

Chapter 1

Human Rights as a Metaphor

Critique
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The Metaphor of Human Rights

The human rights movement is marked by a damning metaphor.¹ The grand narrative of human rights contains a subtext which depicts an epochal contest pitting savages, on the one hand, against victims and saviors, on the other.² The savages-victims-saviors (SVS)³ construction is a three-dimensional compound metaphor in which each dimension is a metaphor in itself.⁴ The main authors of the human rights discourse, including the United Nations, Western states, international nongovernmental organizations (INGOs),⁵ and senior Western academics, constructed this three-dimensional prism. This rendering of the human rights corpus and its discourse is unidirectional and predictable, a black-and-white construction that pits good against evil.

This chapter elicits from the proponents of the human rights movement several admissions, some of them deeply unsettling. It asks that human rights advocates be more self-critical and come to terms with the troubling rhetoric and history that shape, in part, the human rights movement. At the same time, it not only addresses the biased and arrogant rhetoric and history of the human rights enterprise, but also grapples with the contradictions in the basic nobility and majesty that drive the human rights project—the drive from the unflinching belief that human beings and the political societies they construct can be governed by a higher morality.

This first section briefly introduces the three dimensions of the SVS metaphor and how the metaphor exposes the theoretical flaws of the current human rights corpus. The first dimension of the prism depicts a savage and evokes images of barbarism. The abominations of the savage are presented as so cruel and unimaginable as to represent their state as a negation of humanity. The human rights story presents the state as the classic savage, an ogre forever bent on the consumption of humans. Although savagery in human rights discourse connotes much more than the state, the state is depicted as the operational instrument of savagery. States become savage when they choke off and oust civil society.⁶ The “good” state controls its demonic proclivities by cleansing itself with, and internalizing, human rights. The “evil” state, on the other hand, expresses itself

through an illiberal, antidemocratic, or other authoritarian culture. The redemption or salvation of the state is solely dependent on its submission to human rights norms. The state is the guarantor of human rights; it is also the target and *raison d'être* of human rights law.

But the reality is far more complex. While the metaphor may suggest otherwise, it is not the state per se that is barbaric but the cultural foundation of the state. The state only becomes a vampire when “bad” culture overcomes or disallows the development of “good” culture. The real savage, though, is not the state but a cultural deviation from human rights. That savagery inheres in the theory and practice of the one-party state, military junta, controlled or closed state, theocracy, or even cultural practices such as the one popularly known in the West as female genital mutilation (FGM),⁷ not in the state per se. The state itself is a neutral, passive instrumentality—a receptacle or an empty vessel—that conveys savagery by implementing the project of the savage culture.

The second dimension of the prism depicts the face and the fact of a victim as well as the essence and the idea of victimhood. A human being whose “dignity and worth” have been violated by the savage is the victim. The victim figure is a powerless, helpless innocent whose naturalist attributes have been negated by the primitive and offensive actions of the state or the cultural foundation of the state. The entire human rights structure is both anti-catastrophic and reconstructive. It is anti-catastrophic because it is designed to prevent more calamities through the creation of more victims. It is reconstructive because it seeks to reengineer the state and the society to reduce the number of victims, as it defines them, and prevent conditions that give rise to victims. The classic human rights document—the human rights report—embodies these two mutually reinforcing strategies. An INGO human rights report is usually a catalogue of horrible catastrophes visited on individuals. As a rule, each report also carries a diagnostic epilogue and recommended therapies and remedies.⁸

The third dimension of the prism is the savior or the redeemer, the good angel who protects, vindicates, civilizes, restrains, and safeguards. The savior is the victim's bulwark against tyranny. The simple yet complex promise of the savior is freedom: freedom from the tyrannies of the state, tradition, and culture. But it is also the freedom to create a better society based on particular values. In the human rights story, the savior is the human rights corpus itself, with the United Nations, Western governments, INGOs, and Western charities as the actual rescuers, redeemers of a benighted world.⁹ In reality, however, these institutions are merely fronts. The savior is ultimately a set of culturally based norms and practices that inhere in liberal thought and philosophy.

The human rights corpus, though well meaning, is fundamentally Eurocentric,¹⁰ and suffers from several basic and interdependent flaws captured in the SVS metaphor. First, the corpus falls within the historical continuum

of the Eurocentric colonial project, in which actors are cast into superior and subordinate positions. Precisely because of this cultural and historical context, the human rights movement's basic claim of universality is undermined. Instead, a historical understanding of the struggle for human dignity should locate the impetus of a universal conception of human rights in those societies *subjected* to European tyranny and imperialism. Unfortunately, this is not part of the official human rights narrative. Some of the most important events preceding the post-1945, UN-led human rights movement include the antislavery campaigns in both Africa and the United States, the anticolonial struggles in Africa, Asia, and Latin America, and the struggles for women's suffrage and equal rights throughout the world.¹¹ But the pioneering work of many non-Western activists and other human rights heroes are not acknowledged by the contemporary human rights movement.¹² These historically important struggles, together with the norms anchored in non-Western cultures and societies, have been either overlooked or rejected in the construction of the current understanding of human rights.

Second, the SVS metaphor and narrative rejects the cross-contamination of cultures and instead promotes a Eurocentric ideal.¹³ The metaphor is premised on the transformation by Western cultures of non-Western cultures into a Eurocentric prototype and not the fashioning of a multicultural mosaic.¹⁴ The SVS metaphor results in an "othering" process that imagines the creation of inferior clones, in effect dumb copies of the original. For example, Western political democracy is in effect an organic element of human rights. "Savage" cultures and peoples are seen as lying outside the human rights orbit and by implication, outside the regime of political democracy. It is this distance from human rights that allows certain cultures to create victims. Political democracy is then viewed as a panacea. Other textual examples anchored in the treatment of cultural phenomena, such as "traditional" practices that appear to negate the equal protection for women also illustrate the gulf between human rights and nonliberal, non-European cultures.

Third, the language and rhetoric of the human rights corpus present significant theoretical problems. The arrogant and biased rhetoric of the human rights movement prevents the movement from gaining cross-cultural legitimacy.¹⁵ This curse of the SVS rhetoric has no bearing on the substance of the normative judgment being rendered. A particular leader, for example, could be labeled a war criminal, but such a label may carry no validity locally because of the curse of the SVS rhetoric.¹⁶ In other words, the SVS rhetoric may undermine the universalist warrant that it claims and thus engender resistance to the apprehension and punishment of real violators.

The subtext of human rights is a grand narrative hidden in the seem-

ingly neutral and universal language of the corpus. For example, the UN Charter describes its mandate to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."¹⁷ This is certainly a noble ideal. But what exactly does that terminology mean here? This phraseology conceals more than it reveals. What, for example, are fundamental human rights, and how are they determined? Do such rights have a cultural, religious, ethical, moral, political, or other bias? What exactly is meant by the "dignity and worth" of the human person? Is there an essentialized human being that the corpus imagines? Is the individual found in the streets of Nairobi, the slums of Boston, the deserts of Iraq, or the rainforests of Brazil? In addition to the herculean task of defining the prototypical human being, the UN Charter puts forward another pretense—that all nations "large and small" enjoy some equality. Even as it ratified power imbalances between the Third World and the dominant American and European powers,¹⁸ the United Nations gave the latter the primary power to define and determine "world peace" and "stability."¹⁹ These fictions of neutrality and universality, like so much else in a lopsided world, undergird the human rights corpus and belie its true identity and purposes. This international rhetoric of goodwill reveals, just beneath the surface, intentions and reality that stand in great tension and contradiction with it.

This chapter is not merely about the language of human rights or the manner in which the human rights movement describes its goals, subjects, and intended outcomes. It is not a plea for the human rights movement to be more sensitive to non-Western cultures. Nor is it a wholesale rejection of the idea of human rights. Instead, the chapter is fundamentally an attempt at locating—philosophically, culturally, and historically—the normative edifice of the human rights corpus. If the human rights movement is driven by a totalitarian or totalizing impulse, that is, the mission to require that all human societies transform themselves to fit a particular blueprint, then there is an acute shortage of deep reflection and a troubling abundance of zealotry in the human rights community. This vision of the "good society" must be vigorously questioned and contested.

Fourth, the issue of power is largely ignored in the human rights corpus. There is an urgent need for a human rights movement that is multicultural, inclusive, and deeply political. Thus, while it is essential that a new human rights movement overcome Eurocentrism, it is equally important that it also address deeply lopsided power relations among and within cultures, national economies, states, genders, religions, races and ethnic groups, and other societal cleavages. Such a movement cannot treat Eurocentrism as the starting point and other cultures as peripheral. The point of departure for the movement must be a basic assumption about the moral equivalency of all cultures.

