 462.

[32] For example, in the 1901 Protocol following the Boxer rebellion, the Western powers acted against continuing Chinese symbolic resistance by regulating the place of diplomatic meetings, the mode of transport used by ambassadors, the doors by which they entered and exited, the receipt of official letters (the Emperor was required to take them directly into his own hands), and even details of official banquets held in the Imperial Palace. James L. Hevia, 'Making China "perfectly equal"', *Journal of Historical Sociology* 3, December 1990, pp. 379–400 nicely captures some of the complexities of these competing (and changing) systems of ideas and power.

lating humiliations, and material losses. By contrast, Japan, which initially adopted a no less hostile and superior attitude towards the American and European barbarians who forced entry into their country, quickly learned to play the game of Western diplomacy[33] and skilfully exploited the pledge of equal treatment implicit in the classic standard of civilization.[34] Legal and administrative reforms allowed Japan to protect Westerners as they expected. 'Barbaric' practices, especially in the criminal law, were eliminated. New representative parliamentary institutions even provided a positive symbol of Japan's 'progress' and 'civilization'. Accordingly, Britain provisionally renounced its extraterritorial rights in the 1894 Aoki-Kimberley Treaty, a decade before Japan's stunning defeat of Russia (the first major indication that Japan might possess the power to try to abrogate the unequal treaties unilaterally). In both the Sino-Japanese and Russo-Japanese wars, Japan underscored its claims to membership in the society of states by going out of its way to comply with the laws of war, publicizing this compliance and drawing attention to non-compliance by its opponents.

Japan's growing power was important to its acceptance in the (European-dominated) society of states. Appeals to the formal norm of reciprocity and ostensibly universal criteria of civilized behaviour, however, were also essential.[35] The importance of these norms is even clearer in respect of the entry into international society of the much less powerful Siam.[36]

The classic standard of civilization (largely unintentionally) outlined a path for non-Western states to become recognized as sovereign equals and thus obtain the protections of (Western) international law. Entry into (Eurocentric) international society required neither religious conversion, as the Ottomans and medieval and early modern Europeans demanded, nor subordination to an imperial superior, as the Chinese and the Ottomans required. Full and equal membership in international society was (in principle, and to some degree in practice) opened to non-European, non-Christian, and even non-white states willing to comply with relatively clear behavioural standards codified in positive international law.

---

[33] For example, on the first Japanese diplomatic mission abroad, in 1871–72, the Japanese envoys abandoned their national ceremonial dress after a single official meeting. This was less than 20 years after Perry's first voyage to Japan. By contrast, China did not send its first resident minister to Europe until 1876, a full third of a century after the Opium Wars. See Hsu, *China's entrance*, part 3; J. D. Frodsham, *The first Chinese embassy to the West: the journals of Kuo Sung-t'ao, Liu Hsi-hung and Chang Te-yi* (Oxford: Clarendon, 1974).

[34] The following is based primarily on F. C. Jones, *Extraterritoriality in Japan and the diplomatic relations resulting in its abolition, 1853–1899* (New Haven, CT: Yale University Press, 1931); Gong, *Standard of 'civilisation'*, ch. 6; Hidemi Suganami, 'Japan's entry into international society', in Bull and Watson, eds, *Expansion of international society*.

[35] Conversely, the lack of effective reforms was regularly advanced by advocates of continued extraterritoriality in China. See e.g. Hosea Ballou Morse, *The international relations of the Chinese Empire* (London: Longman, Green & Co., 1910), vol. II, p. 415; Stowell, *International law*, pp. 719–20.

[36] See Gong, *Standard of 'civilisation'*, ch. 8.

Capitulations, colonies and minorities in the interwar era

The interwar period saw important changes in attitudes towards both extraterritoriality and colonialism. In addition, minority rights were added to the evolving standard of civilization.

Sovereign equality and colonial trusteeship

Arguments of 'superior civilization' lost ground to a state-centric logic of sovereign equality. For example, the Treaty of Lausanne ended the regime of extraterritorial 'capitulations'[37]—the Ottoman analogue to China's unequal treaties—just four years after Turkey's defeat in the First World War. Although this was the result largely of power politics, supplemented by reforms introduced by Turkey's new aggressively secular and modernizing regime, the growing international sense of discomfort with such formal discriminations helped to defeat British and French efforts to reimpose extraterritoriality.

More generally, the special privileges of recognition as a (Great) Power continued to erode during the era of the League of Nations. For example, the League's universal membership built on the prewar trend of more, and more diverse, participants in international conferences, a central symbol of membership in the family of nations. The first Hague Conference, in 1899, had been notable for the attendance of China, Japan, the Ottoman Empire, Persia and Siam. The second Hague Conference, in 1907, was the first international gathering of the modern states system at which Europeans were outnumbered by non-Europeans.

Power remained closely correlated with 'advanced civilization' and continued to provide immense international advantages. Formal legal status, however, was becoming more equal—at least for internationally recognized states. Although extraterritoriality was not finally abolished in China until the Second World War, the legal distinction between civilized and barbarian states was giving way to a more egalitarian understanding of sovereignty.