The fifth flaw concerns the role of race in the development of the human rights narrative. The SVS metaphor of human rights carries racial connotations in which the international hierarchy of race and color is entrenched and revitalized. The metaphor is in fact necessary for the continuation of the global racial hierarchy. In the human rights narrative, savages and victims are generally nonwhite and non-Western, while the saviors are white. This old truism has found new life in the metaphor of human rights. But there is also a sense in which human rights can be seen as a project for the redemption of the redeemers, in which whites who are privileged globally as a people—who have historically visited untold suffering and savage atrocities against nonwhites—redeem themselves by “defending” and “civilizing” “lower,” “unfortunate,” and “inferior” peoples. The metaphor is thus laced with the pathology of self-redemption.

As currently constituted and deployed, the human rights movement will ultimately fail because it is perceived as an alien ideology in non-Western societies. The movement does not deeply resonate in the cultural fabrics of non-Western states, except among hypocritical elites steeped in Western ideas. In order ultimately to prevail, the human rights movement must be moored in the cultures of all peoples.²⁰

Human rights renew the meaning and scope of rights in a radical way. Human rights bestow naturalness, transhistoricity, and universality to rights. But this chapter lodges a counterclaim against such a leap. It is certainly informed by the works of critical legal scholars,²¹ feminist critics of rights discourse,²² and critical race theorists.²³ Still, the approach here differs from all three because it seeks to address an international phenomenon and not a municipal, distinctly American question. The critique of human rights should be based not just on American or European legal traditions but also on other cultural milieus. The indigenous, non-European traditions of Asia, Africa, the Pacific, and the Americas must be central to this critique. The idea of human rights—the quest to craft a universal bundle of attributes with which all societies must endow all human beings—is a noble one. The problem with the current bundle of attributes lies in their inadequacy, incompleteness, and wrongheadedness. There is little doubt that there is much to celebrate in the present human rights corpus just as there is much to quarrel with. In this exercise, a sober evaluation of the current human rights corpus and its language is not an option—it is required.²⁴

The chapter continues to build on this theoretical background. It relates human rights to the emergence of European and American senses of global predestination and the mission to civilize by universalizing Eurocentric norms. It then focuses on the metaphors of the savage, victim, and savior, and looks at human rights norms, work, and scholarship to underscore the theme of the SVS metaphor.

The Grand Narrative of Human Rights

The Charter of the United Nations, which is the constitutional basis for all UN human rights texts, captures the before-and-after, backward-progressive view of history. It declares human rights an indispensable element for the survival of humankind. It does so by undertaking as one of its principal aims the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”²⁵ This self representation of human rights requires moral and historical certainty and a belief in particular inflexible truths. The Universal Declaration of Human Rights (UDHR), the grandest of all human rights documents, endows the struggle between good and evil with historicity in which the defeat of the latter is only possible through human rights.²⁶ This is now popularly accepted as the normal script of human rights.²⁷ In fact, there is today an orgy of celebration of this script by prominent scholars who see in it the key to the redemption of humanity.²⁸ But this grand script of human rights raises a multitude of normative and cultural questions and problems, especially in light of the historical roots of the human rights movement.

Any valid critique must first acknowledge that the human rights movement, like earlier crusades, is a bundle of contradictions. It does not have, therefore, a monopoly on virtue that its most vociferous advocates claim. I argue here that human rights, and the relentless campaign to universalize them, present a historical continuum in an unbroken chain of Western conceptual and cultural dominance over the past several centuries. At the heart of this continuum is a seemingly incurable virus: the impulse to universalize Eurocentric norms and values by repudiating, demonizing, and “othering” that which is different and non-European. By this argument, I do not mean to suggest that human rights are bad per se or that the human rights corpus is irredeemable. Rather, I suggest that the globalization of human rights fits a historical pattern in which all high morality comes from the West as a civilizing agent against lower forms of civilization in the rest of the world.

Although the human rights movement is located within the historical continuum of Eurocentrism as a civilizing mission, and therefore as an attack on non-European cultures, it is critical to note that it was European, and not non-European, atrocities that gave rise to it. While the movement has today constructed the savage and the victim as non-European, Adolf Hitler was the quintessential savage. The abominations and demise of his regime ignited the human rights movement.²⁹ Hitler, a white European, was the personification of evil. The Nazi regime, a white European government, was the embodiment of barbarism. The combination of Hitler’s gross deviation from the evolving European constitutional law precepts

and the entombment of his imperial designs by the West and the Soviet Union started the avalanche of norms known as the human rights corpus.

Nuremberg, the German town where some twenty-two major Nazi war criminals were tried—resulting in nineteen convictions—stands as the birthplace of the human rights movement, with the London Agreement³⁰ and the Nuremberg Charter³¹ its birth certificates. Originally, the West did not create the human rights movement in order to save or civilize non-Europeans, although these humanist impulses drove the antislavery abolitionist efforts of the nineteenth century.³² Neither the enslavement of Africans, with its barbaric consequences and genocidal dimensions, nor the classic colonization of Asians, Africans, and Latin Americans by Europeans, with its bone-chilling atrocities, was sufficient to move the West to create the human rights movement. It took the genocidal extermination of Jews in Europe—a white people—to start the process of the codification and universalization of human rights norms. Thus, although the Nuremberg Tribunal has been argued by some to be in a sense hypocritical,³³ it is its promise that is significant. For the first time, the major powers drew a line demarcating impermissible conduct by states toward their own people and created the concept of collective responsibility for human rights. But no one should miss the irony of brutalizing colonial powers pushing for the Nuremberg trials and the adoption of the UDHR.

Perhaps more important, two of the oldest and most prestigious international human rights NGOs—the International Commission of Jurists (ICJ) and Amnesty International (AI)—were established to deal with human rights violations in Europe, not the Third World. The ICJ was formed as a tool for the West in the Cold War.³⁴ According to A. J. M. van Dal of the Netherlands, one of its original officials, the mission of the ICJ was to “mobilize the forces—in particular the juridical forces—of the free world for the defense of our fundamental legal principles, and in so doing to organize the fight against all forms of systematic injustice in the Communist countries.”³⁵ AI was launched in 1961 by Peter Benenson, a British lawyer, to protest the imprisonment, torture, or execution of prisoners held in Romania, Hungary, Greece, Portugal, and the United States because of their political opinions or religious beliefs.³⁶ In all these cases, the targets of AI were European or American, and not the Third World.

Thus the human rights movement originated in Europe to curb European savageries such as the Holocaust, the abuses of Soviet bloc communism, and the denials of speech and other expressive rights in a number of Western countries. The movement grew initially out of the horrors of the West, constructing the image of a European savage. The European human rights system, which is now a central attribute of European legal and political identity, is designed to hold member states to particular standards of conduct in their treatment of individuals.³⁷ It is, as it were, the bulwark

against the reemergence of the unbridled European savage—the phenomenon that gave rise to and fueled the Third Reich.

The human rights corpus, only put into effect following the atrocities of the Second World War, had its theoretical underpinnings in Western colonial attitudes. It is rooted in a deep-seated sense of European and Western global predestination.³⁸ As put by Slater, European “belief in the necessity of an imperial mission to civilize the other and to convert other societies into inferior versions of the same” took hold in the nineteenth century. This impulse to possess and transform that which was different found a ready mask and benign cover in messianic faiths, in the spread of Christianity and Islam. By the nineteenth century, the discourse of white over black superiority had gained popularity and acceptance in Europe:

The advocates of this discourse—[German philosopher Georg] Hegel most typically, but duly followed by a host of “justifiers”—declared that Africa had no history prior to direct contact with Europe. Therefore the Africans, having made no history of their own, had clearly made no development of their own. Therefore they were not properly human, and could not be left to themselves, but must be “led” towards civilization by other peoples: that is, by the peoples of Europe, especially of Western Europe, and most particularly of Britain and France.³⁹

As if by intuition, the missionary fused religion with civilization, a process that was meant to remove the native from the damnation of prehistory and to deliver him to the gates of history. In this idiom, human development was defined as a linear and vertical progression of the dark or backward races from the savage to the civilized, the premodern to the modern, from the child to the adult, and the inferior to the superior.⁴⁰ Slater has captured this worldview in a powerful passage:

the geological power over other societies, legitimated and codified under the signs of manifest destiny and civilizing missions, has been a rather salient feature of earlier Western projects of constructing new world orders. These projects or domains of truth, as they emanated from Europe or the United States, attempted to impose their hegemony by defining normalcy with reference to a particular vision of their own cultures, while designating that which was different as other than truth and in need of tutelage.⁴¹

The United States, whose history is simply a continuation of the Age of Europe,⁴² suffers from this worldview just like its Western predecessors. American predestination, as embodied in the Monroe Doctrine, is almost as old as the country itself. President Theodore Roosevelt expressed this sense of predestination when he referred to peoples and countries south of the United States as the “weak, and chaotic people south of us” and declared that it was “our duty, when it becomes absolutely inevitable, to police these countries in the interest of order and civilization.”⁴³ The treat-

ment of Portuguese- and Spanish-speaking Latin America as the United States backyard was instrumental in consolidating the psyche of the United States as an empire.