Norms governing relations with 'savage tribes', which remained under colonial domination, also changed substantially. Article 12 of the League Covenant proclaimed colonies transferred after the war as mandates under 'a sacred trust of civilization' to be ruled for 'the well-being and development' of the subject peoples.[38] Even in the vast majority of colonies which technically did not fall under the mandates system, obligations to the colonized were increasingly acknowledged. For example, the British doctrine of the 'dual mandate' considered a colony to be held in trust 'on the one hand, for the advancement of the

---

[37] See G. Pélissié du Rausas, *Le Régime des capitulations dans l'empire ottoman*, 2nd edn (Paris: Arthur Rousseau, 1910); Nasim Sousa, *The capitulary regime of Turkey: its history, origin, and nature* (Baltimore, MD: Johns Hopkins University Press, 1933).

[38] See Wm. Roger Louis, 'The era of the mandates system and the non-European world', in Bull and Watson, eds, *Expansion of international society*; H. Duncan Hall, *Mandates, dependencies and trusteeship* (New York: Carnegie Endowment for International Peace, 1948).

subject races, and on the other hand, for the development of its material resources for the benefit of mankind'.[39] Although Western attitudes remained profoundly condescending and the gap between reality and rhetorial self-justification was often immense,[40] differences of civilization were increasingly seen as historical artefacts to be eliminated over time.

Such attitudes could be found even in late nineteenth-century Britain. For example, James Lorimer argued in 1880 that colonial rule is justified only if it 'does really promote the human development of the lower or retrograde race...The moment that the lower or retrograde race becomes capable of attaining this end by its own efforts, the rule of the higher race, unless spontaneously retained, degenerates into tyranny.'[41] The number of those with such 'enlightened' views, however, grew dramatically in the interwar period,[42] when, for the first time, a significant number of politicians, administrators, and private citizens seriously considered reforms based on such views. Even formal equality remained decades away. Nonetheless, the language of civilization was beginning to be used in the context of overcoming, rather than institutionalizing, differences.

The League and minorities

In peace treaties accepted by the defeated powers after the First World War and declarations required of newly created states upon entry into the League of Nations, 16 states—Albania, Austria, Bulgaria, Czechoslovakia, Estonia, Finland, Germany, Greece, Hungary, Iraq, Latvia, Lithuania, Poland, Romania, Turkey and Yugoslavia—undertook substantial obligations to protect the rights of national and religious minorities in their territories.[43] Furthermore, these rights were declared, as the treaty with Poland put it (Article 12), 'obligations of international concern...under the guarantee of the League of Nations'. The classic standard of civilization guaranteed 'civilized' (preferential) treatment to European minorities abroad. Western powers had also asserted special rights to protect Christian minorities in the Ottoman Empire, again establishing preferential treatment. The minorities treaties and declarations, by contrast, brought the standard of civilization back home.

---

[39] Lugard, *The dual mandate*, p. 606.

[40] For example, Lugard contended that 'there is no colour bar in British Africa, and the educated native enjoys the fullest liberty', yet claimed to know of no 'educated African youths who are by character and temperament suited to posts in which they may rise to positions of high administrative responsibility': *The dual mandate*, pp. 86, 88.

[41] Lorimer, *The institutes of law: a treatise of the principles of jurisprudence as determined by Nature*, 2nd edn (Edinburgh and London: William Blackwood & Sons, 1880), pp. 310–11. In light of the discussion of legal positivism above, it is interesting to note that this exception is rooted in natural law jurisprudence.

[42] See e.g. Alfred Zimmern, *The third British Empire*, 2nd edn (London: Oxford University Press, 1927); M. F. Lindley, *The acquisition and government of backward territory in international law* (London: Longman, Green & Co., 1926), esp. ch. 36.

[43] See Lucy P. Mair, *The protection of minorities: the working and scope of the minorities treaties under the League of Nations* (London: Christophers, 1928); C. A. Macartney, *National states and national minorities* (Oxford: Oxford University Press, 1934) and 'League of Nations' protection of minority rights', in Evan Luard, ed., *The international protection of human rights* (New York: Praeger, 1967).

Only states defeated in or created after the First World War were required to accept these obligations. International supervision was extremely weak.[44] Japan's effort to include a reference to racial equality in the Covenant of the League of Nations was defeated. Nonetheless, the minorities regime imposed substantive norms of justice, which had only a loose connection to the material interests of the victorious powers, on (some) states of 'higher' civilization as a condition for entry or re-entry into international society.

Self-determination and human rights

The post-Second World War or Cold War era saw two norms with partly complementary and partly competing implications—self-determination and human rights—emerge into prominence. To help analyse these changes, I distinguish (in Figure 1) four ideal types of standards of civilization.