In the last several hundred years, the globe has witnessed the universalization of Eurocentric norms and cultural forms through the creation of the colonial state and the predominance of certain economic, social, and political models. International law itself was founded on the preeminence of four specific European biases: geographic Europe as the center, and Christianity, mercantile economics, and political imperialism as superior paradigms.⁴⁴ Both the League of Nations and its successor, the United Nations, revitalized and confirmed European-American domination of international affairs. In the postwar period, non-European states were trusted or mandated to European powers or became client states of one or other European state.⁴⁵

Since 1945, the United Nations has played a key role in preserving the global order that the West dominates. A critically important agenda item of the United Nations has been the universalization of principles and norms that are European in identity. Principal among these has been the spread of human rights which grow out of Western liberalism and jurisprudence.⁴⁶ The West was able to impose its philosophy of human rights on the rest of the world because it dominated the United Nations at its inception.⁴⁷ The fallacy of the UDHR, which refers to itself as the "common standard of achievement for all peoples and all nations,"⁴⁸ is now underscored by the identification of human rights norms with political democracy. The principal focus of human rights law has been on those rights that strengthen, legitimize, and export the liberal democratic state to non-Western societies.

Some scholars have argued that democratic governance has evolved from a moral prescription to an international legal obligation.⁴⁹ According to Thomas Franck, the right to democratic governance is supported by a large normative human rights canon. He asserts that people almost everywhere, including Africa and Asia, "now demand that government be validated by a Western-style parliamentary, multiparty democratic process." He concludes, rather triumphantly, that

This almost-complete triumph of the democratic notions of Hume, Locke, Jefferson and Madison—in Latin America, Africa, Eastern Europe and, to a lesser extent, Asia—may well prove to be the most profound event of the twentieth century and, in all likelihood, the fulcrum on which the future development of global society will turn. It is the unanswerable response to those who have said that free, open, multiparty, electoral parliamentary democracy is neither desired nor desirable outside a small enclave of Western industrial states.⁵⁰

Franck presents the apparent triumph of liberal democratic nationalism as the free, uncoerced choice of non-Western peoples.

Although the corpus springs from Europe, Third World states have also participated in its legitimation, particularly at the United Nations, the institution most responsible for the creation and universalization of human rights norms. Although some academics point to the increasing role played by non-Western states and cultures in the development of human rights norms, too much should not be made of Third World participation in the making of human rights law. Mary Ann Glendon, in her impressive and well researched book, has argued, for instance, that non-Western scholars and diplomats were key players in the construction of the UDHR.⁵¹ But the levers of power at the United Nations and other international lawmaking forums have traditionally been out of the reach of the Third World. And even if they were within reach, it is doubtful that most Third World states represent their peoples and cultures. In other words, a claim about the universality or democratization of human rights norm-making at the United Nations cannot be made simply by looking at the numerical domination of that body by Third World states.

Although the human rights movement arose in Europe, with the express purpose of containing European savagery, it is today a civilizing crusade aimed primarily at the Third World. It is one thing for Europeans and North Americans, whose states share a common philosophical and legal ancestry, to create a common political and cultural template to govern their societies. It is quite another to insist that their particular vision of society is the only permissible civilization which must now be imposed on all human societies, particularly those outside Europe. The merits of the European and American civilization of human rights notwithstanding, all missionary work is suspect, and might easily seem a part of the colonial project. Once again, the allegedly superior Europeans and North Americans descend on supposedly backward natives in the Third World with the human rights mission to free them from the claws of despotic governments and benighted cultures.

But the human rights project is no longer just a critique of the Third World by the West. Individual states of all cultural and political traditions, including those in the Third World, have taken coercive measures against other states in the name of human rights. Many non-governmental organizations in the Third World openly oppose human rights violations committed by their own states and societies based on imported Western norms and definitions. Non-Europeans now confront each other within the confines of their states over the enforcement of human rights. The observance or denial of human rights now pits African against African, Arab against Arab, and Asian against Asian.

Today, most of the activities of the ICJ, AI, the other Western-based INGOs such as Human Rights Watch and the Lawyers Committee for Human Rights, both based in New York, and the Washington-based International Human Rights Law Group are focused on the Third World. As a

consequence, the predominant image of the savage in the human rights discourse today is that of a Third World, non-European person, cultural practice, or state.

At first blush, there appear to be sufficient grounds for the INGOs' unrelenting emphasis on Third World states as the foci for their work. As a general rule, INGOs concentrate their work on the violations of civil and political rights—the species of legal protections associated with a functioning political democracy. Admittedly, there are more undemocratic states in the Third World than in the developed West. Third World despots have acted with impunity. Violations of civil and political rights and the plunder of Third World economies by their leaders are common and flagrant. The spotlight by INGOs here is appropriate, necessary, and welcome, particularly where local advocacy groups and the press have been muzzled or suffocated by the state. There is no doubt that mechanisms for the protections of human rights are more fragile in many Third World states, if they exist at all.

But while this explains the work of INGOs in the Third World, it does not excuse their relative inactivity on human rights violations in the West. Western countries, like the United States, are notorious for their violations of the civil rights of racial minorities and the poor. Although both Human Rights Watch and AI have haltingly started to breach the publicity and advocacy barriers in these areas,⁵² such reports have been sparse and episodic, and have given the impression of a public relations exercise, designed to mute critics who charge INGOs with a lopsided Third World focus. The ravages of globalization notwithstanding, INGOs have largely remained deaf to calls for advocacy on social and economic rights.⁵³ There certainly is no sufficient defense for their failure to address the violations of economic and social rights by Western states. It is true, of course, that dominant public discourse in the West generally opposed the mainstreaming of an agenda for economic and social rights, and instead characterized them as inimical to free enterprise. But in reality, most countries—socialist, capitalist, and Third World—have never seriously sought to fulfill economic, social, and cultural rights, even those which rhetorically championed them, such as the Soviet Union.

The historical pattern is undeniable. It forms a long queue of the colonial administrator, the Bible-wielding Christian missionary, the merchant of free enterprise, the exporter of political democracy, and now the human rights zealot. In each case the European culture has pushed the “native” culture to transform. The local must be replaced with the universal—that is, the European. Are the connections between human rights and particular attributes of European-American culture, such as hedonism, excess individualism, free markets, and now globalization contingent and not organic? Is, in fact, the text of human rights so open that it is up for grabs, allowing different interests to make whatever claims they wish on it? In

other words, are non-European cultures better advised to adopt the human rights text to their specific contexts, but to leave its core in place, if they seek redemption from their own backwardness? Can they segregate the “good” from the “bad” in human rights and reject the baggage of the West, while building a culture that is free from the evils that deny human potential?

Although the purpose here is not to address particularized national settings, it is sufficient to note that the savage-victim-savior metaphor has deep historical parallels in the national histories of states where nonwhites, and especially persons of African ancestry, have been subjected to oppression, abuse, exploitation, and domination by whites. The history of South Africa, as told by Nelson Mandela, is not just a testament to the cooperation of black and white South Africans against apartheid, the system of official segregation.⁵⁴ There is in that history a strong undercurrent of white benefactors, sometimes pejoratively referred to as “do-gooders,” a species of humans cut from the abolitionist cloth.⁵⁵ During the darkest days of apartheid, many individual white lawyers, white law firms, and white human rights organizations spoke for and defended black South Africans.⁵⁶ Many whites became key leaders in what was essentially a black liberation struggle.⁵⁷ In the United States, from the earliest days of the enslavement of Africans by whites up to the civil rights movement, whites often played important roles in the struggle for equality by blacks. As in South Africa, many American whites held key positions in the fight for civil rights.⁵⁸ It seems politically incorrect to consign white participation in these noble causes to the SVS metaphor. But it is an unavoidable conclusion that the metaphor largely describes their involvement. It would also be a tragic historical error not to recognize the importance of those struggles to the liberal project and its centrality to democracy and the freedom of whites as a people themselves.

My purpose here is not to assign ignoble intentions or motivations on the individual proponents, leaders, or participants in the human rights movement. Without a doubt many of the leaders and foot soldiers of the human rights movement are driven by a burning desire to end human suffering, as they see it from their vantage point. The white American suburban high school or college student who joins the local chapter of AI and protests FGM in faraway lands or writes letters to political or military leaders whose names do not easily roll off the English tongue are no doubt drawing partly from a well of noblesse oblige. The zeal to see all humanity as related and the impulse to help those defined as in need is noble and is not the problem addressed here. A certain degree of human universality is inevitable and desirable. But what that universality is, what historical and cultural stew it is made of, and how it is accomplished make all the difference. What the high school or college student ought to realize is that his or her zeal to save others—even from themselves—is steeped in Western and

European history. If one culture is allowed the prerogative of imperialism, the right to define and impose on others what it deems good for humanity, the very meaning of freedom itself will have been abrogated. That is why a human rights movement that pivots on the savage-victim-savior metaphor violates the very idea of the sanctity of humanity that purportedly inspires it.

The Metaphor of the Savage

Human rights law frames the state as its primary target. Although voluntarily entered into, human rights treaties are binding on the state. The state is both the guarantor and subject of human rights. Underlying the development of human rights is the belief that the state is a predator that must be contained. Otherwise it will devour and imperil human freedom. From this conventional international human rights law perspective, the state is the classic savage.

But it is not the state *per se* that is predatory, for the state in itself is simply a construct that describes a repository for public power, a disinterested instrumentality ready to execute public will, whatever that maybe. There is a high degree of fluidity in the nature of that power and how it is exercised. For instance, a state's constitutional structure could in its configuration require a particular form of democratic government. Or a state's constitution could locate public power in religious bodies and clerics, as has been the case in the Islamic Republic of Iran.⁵⁹ However, a state could, through revolution or some other device, be Islamic today and secular tomorrow. Since the state in this construction appears to be an empty vessel, the savage must be located beyond the state.

The state should be unmasked as being a mere proxy for the real savage. That leaves the historically accumulated wisdom, the culture of a society, as the only other plausible place to locate the savage. Culture represents the accumulation of a people's wisdom and thus their identity; it is real and without it a people is without a name, rudderless, and torn from its moorings. In this sense, culture is a set of local truths which serve as a guide for life's many pursuits in a society. The validity of a cultural norm is a local truth, and judgment or evaluation of that truth by a norm from an external culture is extremely problematic, if not altogether an invalid exercise.⁶⁰ But culture itself is a dynamic and alchemical mix of many variables, including religion, philosophy, history, mythology, politics, environmental factors, language, and economics. The interaction of these variables—both within the culture and through influence by other cultures—produces competing social visions and values in any given society. The dominant class or political interests that capture the state make it the public expression of their particular cultural vision. That is to say, the state is

more a conveyor belt than an embodiment of particular cultural norms. The state is but the scaffolding underneath which the real savage resides. Thus, when human rights norms target a deviant state, they are really attacking the normative cultural fabric or variant expressed by that state. The culture, and not the state, is the actual savage. From this perspective, human rights violations represent a clash between the culture of human rights and the savage culture.

The view that human rights is an ideology with deep roots in liberalism and democratic forms of government is now supported by senior human rights academics in the West.⁶¹ The cultural biases of the human rights corpus can only be properly understood if it is contextualized within liberal theory and philosophy. Understood from this position, human rights become an ideology with a specific cultural and ethnographic fingerprint.⁶² The human rights corpus expresses a cultural bias, and its chastening of a state is therefore a cultural project. If culture is not defined as some discrete, exotic, and peculiar practice which is frozen in time but rather as the dynamic totality of ideas, forms, practices, and structures of any given society, then human rights, as it is currently conceived, is an expression of a particular European-American culture. The advocacy of human rights across cultural borders is then an attempt to displace the local culture with the "universal" culture of human rights. Human rights, therefore, become the universal culture. It is in this sense that the "other" culture, that which is non-European, is the savage in the human rights corpus and its discourse.

In major international human rights instruments, the "other" culture is quite often depicted as the evil that must be overcome by human rights themselves. An example is the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which is based on equality and antidiscrimination, the two basic and preeminent norms of the human rights corpus. The most transformatively radical human rights treaty, CEDAW refers to offending "social and cultural patterns,"⁶³ and demands that the state take all appropriate measures to transform attitudes and practices that are inimical to women. The treaty explicitly requires that states seek the "elimination of prejudices and customary and all other practices" that are based on the ideas of the inequality of the sexes.⁶⁴

While there are no cultures that are innocent of discriminatory practices against women, human rights discourse treats non-Western cultures as particularly problematic in this regard. For example, in its first report, the Women's Rights Project of Human Rights Watch focused on wife-murder, domestic battery, and rape in Brazil.⁶⁵ Significant here is the fact that HRW's first report on violations of women's human rights did not focus on the wife-murder, domestic battery, and rape commonplace in the United States or a European country but rather on Brazil, a Third World state. Other reports by the Women's Rights Project have concentrated on viola-

tions in Botswana, Haiti, and Turkey, which is Muslim and on the periphery of Europe.⁶⁶

The impression left by the reports and the activities of powerful INGOs is unmistakable. While the West is presented as the cradle of the feminist movement, countries in the South have been constructed as steeped in traditions and practices which are harmful to women. In one of her first reports, Radhika Coomaraswamy, the UN Special Rapporteur on Violence Against Women, confirmed this impression when she noted that "certain customary practices and some aspects of tradition are often the cause of violence against women." She noted that "besides female genital mutilation, a whole host of practices violate female dignity. Foot binding, male preference, early marriage, virginity tests, dowry deaths, sati, female infanticide, and malnutrition are among the many practices that violate a woman's human rights."⁶⁷ All these practices are found in non-Western cultures. Images of practices such as "female genital mutilation," dowry burnings, and honor killings have come to frame the discourse, and in that vein stigmatize non-Western cultures.

Elsewhere, non-European political traditions that lie outside the liberal tradition and do not yield political democratic structures are demonized in the text of human rights and its discourse. Take, for example, the view expressed by human rights documents in the area of political participation. Here, the human rights corpus expects all societies to support a pluralist, democratic society. Both the UDHR and the ICCPR, the two key documents in the area of civil and political rights, are explicit about the primacy of rights of expression and association. They both give citizens the right to political participation through elections and the guarantee of the right to assemble, associate, and disseminate their ideas.⁶⁸ This scheme of rights coupled with equal protection and due process rights implies a political democracy or a political society with a regularly elected government, genuine competition for political office, and separation of powers with judicial independence. While it is true that the human rights regime does not dictate the particular permutation or strain of political democracy, it suggests a Western-style liberal democracy nevertheless. Systems of government such as monarchies, theocracies, dictatorships, and one-party states would violate rights of association and run afoul of the human rights corpus.⁶⁹ When it rejects non-Western political cultures as undemocratic, the human rights corpus raises the specter of political savagery.

In scholarship by many Western academics, the same sharp contrast is drawn between human rights supporters and the cultural or political savage who must be civilized by human rights. Industrial democracies in the last two decades have worked to link human rights to aspects of foreign policy such as development assistance, aid, and trade with non-Western states.⁷⁰ Such linkage requires the recipient, usually a non-Western state, to conform aspects of its domestic laws, policies, or programs to human rights

or democratic norms. The coercive maneuver is intended to civilize the offending state. In this sense, Western states frequently use human rights as a tool of foreign policy against non-Western states.⁷¹

Some writers have depicted certain practices as part of a savage culture. In the gruesome conflict following the collapse of Yugoslavia, genocide and other war crimes were perpetrated with chilling callousness. In particular, one of the most horrifying war crimes was the massive rape by Serbs of Muslim Bosnian women, with some reports estimating as many as 20,000 victims.⁷² Todd Salzman characterizes these offenses as "an assault against the female gender, violating her body and its reproductive capabilities as a 'weapon of war.'"⁷³ He traces these atrocities to a savage Serbian patriarchal culture that usurps the female body and reduces the female to "her reproductive capacities in order to fulfill the overall objective of Serbian nationalism by producing more citizens to populate the nation." According to Salzman, this view of the female body is deeply rooted in Serbian culture, the Serbian Orthodox Church, and Serbian official policies. The savage here is located in religion, politics, and culture which the state supports and implements for the purpose of creating "Greater Serbia."