Figure 1 Dimensions of a standard civilization

	Application	
	Inclusive (universal)	Exclusive (particular)
Positive (maximal)	'Lockean' (human rights)	'fundamentalist' (Islam?/Calvinist)
Negative (minimal)	'Hobbesian' (self-determination) (sovereign equality)	'Burkean' (classic standard of civilization)

(left axis label: Substance)

Standards of civilization may apply either inclusively (primarily among 'civilized' states) or exclusively (primarily in relations with 'barbarians'). Inclusive standards emphasize commonalities and thus tend to be relatively universal. Exclusive standards emphasize difference and thus tend to be relatively particularistic. 'Civilization' may also be defined either primarily negatively—avoiding the worst sorts of barbarism—or positively. Negative standards tend to be minimal in their substance. Positive standards tend to make more extensive (maximal) demands on states. The classic standard of civilization was exclusive and negative: civilized powers imposed minimal obligations primarily on barbarians. The norms of self-determination are inclusive but still narrowly negative. A positive and universal international standard of civilization emerged only in the idea of human rights.

---

44 See Inis L. Claude, Jr, *National minorities: an international problem* (Cambridge, MA: Harvard University Press, 1955), ch. 3.

Self-determination

The struggle for self-determination ironically drew normative support from the classic standard of civilization. Colonial territories increasingly argued, in effect, that they too, with only modest internal reforms, could meet established minimum requirements for membership in international society. Internal contradictions in the classic standard, however, were at least as important. The 'civilization' that brought the world the Holocaust, the Gulag, the atom bomb, and two global wars of appalling destructiveness in barely 30 years found it increasingly difficult to suggest that Asians and Africans were too 'uncivilized' to join their ranks—especially as the other intellectual supports of imperialism were also crumbling.

Social Darwinism had given way at home to the welfare state and found few remaining exponents in international relations. Scientific racism was retreating in the face of a tolerant cultural relativist anthropology. Nineteenth-century European defences of nationalism were revived in anti-colonial forms. More generally, universalistic (Western) religious and moral theories were increasingly turned against the West.[45] As Westerners began to open their eyes to the suffering and injustice they had inflicted in Africa and Asia, the still powerful Enlightenment idea of progress increasingly became associated with self-determination rather than colonialism. It was but a small step for positivist international law to extend the doctrine of sovereign equality to post-colonial states. Western imperialism had never depended entirely on superior arms, nor were its rationales and rewards entirely economic and strategic. Power and interest were accompanied by a sense of righteousness based on higher civilization,[46] important elements of which the colonized internalized. Beyond military and economic power, Western privilege rested on a shared sense of legitimacy, even if for the colonized this was expressed in the destructive form of feelings of inferiority.[47] Self-determination too involved more than (declining imperial) power and (changing) economic interests. Shifts in relative power were decisive

---

[45] Rupert Emerson, *From empire to nation: the rise to self-assertion of Asian and African peoples* (Boston, MA: Beacon Press, 1960) is a classic account that emphasizes 'the turning of the weapons—the ideas, the instruments, the institutions—of the West against itself' (p. 17).

[46] This was particularly true in Britain. See e.g. Ronald Robinson and John Gallagher with Alice Denny, *Africa and the Victorians: the official mind of imperialism* (London: Macmillan, 1961); C. E. Carrington, *The British overseas: exploits of a nation of shopkeepers* (Cambridge: Cambridge University Press, 1950), esp. chs 11, 12, 15; Charles Pelham Groves, 'Missionary and humanitarian aspects of imperialism from 1870 to 1914', in L. H. Gann and Peter Duignan, eds, *Colonialism in Africa, 1870–1960*, vol. 1: *The history and politics of colonialism, 1870–1914* (Cambridge: Cambridge University Press, 1969); Wallace G. Mills, 'Victorian imperialism as religion—civil or otherwise', in Robert D. Long, ed., *The man on the spot: essays on British Empire history* (Westport, CT: Greenwood Press, 1995); L. H. Gann and Peter Duignan, *The rulers of British Africa, 1870–1914* (Stanford, CN: Stanford University Press, 1978). For a brief general assessment of Western imperialism that captures some of the higher aspirations and progressive achievements while giving primary emphasis to the devastation it caused, see V. G. Kiernan, 'Europe and the world: the imperial record', in Moorhead Wright, ed., *Rights and obligations in North–South relations* (New York: St Martin's Press, 1986).

[47] See e.g. Albert Memmi, *The colonizer and the colonized* (New York: Orion Press, 1965) and *Dominated man: notes towards a portrait* (New York: Orion Press, 1968); Franz Fanon, *Black skins, white masks* (New York: Grove Press, 1967).

in Indo-China, India and Indonesia. In most of Africa, however, power was of minor importance. Normative change was essential—and was an important part of the story in Asia as well.[48] In the West, it became increasingly difficult to claim superior civilization with a straight face, while such claims were rejected with growing vigour in Asia and Africa.