The image of the savage is also painted impressively by INGOs in their work through reporting and other forms of public advocacy. The focus here is not on domestic human rights NGOs in the Third World because many simply imitate the practices of their predecessors in the North. Typically, INGOs perform three basic functions: investigation, reporting, and advocacy.⁷⁴ The focus of human rights INGOs is usually human rights violations in a Third World country, where the "investigation" normally takes place. Generally, a Western-based INGO—typically based in the political and cultural capitals of the most powerful countries in the West⁷⁵—sends a team of investigators called a human rights mission to a country in the South. The mission lasts anywhere from several days to a few weeks and collects data and other information on human rights questions from victims, local NGOs, lawyers, local journalists, human rights defenders, and government officials. Information from these local sources is usually cross-checked with other, supposedly more objective sources—meaning Western embassies, locally based Western reporters, and other Western interests such as foundations. Upon returning to the West, the mission systematizes the information and releases it in the form of a report.

The human rights report is a catalog of abuses committed by the state against liberal values.⁷⁶ It criticizes the state for departing from the civil and political rights obligations provided for in the major instruments. Its purpose is to shame the Third World state by pointing out the gulf between the state's conduct and internationally sanctioned civilized behavior. This departure from good behavior is stigmatized and used to paint the state either as a pariah or out-of-step with the rest of the civilized world. Reports normally contain corrective measures and recommendations to

the offending state. In many instances, however, the audience of these reports is the West or some other Western institution, such as the European Union. The pleas of the INGO report here pit a First World state or institution against a Third World state or culture. The report asks that the West cut off aid, condition assistance, impose sanctions, and/or publicly denounce the unacceptable conduct of the Third World state.⁷⁷ INGOs thus ask First World states and institutions to play a significant role in "taming" and "civilizing" Third World states, even though such a role relies on the power and economic imbalances of the international order which favors the North over the South.

The human rights report also tells another, more interesting story about the target of the human rights corpus. In this story, the report describes several images of the savage, including the Third World state, the quintessential savage. Human rights literature is replete with images of blood-thirsty Third World despots and trigger-happy police and security forces.

Perhaps in no other area than in the advocacy over "female genital mutilation" is the image of culture as the savage more poignant. The word "mutilation" itself implies the willful, sadistic infliction of pain on a hapless victim, and stigmatizes the practitioners and their cultures as barbaric savages. Descriptions of the practice are so searing and revolting that they evoke images of a barbarism that defies civilization.⁷⁸ Although the practice has dissipated over the last several decades, it is still carried out in parts of Africa and the Middle East. Given Western stereotypes of barbaric natives in the "dark" continent,⁷⁹ Western advocacy over FGM has evoked images of machete-wielding natives only too eager to inflict pain on women in their societies. The speed, for example, with which the 1994 mass killings in Rwanda took place, and the weapons used, have come to symbolize in the Western mind the barbarism of Africans. Philip Gourevitch, an American journalist, was one of the instrumental voices in the creation of this portrayal:

Decimation means the killing of every tenth person in a population, and in the spring and early summer of 1994 a program of massacres decimated the Republic of Rwanda. *Although the killing was low-tech—performed largely by machete—it was carried out at dazzling speed: of an original population of about seven and a half million, at least eight hundred thousand people were killed in just a hundred days.* Rwandans often speak of a million deaths, and they may be right. The dead of Rwanda accumulated at nearly three times the rate of Jewish dead during the Holocaust. It was the most efficient mass killing since the atomic bombings of Hiroshima and Nagasaki.⁸⁰

These images are critical in the construction of the savage. Human rights opposition and campaigns against FGM, which have relied heavily on demonization, have picked up where European colonial missionaries left off.⁸¹ Savagery in this circumstance acquires a race—the black, dark, or non-Western race. The Association of African Women for Research and

Development (AAWORD), by contrast, opposed female circumcision but sharply denounced the racism inherent in Western-led, anti-FGM campaigns:

This new crusade of the West has been led out of the moral and cultural prejudices of Judaeo-Christian Western society: aggressiveness, ignorance or even contempt, paternalism and activism are the elements which have infuriated and then shocked many people of good will. In trying to reach their own public, the new crusaders have fallen back on sensationalism, and have become insensitive to the dignity of the very women they want to "save."⁸²

AAWORD vigorously questioned the motives of Western activists and suggested that they were twice victimizing African women. It stopped just short of asking Western activists to drop the crusade, yet openly denounced the use of the savage-victim-savior metaphor:

[Western crusaders] are totally unconscious of the latent racism which such a campaign evokes in countries where ethnocentric prejudice is so deep-rooted. And in their conviction that this is a "just cause," they have forgotten that these women from a different race and a different culture are also *human beings*, and that solidarity can only exist alongside self-affirmation and mutual respect."⁸³

As illustrated by the debate over FGM, advocacy across cultural barriers is an extremely complex matter. Making judgments across the cultural divide is a risky business because the dice are always heavily loaded. Not even the black-white pretense of human rights can erase those risks. But since that is precisely what the human rights movement does—make judgments across cultures—there is an obligation to create truly universal standards. Otherwise, the human rights enterprise will continue to present itself as a struggle between the cultures of non-Western peoples and the "universal" culture of the West.

The Metaphor of the Victim

The metaphor of the victim is the giant engine that drives the human rights movement. Without the victim there is no savage or savior, and the entire human rights enterprise collapses. This section examines the victim from the perspective of the United Nations, human rights treaties, human rights law, and, especially, human rights literature. Also, intertwined in the victim identity are questions of race and the legacy of colonialism.

The basic purpose of the human rights corpus is to contain the state, transform society, and eliminate both the victim and victimhood as conditions of human existence. In fact, the human rights regime was designed to respond to both the potential and actual victim, and to create legal, po-

litical, social, and cultural arrangements to defang the state. The human rights text and its discourse present political democracy, and its institutions of governance, as the *sine qua non* for a victimless society.

On the international level, the United Nations pursues civilizing campaigns that ostensibly seek to prevent conditions that create human victims, to "save succeeding generations from the scourge of war," to "establish conditions under which justice" can be maintained, and to "reaffirm faith in fundamental human rights."⁸⁴ Human rights treaties are therefore a series of obligations assumed by states to prevent the creation of victims. To accomplish this, the state obligates itself to three basic duties for every basic human right: to avoid depriving, to protect from deprivation, and to aid the deprived.⁸⁵ The first duty, being negative, may be the least costly and mainly requires self-restraint; the latter two are positive and demand the expenditure of more resources and the implementation of programs.

Human rights law protects against the invasion of the inherent dignity and worth of the potential victim. Regardless of whether an individual is guilty of some offense, the state is not permitted to violate his fundamental rights without abiding by certain state-created norms. The state's culpability extends to individuals and entities within its jurisdiction, whether or not the violation can be traced directly to it. Thus, for example, the state's failure to prevent or punish domestic violence can be seen as a human rights violation.

In human rights literature, the victim is usually presented as a helpless innocent who has been abused directly by the state, its agents, or pursuant to an offensive cultural or political practice.⁸⁶ The most visible human rights victims, those that have come to define the term, are subjected to the now numbingly familiar set of abuses: arbitrary arrest and detention; denials of the rights to speech, assembly, and association; involuntary exile; mass slaughters and genocide; discriminations based on race, ethnicity, religion, gender, and political opinion; and denials of due process.⁸⁷

Consider this descriptive report of an incident where Iraqi government soldiers randomly selected Kurdish male villagers and executed them within earshot of their wives, children, and relatives:

The soldiers opened fire at the line of thirty three squatting men from a distance of about 5–10 meters. . . . Some men were killed immediately by rifle fire. Others were wounded, and a few were missed altogether. . . . [S]everal soldiers approached the line of slumped bodies on orders of the lieutenant and fired additional individual rounds as a coup de grace. The soldiers then left the execution site, without burying the bodies or otherwise touching them, according to survivors who lay among the corpses.⁸⁸

A basic characteristic of the victim is powerlessness, an inability for self-defense against the state or the culture in question. The usual human rights narrative generally describes victims as hordes of nameless, despair-

ing, and dispirited masses. To the extent they have a face, it is desolate and pitiful. Many are uneducated, destitute, old and infirm, too young, poorly clad, and hungry: peasants, the rural and urban poor, marginalized ethnic groups and nationalities, and lower castes. Their very being is a state of divorce from civilization and a large distance from modernity. Many are women and children twice victimized because of their gender and age,⁸⁹ and sometimes the victim of the savage culture is the female gender itself.⁹⁰

Another example of the images of helplessness and utter degradation of victims comes from a report by AI, detailing the torture and abuse, including rape, of women in detention in many states around the globe. An account from an Israeli detention center, while not unique, is particularly disturbing:

Dozens of Palestinian women and children detained in the Israeli-Occupied Territories have reportedly been sexually abused or threatened in sexually explicit language during interrogation. Fatimah Salameh was arrested in Nablus in July 1990. Her interrogators allegedly threatened to rape her with a chair leg and told her they would photograph her naked and show the pictures to her family. "They called me a whore and said that a million men had slept with me," she said. Fatimah Salameh agreed to confess to membership in an illegal organization and was sentenced to 14 months' imprisonment.⁹¹

The language of the human rights reports suggests the need for help—most likely outside intervention—to overcome the conditions of victimization. In many instances, the victims themselves deeply believe in and openly declare their helplessness and plead for outside help. A classic example was the case of the Kosovars who sought Western support in their conflict with the Serbian government of Slobodan Milosevic.⁹² Individual victims serve as more vivid illustrations of this particular victim syndrome. Tong Yi, a Chinese dissident who was jailed and freed in 1997 partly due to the pressure exerted by Human Rights Watch and the U.S. government, was profusely grateful to Robert Bernstein, the human rights patriarch and founder of HRW, whom she credited with her release. Despite her torturous time in prison, Yi noted that "If there's a smile on my face, it's because of Bob Bernstein."⁹³

The victim must also be constructed as sympathetic and innocent. Otherwise it is difficult to mobilize public outrage against the victimizer. Moral clarity about the evil of the perpetrator and the innocence of the victim is an essential distinction for Western public opinion, for it is virtually impossible to evoke sympathy for a victim who appears villainous, roguish, or un-receptive to a liberal reconstructionist project.⁹⁴

In the case of the Kosovo Albanians, the demon was Milosevic, the hated autocrat who has refused to join the democratic-privatization dance currently in vogue in the former Soviet bloc. The NATO intervention may have been more intended to oust him and replace him with a "good

Serb⁹⁵ than to save the Kosovars. The Kosovars and their ragtag band of fighters were painted as defenders of an innocent population against the cruel repression of Milosevic. Although Kosovars are Muslims, the press did not employ the stigma of Islamic fundamentalism to discredit their victim status. In stark contrast to this depiction, Chechen fighters have been portrayed as Islamic zealots and dangerous terrorists responsible for bombings and fundamentalist atrocities in both Chechnya and Russia.⁹⁶

The face of the prototypical victim is nonwhite. With the exception of the wars and atrocities committed in the former Yugoslavia and in Northern Ireland, the most enduring faces of human rights victims have been black, brown, or yellow. But even in Bosnia and Kosovo the victims were Muslims, not Christians or "typically" white Westerners. The images of the most serious suffering seem to be those of Africans, Asians, Arabs, or Latin Americans. Thus, since the Second World War, the major focus of human rights advocacy by both the United Nations and INGOs has been in the Third World in Latin America, Africa, and Asia.

Rarely is the victim conceived as white.⁹⁷ Due to sensationalistic reporting by dominant Western media organizations and the instantaneous availability of these stories worldwide,⁹⁸ the human rights crises afflicting the nonwhite world seem to be overwhelming and without number. As a result, many affluent Westerners have in the past decade spoken of what Susan Moeller terms "compassion fatigue,"⁹⁹ a euphemism for lack of interest in the suffering of people who are seemingly remote, benighted, look different, speak another language, and do not have any discernibly immediate impact on the lives of people in the West. Yet it is precisely these dire, seemingly catastrophic situations that the human rights movement is relentlessly committed to change.

While many victims in Latin American countries are white, the popular perception of Latin Americans in the West is that of nonwhite, underdeveloped victims of crude despotism. Latin American whites, who form the ruling elites of the region, are not perceived in the West as "typical" whites, with the attendant benefits of modern affluence, presumed intelligence, global power, and influence. At best, they have been constructed as "second class" whites, lower in the racial pecking order than whites in Australia, New Zealand, and even South Africa, the three other countries outside Europe and North America with substantial white populations. In any case, the typical Latin American victim is presumed to be indigenous.

The representations of the victim in human rights literature spring from a messianic ethos in both the INGO and the United Nations. There is a colonial texture to the relationship between the human rights victim and the West. In the colonial project, for example, the colonizer justified his mission by drawing a distinction between the "native" and the "civilized" mind. In one case, which was typical of the encounter between Africa and

the West, a European missionary compared what he called the "Bantu mind" to that of a "civilized man":

It is suggested that the mere possession on the part of the Bantu of nothing but an oral tradition of culture creates a chasm of difference between the Native "mind" and that of civilized man, and of itself would account for a lack of balance and proportion in the triple psychological function of feeling, thinking and acting, implying that thinking is the weakest of the three and that feeling is the most dominant. The Native seeks not truth nor works, but power—the dynamical mood.¹⁰⁰

The view that the "native" is weak, powerless, prone to laziness, and unable on his own to create the conditions for his development was a recurrent theme in Western representations of the "other." Early in the life of the organization, an International Labour Organization report concluded, for example, that indigenous peoples could not by themselves overcome their "backwardness." It noted: "it is now almost universally recognized that, left to their own resources, indigenous peoples would have difficulty in overcoming their inferior economic and social situation which inevitably leaves them open for exploitation."¹⁰¹ In the culture of the human rights movement, whose center is in the West, there is a belief that human rights problems afflict people "over there" and not people "like us." The missionary zeal to help those who cannot help themselves is one of the logical conclusions of this attitude.

The idea that the human rights corpus is concerned with ordering the lives of non-European peoples has a long history in international law itself. More recent scholarship explores this link between international law and the imposition of European norms, values, ideas, and culture on non-European societies and cultures.¹⁰² Since the inception of the current international legal order some five centuries ago, there have been outright challenges by non-European cultures to the logic, substance, and purpose of international law.¹⁰³ The development of human rights has only blunted, but not eliminated, some of those challenges.

The Metaphor of the Savior

The metaphor of the savior is constructed through two intertwining characteristics—Eurocentric universalism and Christianity's missionary zeal. This section examines these characteristics and the institutional, international actors who promote liberal democracy as the antidote to human rights abuses.

First, the savior metaphor is deeply embedded in the Enlightenment's universalist pretensions, which constructed Europe as superior and as center of the universe.¹⁰⁴ International law itself is founded on these assump-

tions and premises.¹⁰⁵ International law has succeeded in governing "states of all civilizations, European and non-European."¹⁰⁶ International law has become "universal" although some have argued that it bears an ethnocentric fingerprint.¹⁰⁷

In addition to the Eurocentric focus of human rights, the metaphor of the savior is also located in the missionary's Christian religion. Inherent to any universalizing creed is an unyielding faith in the superiority of at least the beliefs of the proselytizer over those of the potential convert, if not over the person of the convert. The project of universality or proselytism seeks to remake the "other" in the image of the converter. Christianity has a long history of such zealotry. Both empire-building and the spread of Christendom justified the means.

Crusades, inquisitions, witch burnings—which invariably meant the . . . burnings of heretics and gay people, of fellow Christians and of infidels—all in the name of the cross. It is almost as if Constantine, upon his and his empire's conversion to Christianity in the fourth century, uttered a well-fulfilled prophecy when he declared: "In the name of this cross we shall conquer." The cross has played the role of weapon time and time again in Christian history and empire building.¹⁰⁸

In fact, the political-cultural push to universalize one's beliefs can be so obsessive that it has been identified frequently with martyrdom in history:

the supreme sacrifice was to die fighting under the Christian emperor. The supreme self-immolation was to fall in battle under the standard of the Cross. . . . But by the time Christianity was ready to meet Asia and the New World, the Cross and the sword were so identified with one another that the sword itself was a cross. It was the only kind of cross some conquistadores understood.¹⁰⁹

There is a historical continuum in this impulse to universalize Eurocentrism and its norms and to ratify them under the umbrella of "universalism." Whether it is in the push for free markets, liberal systems of government, "civilized" forms of dress, or in the ubiquity of the English language itself, at least the last five centuries can appropriately be called the Age of Europe. These Eurocentric models have not been content to remain at home. They intrinsically define themselves as eternal truths. Universalization is an essential attribute of their validity. This validation comes partly from the conquest of the "primitive" and his introduction and delivery to "civilization."¹¹⁰ For international law, Antony Anghie has captured this impulse clearly:

the extension and universalization of the European experience, which is achieved by transmuting it into the major theoretical problem of the discipline [international law], has the effect of suppressing and subordinating other histories of international law and the people to whom it has applied. Within the axiomatic framework of positivism, which decrees that European states are sovereign while

non-European states are not, there is only one means of relating the history of the non-European world, and this the positivists proceed to do: it is a history of the civilizing mission, the process by which peoples of Africa, Asia, the Americas, and the Pacific were finally assimilated into a European international law.¹¹¹