Self-determination, however, in practice came to mean decolonization: a right of colonial territories to recognition as sovereign states, within colonial borders.[49] Considerations of justice were thus banished from decisions on membership in international society.[50] In addition, these newly independent states (understandably) emphasized their sovereign equality, understood in radical legal positivist terms, and met efforts to hold them to minimum standards of humane behaviour towards their own citizens with charges of neo-colonialism. Non-intervention became the central principle of international law for the Afro-Asian bloc.[51] The result, as Georg Schwarzenberger put it in a slightly different context, was an international relations based on 'pristine sovereignty in the form of lawlessness'.[52] The (rightly celebrated) death of the classic standard of civilization was accompanied by the entrenchment of a Hobbesian conception of sovereignty. Rather than seek to raise all states to a higher standard, self-determination was interpreted to require accepting the lowest common denominator of sovereign equality.

The whole globe was recognized as civilized. 'Civilization', however, lost all substantive meaning. The Idi Amins, the Macias Nguemas, the Mobutus, the Maos, the Sukharnos and the Pinochets of the world were accepted as, to use Westlake's language, 'civilised, though with other civilisations than ours'.[53] Although preferable to unchecked power politics and the depredations of civilizational imperialism, this thin, power-based account of international legitimacy had few positive moral attractions.

---

[48] See Robert H. Jackson, 'The weight of ideas in decolonization: normative change in international relations', in Goldstein and Keohane, eds, *Ideas and foreign policy* and *Quasi-states: sovereignty, international relations, and the Third World* (Cambridge: Cambridge University Press, 1990); Neta C. Crawford, 'Decolonization as an international norm: the evolution of practices, arguments, and beliefs', in Laura W. Reed and Carl Kaysen, eds, *Emerging norms of justified intervention* (Cambridge, MA: American Academy of Arts and Sciences, 1993). In contrast to the immense literature on imperialism, Stephen Howe, *Anticolonialism in British politics: the left and the end of empire, 1918–1964* (Oxford: Clarendon, 1993) provides one of the few detailed studies of Western anti-colonial attitudes and activities that seeks to address basic theoretical issues. See also R. Robinson, 'The moral disarmament of African empire, 1919–1947', *Journal of Imperial and Commonwealth History* 8, 1979, pp. 86–104.

[49] See Michla Pomerance, *Self-determination in law and practice: the new doctrine in the United Nations* (The Hague: Martinus Nijhoff, 1982).

[50] Ideological standards for recognition—as championed by the United States in its relations with Cuba, China, and Cambodia, or as expressed in the Johnson and Brezhnev Doctrines— did have a central normative element, but they were primarily of bloc or regional (not global) significance.

[51] Vincent's *Nonintervention and international order* (Princeton, NJ: Princeton University Press, 1974) is a classic study of the theory and practice of non-intervention.

[52] Schwarzenberger, *International law*, p. 207.

[53] Oppenheim, *Papers of John Westlake*, p. 103.

Universal human rights

The decades following the Second World War, however, also saw the development of an extensive body of international human rights law that recaptured, in a substantially purified form, the morally appealing idea of adherence to shared standards of justice as a condition for full membership in international society. The link to the classic standard of civilization was to the underlying idea of universal rights rather than extraterritorial discrimination in favour of aliens. The preliminary efforts of the interwar minorities regime to bring the standard of civilization back home were dramatically expanded in substance and applied universally.

After Hitler revealed the barbarian 'other' inside the 'civilized' West 'civilization' was in need of constructive reassertion, above all at home. This required an idiom more demanding than either the classic standard of civilization or self-determination. Human rights offered a new inclusive standard that emphasized what is shared by and owed to everyone. Furthermore, contemporary international human rights norms insist on elevating practice to very high standards, in contrast to both extraterritorial preferences for those whose rights are already relatively well protected and the extremely mean lowest common denominator of self-determination.

The classic standard of civilization can be described as Burkean, based on the idea that some peoples have developed further than others, and thus should enjoy more rights and a greater say in politics. Self-determination and sovereign equality draw more on Hobbes's uncivilized state of nature. International human rights appeal to a Lockean or liberal progressivist understanding of civilization and a social contract conception of the state as an instrument to realize the rights of its citizens.[54] But this liberal standard of legitimacy—a government is entitled to full membership in international society to the extent that it implements internationally recognized human rights—faced the competing legal positivist (Hobbesian) theory of recognition, which grants membership in international society if a state controls its territory and discharges the international obligations it has undertaken. During the Cold War era, international practice generally favoured pristine positivist sovereignty (which was most strongly supported by communist and Third World states).

Universal human rights ideas did become a standard subject of bilateral and multilateral diplomacy by the early 1980s. Multilateral implementation mechanisms, however, remained extremely weak and few states undertook strong bilateral human rights initiatives.[55] Furthermore, during the Cold War human rights issues (other than self-determination and racism) were raised primarily externally, especially across the 'three worlds'. Although individual states did

---

[54] In Figure 1, I label a maximal and exclusive standard 'fundamentalist'. One might alternatively consider all exclusive standards 'Burkean' or 'prescriptive', and distinguish between strong (maximal) and weak (minimal) variants. Likewise, we might call all inclusive standards 'liberal' or 'universal', and then distinguish between Paineite or social democratic (maximal) and Hobbesian or libertarian (minimal) variants.