The impulses to conquer, colonize, save, exploit, and civilize non-European peoples met at the intersection of commerce, politics, law, and Christianity and evolved into the Age of Empire. As put by John Norton Pomeroy, lands occupied by "persons who are not recognized as belonging to the great family of states to whom international law applies" or by "savage, barbarous tribes" belonged as of right upon discovery to the "civilized and Christian nation."¹¹²

The savior-colonizer psyche reflects an intriguing interplay of both European superiority and manifest destiny over the subject. The "othering" project degrades although it also seeks to save. One example is the manipulative manner in which the British took over large chunks of Africa. Lord Lugard, the British colonialist, described in denigrating language a "treaty-making" ceremony in which an African ruler "agreed" to "British protection." He described himself and the African ruler "seated cross-legged on a mat opposite to each other on the ground, you should picture a savage chief in his best turn-out which consists probably of his weapons of war, different chalk colorings on his face, a piece of skin of a leopard, a wild cat, sheep, ox."¹¹³ As put by a European missionary, the "Mission to Africa" was "the least that we [Europeans] can do . . . to strive to raise him [the African] in the scale of mankind."¹¹⁴ Anghie notes that the deployment of denigrating, demeaning language is essential to the psyche of the savior. He writes:

The violence of positivist language in relation to non-European peoples is hard to overlook. Positivists developed an elaborate vocabulary for denigrating these peoples, presenting them as suitable objects for conquest, and legitimizing the most extreme violence against them, all in the furtherance of the civilizing mission—the discharge of the white man's burden.¹¹⁵

Human rights law continues this tradition of universalizing Eurocentric norms by intervening in Third World cultures and societies to save them from the traditions and beliefs that it frames as permitting or promoting despotism and disrespect for human rights.

While it is incorrect to equate colonialism with the human rights movement, at least in terms of the methods of the two phenomena, it is not unreasonable to draw parallels between them with respect to some of their motivations and purposes. Colonialism was driven by ignoble motives while the human rights movement was inspired by the noblest of human ideals. However, both streams of historical moment are part of a Western push to transform non-European peoples. Henkin celebrates the embrace

of human rights by diverse states across the globe as the triumph of the post-1945 era. He refers to this era as the "age of rights."¹¹⁶

Henkin is so quick to celebrate universality that he fails to problematize the human rights project. Why does he not express more suspicion about the contrasting diversity of states that have ratified human rights instruments? Might that not mean that they are simply bowing to a false international consensus because in some sense their statehood and belonging to the "international community" is dependent on paying homage to international law, to human rights? Do non-European states really have a choice of rejecting in any sustained manner any doctrine of international law, particularly human rights, which represent the ultimate civilizing project of international law? Why should credence be given to states here when many, if not the majority, do not even speak for their peoples or cultures? Might states not just be acting cynically because they want to be seen to belong among the ranks of the "civilized?" After all, how much does the ratification of international law instruments mean to Third World states when they live under a patently unjust international order in which they are the subordinates? Yet Henkin rejects this debate and argues that "cultural relativists" who question the human rights corpus on ideological or cultural grounds desire a vague, broad, and ambiguous text of human rights.¹¹⁷ He ignores these questions because they may be fatal to the project of universality, which is essential for the human rights project.

Proponents of human rights universality claim that the antidote to illiberal, authoritarian, and closed societies is constitutionalism and political democracy. The corpus proceeds from the premise that the world should be a marketplace of ideas. The expressive rights in the basic human rights instruments are based on this assumption although they are subject to some limitations.¹¹⁸ But this assumption imposes on other cultures the obligation and the requirement to compete against human rights, even though those cultures may not be universalistic and may be ill-equipped to compete in the marketplace of ideas.

Human rights are part of the cultural package of the West, complete with an idiom of expression, a system of government, and certain basic assumptions about the individual and his relationship to society.¹¹⁹ The spread of the liberal constitution—with its normative assumptions and the political structures it implies—makes human rights an integral part of the Western conception of modern society and its ubiquitous domination of the globe.

Institutionally, saviors constitute a broad range of actors and interests which are driven by a belief in the redemption of nonliberal, usually non-European, societies and cultures from human rights abominations.

At the intergovernmental level, the United Nations' vertical enforcement processes and machineries act as the official guardians of the human rights corpus, and its location at the heart of UN activities and purposes

gives it the imprimatur of objectivity and neutral internationalism.¹²⁰ A maze of human rights bodies—committees and commissions—is responsible for developing, overseeing, monitoring, and enforcing human rights.¹²¹ Most UN work in human rights focuses on Third World states and societies, complete with technical assistance programs and other "hand-holding" projects to ensure the incorporation, dissemination, and enforcement of human rights norms, as well as the creation and nurturing of institutions to perform these tasks.¹²² The United Nations is, in a sense, the grand "neutral" savior, and Western liberal democracies treat it as such.

Although the United Nations is an institution composed of states, and therefore is bound in theory to respect the sovereignty of all states, it has recently taken a more active posture in human rights matters. United Nations failures in Rwanda and Somalia as well as the atrocities in the former Yugoslavia have embarrassed the world body and have made an urgent case for more effective intervention.¹²³ The creation of the International Criminal Tribunal for the Former Yugoslavia,¹²⁴ the International Criminal Tribunal for Rwanda,¹²⁵ and the 1998 adoption in Rome of the Statute of the International Criminal Court are just several recent examples of this renewed urgency in the area of human rights.¹²⁶ But these actions came after long periods of resistance by major Western powers, including the United States, and only after intense public scrutiny and media exposures of atrocities.¹²⁷ Following the Yugoslav and Rwanda crises, Human Rights Watch lamented the "moral vacuum in the halls of the United Nations."¹²⁸ It decried the UN "posture of neutrality between murderer and victim" and argued that the "failure of leadership, eagerly abetted by the Security Council's permanent members, led to a squandering of the United Nations' unique capacity on the global stage to articulate fundamental human rights values and to legitimize their enforcement." The weight of responsibility placed on the United Nations in the area of human rights is undeniable.

After the UN, the second powerful tier of saviors is constituted by Western states and Western or Western-controlled institutions, including, recently, the World Bank, which is not primarily concerned with human rights.¹²⁹ Western states usually employ a horizontal state-to-state enforcement of human rights in which their foreign policies become the conveyor belts of "civilization." Through foreign ministries, diplomatic missions, and special agencies, such as the United States Agency for International Development (USAID) and the Canadian International Development Agency (CIDA), Western governments use a carrot-and-stick approach to force certain policy choices on recipient states, frequently but only selectively using human rights to achieve specific policy objectives.

Human rights have featured prominently, if inconsistently, in the calculus of U.S. foreign policy. The U.S. Congress mandated in 1976 that a human rights bureau be established in the State Department and in-

structed that the office report annually on the human rights conditions of all countries in the world.¹³⁰ President Jimmy Carter gave human rights unprecedented rhetorical significance in foreign policy, though President Ronald Reagan dropped this emphasis. In 1994, the head of the human rights bureau was renamed the Assistant Secretary of State for Democracy, Human Rights, and Labor from the Assistant Secretary of State for Human Rights and Humanitarian Affairs. This change seems to acknowledge the broad civilizational sweep of human rights and their inseparability from free markets and political democracy. In other words, the United States sees itself as promoting this cultural package when it advocates human rights abroad.

Increasingly, the human rights movement has come to be identified openly with the United States, whose chief executive frequently invokes human rights when he addresses a non-European nation.¹³¹ In fact, President Bill Clinton's speeches on human rights have come to resemble lectures and sermons, very much in the savior mode.¹³² Today the presence of the United States—which has succeeded France and Britain as the major global cultural, military, and political power—is ubiquitous. There is virtually no conflict or issue of importance today in which the United States does not seek, and often play, the crucial role whether by omission or commission. The domination of the globe exercised by European powers for the last several centuries has been assumed by the United States. The United States is now the major determinant of "international peace and security" and the spokesperson for the "welfare" of humanity. Never before has one state wielded so much power and influence over so vast a population. A global policeman, the United States now plays the central civilizing role through the export of markets, culture, and human rights.

European states have similar approaches in their relationships with the Third World. Former communist states in Eastern Europe and the former Soviet Union, whose political cultures the West deems inferior, are treated as being in need of "civilizing."¹³³ Turkey, the only Muslim member of NATO, has been denied entry into the European Union on human rights grounds.¹³⁴ Western European liberal democracies leave little doubt that human rights covenants are meant for the Third World, which needs "improving."