[55] For an overview of Cold War era practice, in both multilateral and bilateral arenas, see Jack Donnelly, *International human rights*, 2nd edn (Boulder, CO, Oxford: Westview, 1998), chs 4, 5.

address human rights violations in a considerable number and variety of coun-
tries, especially in the late 1970s and 1980s, systematic international efforts were
focused largely on pariah regimes in South Africa, Southern Rohdesia, Portugal
and Israel, the new 'barbarians'. And the support given to these pariah regimes
by the United States and some other Western powers revealed an interesting
disjunction between traditional power politics and the new, emerging global
logic of legitimacy.

Europe's new conception of civilization

To prevent the terminology of 'international human rights' from degenerating
into a language of smug self-satisfaction, greater emphasis had to be placed on
the positive demands of 'civilization'. This in turn required shifting attention
from the exclusive or particularistic, intercultural dimensions of 'civilization' to
the inclusive and universal. Rather than stigmatizing outsiders, appeals to 'civ-
ilization' had to recall all, including (even especially) insiders, to higher values.
During the Cold War, this occurred systematically only in western Europe; and
only in Europe did international human rights become as much a matter of
internal as external politics.[56]

The states of western (and especially northern) Europe, for all their short-
comings, have most consistently and most successfully sought to implement
internationally recognized human rights. Furthermore, the European
Commission on Human Rights has extensive powers to investigate complaints
and the European Court of Human Rights has the power, which it exercises
regularly, to issue binding legal judgments.[57] Therefore, as west European states
in the 1980s and 1990s increasingly emphasized human rights in their foreign
policies, they operated from a moral high ground.

European human rights initiatives have been missionary in the best sense of
that term, seeking to spread the benefits of (universal) values enjoyed at home.
Fear and historic guilt, arising from the moral blindness and abuses of mis-
sionaries operating under earlier standards of civilization, should not immobi-
lize us in the face of abuses of power by murderous dictators hiding behind
the legal norm of sovereignty or a claim to radical cultural differences.[58]
Something like a standard of civilization is needed to save us from the

---

[56] Kathryn Sikkink, 'The power of principled ideas: human rights norms in the United States and western
Europe', in Goldstein and Keohane, eds, *Ideas and foreign policy*, emphasizes European acceptance and
American rejection of regional and international monitoring.

[57] Between 1960 and 1995 the Court handed down 439 decisions, 320 of which found at least one viola-
tion. Like the rest of the European system, the level of activity has increased substantially in the 1990s. In
1995 alone, decisions were handed down on 46 cases (30 of which found violations). See Council of
Europe, *Yearbook of the European Convention on Human Rights, 1995*, vol. 38 (The Hague: Martinus
Nijhoff, 1997), p. 219.

[58] Space precludes addressing issues of human rights cultural relativism. For my (not very sympathetic)
views see *Universal human rights*, chs 3–8. I would note, however, that the classic standard of civilization
provides a striking example of the logic of strong cultural relativism. More attractive versions of strong
relativism typically rely on an implicit appeal to values such as toleration, respect for diversity, or equali-
ty, which it would seem hard to justify in relativist terms.

barbarism of a pristine sovereignty that would consign countless millions of individuals and entire peoples to international neglect. At the present historical juncture, only the idea of internationally recognized human rights, as expressed in authoritative documents such as the *Universal Declaration of Human Rights* and the international human rights covenants,[59] seems capable of playing such a role. I have tried to show that despite the fatal tainting of the language of 'civilization' by abuses carried out under (and by the exponents of) the classic standard of civilization, internationally recognized human rights share a similar legitimating logic.

A new standard of civilization?

One need not be a realist to allow that power and perceived self-interest will continue to dominate foreign policy in the coming decades. Sovereign equality will also remain a paramount norm of international society. More controversial is the suggestion that positive international law is becoming supplemented by human rights norms that, like those of the classic standard of civilization, hold even against resistant states.[60]

Genocide and minimum humanitarian standards

Genocide is at the core of an emerging post-Cold War minimum standard of civilization. International responses to the genocides in Bosnia and Rwanda, although weak and tardy,[61] mark a significant advance over previous international inaction in, for example, Cambodia.[62] The West, despite the powerful resurgence of anti-Islamic sentiments, ultimately came to the aid of Bosnia's Muslims.

Regional security interests certainly were at the heart of this response; but there was also a genuine humanitarian concern over, for example, ethnic cleansing, rape as a tactic of warfare, and the plight of Sarajevo. Even UN-

---

[59] For an overview of the substance of these norms, which include extensive sets of both civil and political and economic, social, and cultural rights, see Jack Donnelly and Rhoda E. Howard, 'Assessing national human rights performance: a theoretical framework', *Human Rights Quarterly* 10, May 1988, pp. 214–48; Rhoda E. Howard and Jack Donnelly, 'Human dignity, human rights and political regimes', *American Political Science Review* 80, September 1986, pp. 801–17.

[60] My argument here is political. On the legal sources, status, and force of international human rights norms, see Theodor Meron, *Human rights and humanitarian norms as customary law* (Oxford: Clarendon, 1989), ch. 2; Bruno Simma and Philip Alston, 'The sources of human rights law: custom, jus cogens, and general principles', *Australian Year Book of International Law* 12, 1992, pp. 82–108; and (for a sceptical view) J. S. Watson, 'Legal theory, efficacy and validity in the development of human rights norms in international law', *University of Illinois Law Forum* 3, 1979, pp. 609–41.

[61] See e.g. David Rieff, *Slaughterhouse: Bosnia and the failure of the West* (New York: Simon & Schuster, 1995); Thomas Cushman and Stjepan G. Mestrovic, eds, *This time we knew: Western responses to genocide in Bosnia* (New York: New York University Press, 1996); Alex De Waal and Rakiya Omaar, 'The genocide in Rwanda and the international response', *Current History*, April 1995, pp. 156–61.

[62] For a thorough overview and a generally balanced analysis, see Jamie Frederic Metzl, *Western responses to human rights abuses in Cambodia, 1975–1980* (London, New York: Macmillan and St Martin's Press, 1996).

guaranteed 'safe havens', for all their tragic shortcomings,[63] represented a noble refusal to bow to the logics of power politics and ethnic cleansing. In Rwanda, the West took a step away from the conveniently demeaning notion that 'tribal' violence was to be expected in Africa, and UN Secretary-General Boutros Ghali's effective use of the Bosnian intervention as a precedent illustrates the potential power of moral ideas to mobilize action (at least in cases of economic and strategic uninterest). France's shameful pursuit of regional power politics is also a major part of the story. In contrast to earlier genocides in Rwanda and Burundi, however, the international community responded with *relatively* forceful action, and attention remains focused on ethnic violence in Rwanda, Burundi and Eastern Zaire (now Congo).

The international community still refuses to act before ethnic conflict erupts into widespread bloodshed, or even to develop early warning systems. Belated remedial action, however, is both new and of some value. Bosnia and Rwanda also revived the dormant Nuremberg precedent of individual international legal responsibility. At minimum, these responses express an intrinsically important international sense of justice and humanity. Prohibiting genocide, however, represents a very minimal standard of civilized behaviour. To go no further would be to accept consigning countless individuals and entire peoples to a life of systematic political and economic abuse that, although not subject to being shortened in certain ways, remains poor, nasty and brutish. The crucial question is whether states are willing to act on the positive standards of the Universal Declaration and Covenants.

China after Tiananmen

The international campaign against China following the 1989 Tiananmen Square massacre provides a good example of changing international attitudes towards human rights. A large country with substantial regional military power and a huge, rapidly growing economy was politically ostracized for over a year and subjected to modest economic sanctions for up to five years. Even today China must devote considerable diplomatic energy to fending off human rights criticisms; and China's critics accepted net political and economic costs in pursuing their human rights objectives.[64]

The other side of the picture, of course, is that China's party dictatorship remains in power and continues to violate most internationally recognized human rights. After the initial outrage subsided, and repression in China once more became routinized, international sanctions unravelled. Even the United

---

[63] See Jan Willem Honig and Norbert Both, *Srebenica: record of a war crime* (Harmondsworth: Penguin, 1996); David Rohde, *Endgame: the betrayal and fall of Srebenica* (New York: Farrar, Strauss & Giroux, 1996); Human Rights Watch/Helsinki, *The fall of Srebrenica and the failure of UN peacekeeping* (New York: Human Rights Watch, October 1995).

[64] For an overview of international responses to the Tiananmen episode, see Donnelly, *International human rights*, ch. 6.

States, China's harshest critic, has not been willing to make major economic, political or strategic sacrifices to press human rights concerns; and Chinese appeals to sovereignty have had considerable impact.

Human rights are not an alternative to power politics or the international law of sovereign equality. They do, however, impose supplementary constraints on the freedom of action of states. The reality of these constraints, and the importance of asserting the relevance of standards of international justice, are no less important than their limits.

A right to democratic government?

Thomas Franck has recently argued that 'both textually and in practice the international system is moving towards a clearly defined democratic entitlement, with national governance validated by international standards and systematic monitoring of compliance.'[65] Despite serious exaggeration, Franck does point to the infusion of more positive universal human rights values into contemporary international politics.

Almost all Latin American governments can plausibly claim to have been selected in open and fair elections. Although military and civilian oligarchies often retain grossly disproportionate power, they have been forced to accept the forms of electoral democracy and to open political spaces that in many countries had been closed for at least decades. In sub-Saharan Africa, military governments, personalist dictatorships and single-party autocracies are becoming more the exception than the rule. Elections have as often as not failed to meet high standards of fairness and openness; many forms of previously repressed dissent and political opposition, however, have become regularly available. Military rule has been largely delegitimated. For example, the coup in Sierra Leone in May 1997 provoked unusually strong and widespread regional and international condemnation, including a unanimous vote of the Organization of African Unity not to recognize the new regime. In Asia, South Korea and Taiwan have replaced decades of military dictatorship and one-party rule with lively, if corrupt, competitive elections. Burma's ruling State Law and Order Restoration Commission (SLORC) has faced substantial and growing diplomatic and economic pressures and has become, in many eyes, an international pariah because of its flouting of the principle of electoral government. But pressures on Burma have come primarily from outside the region, as witnessed by its admission in July 1997 to the Association of Southeast Asian Nations (ASEAN); indeed, the democratic credentials of governments in most of the rest of South-East Asia are questionable. We must also note that the Middle East presents an almost uniformly dismal picture.

---

[65] Thomas M. Franck, *Fairness in international law and institutions* (Oxford: Clarendon, 1995), p. 139.

In general, though, the international normative environment has changed dramatically from the Cold War era, when the United States and the Soviet Union supported elections primarily when the results went their way, and when most Third World governments and intellectuals were contemptuous of the claim that open and fair elections were a central source of international political legitimacy. Governments that cannot plausibly claim to have been chosen in open and fair elections are becoming subject to at least partial ostracism. Their membership in international society is thus devalued, even when (as is usually the case) they escape major material sanctions.

The emerging norm of electoral legitimacy is unlikely to displace power, interest and sovereign equality. Nonetheless, states today face political costs for practices that just two decades ago were standard, and the dramatic upsurge in international election monitoring[66] indicates growing acceptance of an active international interest in national electoral democracy.

International human rights standards: inclusive but not maximal

If we compare the full list of rights in the Universal Declaration with the cases that have provoked substantial, sustained international action, current practices must be described as still relatively minimal. In addition, the (very weak) multilateral human rights institutions created during the Cold War era have not been substantially strengthened, especially given the disappointing (in)activity of the new UN High Commissioner for Human Rights. The infusion of human rights into the mainstream of international relations, however, has subtly reshaped national and international political space.

For example, recent criticisms of the Palestinian Authority for mistreatment of prisoners and attacks on free speech have come from sympathetic as well as hostile states, and many Palestinians have treated such discussions as a legitimate part of everyday politics, rather than slander against the nation. The image of Arafat as a corrupt, dictatorial thug remains subordinate to that of national liberator and essential partner in the peace process; nonetheless, human rights abuses have tarnished his national and international prestige.

More generally, a growing number of states seem willing to pursue sustained, if modest, international human rights initiatives. For example, the United States continues to press Bosnia, Croatia and Serbia on issues such as press freedom and political participation, as well as specific human rights undertakings in the Dayton Accords. Nigeria, one of Africa's wealthiest and most powerful countries, has faced persistent, if largely verbal, pressure over military rule and political repression. Human rights have become an everyday, and remarkably non-partisan, part of foreign policy in most Western and many non-Western states. Furthermore, human rights issues are increasingly raised with friends as well as adversaries and pariahs.

---

[66] For a comprehensive historical overview, see Yves Beigbeder, *International monitoring of plebiscites, referenda and national elections* (Dordrecht: Martinus Nijhoff, 1994).

Human rights have become a (small) part of the post-Cold War calculus of political legitimacy. They are, to re-quote Martin Wight, 'principles that prevail (or are at least proclaimed) *within* a majority of the states that form international society, as well as in the relations *between* them'. Like the classic standard of civilization, human rights have their greatest international force in cases of shocking barbarism, such as Bosnia, Rwanda or Tiananmen Square. Unlike the classic standard, however, they link national and international legitimacy to an inclusive, positive model of civilized behaviour.

Those who violate human rights norms rarely face coercive international enforcement. But systematic violators—especially if the violations are unusually shocking or telegenic—often do pay (modest) political costs and find their legitimacy questioned. This represents a remarkable change from the heyday of military and single-party regimes just a quarter-century ago. Respect for the inalienable rights of one's citizens has become an inescapable, if secondary, part of the language and practice of post-Cold War international relations.

Moral progress and the new universalism of international human rights

Although appeals to universal values suggest that one is acting on more than narrow, selfish interests, allegedly universal norms often reflect instead the particular values or interests of a given time, place or group. Contemporary international human rights norms, no less than the classic standard of civilization, are European in origin. But genealogy is no substitute for moral argument. Unless we deny all distinctions between social constructions—and thus abandon moral discourse or reduce it to unarguable, emotive expressions of personal or cultural preferences—we must ask whether there are good reasons to support or oppose particular practices.

At the risk of both substantive criticism and charges of methodological inconsistency, I want to suggest that not merely the demise of racist imperialism but also the rise of universal human rights ideas presents a story of moral progress. Elsewhere I have argued that human rights rest on a morally attractive vision of a life of equality and autonomy and present a relatively effective response to several major threats to human dignity posed by modern markets and states.[67] Here I will focus on procedural grounds for claiming that incorporating human rights into the regulative norms of international society represents moral progress.

Universal prohibitions of particular practices, although not all equally suspect—consider, for example, prohibition of the slave trade—are most likely to reflect generalizations from the present that are difficult to defend. For example, nineteenth-century Europeans excoriated 'barbaric' Chinese penal prac-

[67] See Donnelly, *Universal human rights*, chs 1–5.

tices such as execution by strangulation but considered hanging perfectly civilized. Most internationally recognized human rights, however, are appropriately formulated in fairly general terms—and those that are not, such as the requirement of segregating juveniles in penitentiaries,[68] should be treated with caution, especially with the passage of time.

We should also be unusually suspicious of 'universal' norms that apply principally to the behaviour of others. Norms that apply equally to oneself and to others are far less likely to be discriminatory in effect or appearance. Inclusive norms are *relatively* well insulated from self-interested or partisan abuse. Most internationally recognized human rights easily pass this test.

Contemporary appeals to universal human rights are also relatively unproblematic because they rest on a moral claim that we are all equally human and, as a result, are equally entitled to certain goods, services, opportunities and protections. Moral systems that reject fundamental human equality have been historically common and remain logically plausible. In the late twentieth century, however, none has broad international appeal—a fact that itself can be seen as a significant sign of moral progress.

That international human rights norms are not being imposed internationally by force (except in a limited fashion in the least controversial cases of genocide and extreme humanitarian emergency) also makes them relatively unproblematic. Many states, international organizations and non-governmental organizations have been strong verbal advocates of human rights. They have occasionally resorted to punitive sanctions and positive inducements. But by stopping short of (the threat of) force, the risk of imposing particular preferences, or even selfish interests, in the name of universal values is dramatically reduced. In addition, even the strongest persuasive means reflect a morally attractive respect for the autonomy of those whose practices one abhors.

Social conditions and moral understandings will change in ways that will lead international society to reject at least some contemporary international human rights norms. Nevertheless, human rights represent a progressive late twentieth-century expression of the important idea that international legitimacy and full membership in international society must rest in part on standards of just, humane or civilized behaviour. Despite the continuing split between national and international law embodied in dominant conceptions of sovereignty, the society of states has come to accept that our common humanity makes the way in which any state treats its citizens a legitimate concern of other states, foreign nationals and international society. Although we remain far from realizing any plausible international moral ideal, we have moved a significant distance from both civilizational imperialism and the politics of pristine sovereignty. This, I believe, represents clear moral progress, however much we may disagree about the size of the step taken or the distance remaining from the ideal.

---

[68] *International Covenant on Civil and Political Rights*, Article 10, para. 3.

Concluding observations

I want to conclude with three brief, interrelated observations on the story I have told. The first concerns how we look at human rights in contemporary international relations. The human rights literature has tended to emphasize legal and political power and enforcement, as expressed in formal multilateral institutions such as the United Nations Commission or the European Court and in coercive bilateral foreign policy initiatives. The metaphor of a new standard of civilization suggests that we look—not instead, but no less importantly—at human rights as legitimizing norms. Greater attention should be paid to the ways in which human rights subtly shape national and international political spaces and identities by demanding, justifying or delegitimating certain practices. My narrative, I hope, thus makes a minor contribution to the growing literature on the role of norms and ideas in international relations.[69]

Second, even in the late nineteenth-century heyday of power politics and imperialism, international norms had a place in international society and an independent (if minor) impact on state practices. Appeals to civilized behaviour, despite dramatic changes in their substance, have been a constant feature of nineteenth- and twentieth-century international relations. At the very least, the contexts of power politics, the spaces available for internationally acceptable appeals to power and interest, vary over time with such changing norms. Finally, the story I have told has bracketed the most abusive elements of the classic standard of civilization between a more humane and universalistic natural law jurisprudence and the extensive contemporary body of international human rights law. Schwarzenberger's 'pristine sovereignty in the form of lawlessness' is a contingent historical construction rather than an unproblematic starting-point for international theory. Absolute or 'original' state sovereignty is a myth, in both the constructive and pejorative senses of that term.

For most of the history of the modern European states system, the practices of state sovereignty and power politics have been embedded within a normative framework that appeals to standards of justice and legitimacy above and beyond the consent and practice of states. Late nineteenth-century positivist jurisprudence and the classic standard of civilization represent a low point in such moral appeals—although even then universal norms were not entirely

---

[69] See e.g. Goldstein and Keohane, eds, *Ideas and foreign policy*; Martha Finnemore, *National interests in international society* (Ithaca, NY: Cornell University Press, 1996); Peter J. Katzenstein, ed., *The culture of national security: norms and identity in world politics* (New York: Columbia University Press, 1996); and Jeffrey T. Checkel, *Ideas and international political change: Soviet/Russian behavior and the end of the Cold War* (New Haven, CT: Yale University Press, 1997). Friedrich V. Kratochwil, *Rules, norms, and decisions: on the conditions of practical and legal reasoning in international relations and domestic affairs* (Cambridge: Cambridge University Press, 1989) provides the most often cited general theoretical discussion.

abandoned. International human rights, rather than a deviation from principles defining the essence of the 'Westphalian' system, represent a return to a conception of international society that is older and morally much more attractive than the positivist vision of pristine sovereignty.