Finally, INGOs constitute perhaps the most important element of the savior metaphor. Conventionally doctrinal, INGOs are the human rights movement's foot soldiers, missionaries, and proselytizers. Their crusade is framed in moral certainty in which "evil" and "good" are as separate as night and day. They claim to practice law, not politics.¹³⁵ Although they promote paradigmatic liberal values and norms, they present themselves as neutral, universal, and unbiased. Based in the capitals of the powerful Western states, their staffs are mostly well educated, usually trained in the law, middle class, and white. They are very different from the people they

seek to save. They are modern-day abolitionists who see themselves as cleansers, singlehandedly rooting out evil in Third World countries and cultures by shining light where darkness reigns.

INGOs have also been instrumental in the creation of national NGOs in the Third World. Mandates of many national NGOs initially mirrored those of INGOs. However, in the last decade, many Third World NGOs have started to broaden their areas of concentration and go beyond the INGOs' civil and political rights constraints. In particular, domestic Third World NGOs are now paying more attention to economic and social rights, development, women's rights, and the relationships between transnational corporations and human rights conditions. In spite of this incipient conceptual independence on the part of NGOs, many remain voiceless in the corridors of power at the United Nations, the European Union, the World Bank, and in the dominant media organizations in the West.

INGOs occupy such a high moral plane in public policy discourse that they are rarely the subject of probing critiques. Morally righteous, they are supported by an almost universal consensus that they are the "good guys." Even academia has been slow to reflect seriously on INGOs. INGOs and their supporters see those who question them as naive, at best, and apologists for repressive governments and cultures, at worst. This climate of intolerance has a chilling effect on human rights speech, particularly of young, probing scholars and activists. It also encourages a herd mentality and compliance with official or knee-jerk human rights strategies, positions, or responses. It certainly does not encourage innovation on the part of the movement.

INGOs also play the role of gatekeepers to powerbrokers in the West, including powerful Western states. Significantly, national NGOs have virtually no financial independence. They rely almost exclusively on funding from Western states, foundations, charities, development agencies, and intergovernmental institutions such as the European Union. In spite of these criticisms of INGOs, many non-Western NGOs expressed appreciation for the work of INGOs at a retreat which discussed the roles of NGOs in the human rights movement. In fact, many sought a more involved approach by INGOs.

The critics sought a more expanded role of INGOs and not an abandonment of their traditional work. No one at the retreat doubted INGOs' contributions to the growth of the human rights movement as a whole and to heightening consciousness about rights in general, thereby influencing the directions and pace of change. No one doubted the vital importance of INGOs' activities: monitoring, investigative reports, publicity, education, and lobbying or interventions before national and intergovernmental bodies.¹³⁶

The lack of a more vigorous and fundamental disagreement between national NGOs and Western INGOs may speak volumes about the leadership

of Third World human rights actors. This complacency also does not take into account locally grown, indigenous, "non-human rights" efforts to oppose repression and fight for political and social change. While it is true that INGOs often spoke and agitated for those who were politically voiceless, especially during the Cold War, it would be a mistake to see local human rights activists as separate from the entire human rights project. Opposing that project would be tantamount to self-repudiation. These so-called human rights activists, local collaborators in the civilizing mission, are drawn primarily from the elite in their own societies and aspire generally to the political, social, and economic models of the West. Many of these activists and their organizations are financially dependent on the West and rely on connections with Western institutions, including the diplomatic missions in their countries, for their social status.

In the last decade in Africa, however, a more politically educated activist and thinker, one who questions the human rights project more seriously and who seeks a culturally grounded program for social change, has started to emerge. This activist and thinker understands the connections among power relations, human rights, economic domination, and the historical relationships between the West and the rest of the world. Such a thinker is aware of the deep contradictions that mark the human rights enterprise and seeks the construction of a different human rights movement. While this new actor is still being defined, and constitutes but a small fraction of the human rights movement on the African continent, he is now increasingly at the center of innovative thinking and action. At the core of this new activism and thinking is the push for intellectual originality and self-reliance, local and not Western foundation support, and a commitment to challenge all sources of violations, be they local or foreign. This development represents the cultivation of a truly local human rights culture in terms of the definition of rights and their enforcement.

Chapter 2

Human Rights as an Ideology

The Authors of Human Rights

Over the last fifty years the international law of human rights has steadily achieved a moral plateau rarely associated with the law of nations.¹ A diverse and eclectic assortment of individuals and entities now invoke human rights norms and the attendant phraseology with the intent of cloaking themselves and their causes in the paradigm's perceived power and righteousness. What is interesting is the failure of this universal reliance on the language of human rights to create agreement on the scope, content, and philosophical bases of the human rights corpus. Intellectual and policy battles have focused on its cultural relevance, ideological and political orientation, and thematic incompleteness. Notwithstanding these questions, the seduction of human rights discourse has been so great that it has, in fact, delayed the development of a critique of rights.²

This chapter focuses upon what these polar impulses and positions—the fight over the content of human rights, on the one hand, and their captivating allure, on the other—have obscured: that although it seems implausible to openly deny that the human rights corpus is the construction of a political ideology, the discourse's major authors present it as nonideological. They use a vocabulary that paints the movement as both impartial and the quintessence of human goodness. They portray it as divorced from base materialism, self-interest, and "ideology." Perhaps they do so because "ideology" has a negative connotation: it is the instrument that the "other," the adversary, the opponent, uses to challenge and seek the marginalization of the forces of "good." In reality, however, the human rights corpus is not a creed or a set of normative principles suspended in outer space; the matters that it affects are earthly and concern immediate routine politics. The larger political agenda of the human rights regime has, however, been blurred by its veneration and by attempts to clean it of the taint of partisanship.

The following section discusses the theoretical and practical works of the major authors of human rights discourse are analyzed and discussed.³ It concludes that human rights and Western liberal democracy are virtually tautological. Although the two concepts seem different from a distance,

a great deal open for invention, for political variation, for progressive development of the very notion of democracy."

10. *Id.* at 200-201.

Chapter 1. Human Rights as a Metaphor

1. For the purposes of this chapter, the "human rights movement" refers to that collection of norms, processes, and institutions that traces its immediate ancestry to the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948. Universal Declaration of Human Rights, G.A. Res. 217A (III), UN GAOR, 3d Sess., 183d mtg. at 71, UN Doc. A/810 (1948).

2. This oppositional duality is central to the logic of Western philosophy and modernity. As described by David Slater, this binary logic constructs historical imperatives of the superior and the inferior, the barbarian and the civilized, and the traditional and the modern. Within this logic, history is a linear, unidirectional progression with the superior and scientific Western civilization leading and paving the way for others to follow. *See generally* David Slater, *Contesting Occidental Visions of the Global: The Geopolitics of Theory and North-South Relations*, BEYOND LAW, December 1994, pp. 100-101.

3. This chapter hereinafter refers to the "savages-victims-saviors" metaphor as "SVS." The author uses the term "metaphor" to suggest a historical figurative analogy within human rights and its rhetoric and discourse.

4. Each of the three elements of the SVS compound metaphor can operate as independent, stand-alone metaphors as well. Each of these three separate metaphors is combined within the grand narrative of human rights to compose the compound metaphor.

5. Human rights INGOs are typically "First World" nongovernmental organizations (NGOs) that concentrate on human rights monitoring of, reporting on, and advocacy in "Third World" states. *See, e.g.*, Henry J. Steiner, *DIVERSE PARTNERS: NON-GOVERNMENTAL ORGANIZATIONS IN THE HUMAN RIGHTS MOVEMENT* (Cambridge, Mass.: Harvard Law School Human Rights Program and Human Rights Internet, 1991). Steiner notes that these INGOs share a fundamental commitment to the proselytization of Western liberal values, particularly expressive and political participation rights.

6. In Western thought and philosophy, the state becomes savage if it suffocates or defies civil society. *See generally* John Keane, *Despotism and Democracy*, in *CIVIL SOCIETY AND THE STATE* (London: Verso, 1988), p. 35.

7. There has been considerable debate among scholars, activists, and others in Africa and in the West about the proper term for this practice entailing the surgical modification or the removal of some portions of the female genitalia. *See, e.g.*, Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. J. 1, 4-8 (1995); *See also* Hope Lewis and Isabelle R. Gunning, *Cleaning Our Own House: "Exotic" and Familiar Human Rights Violations*, 4 BUFF. HUM. RTS. L. REV. 123, 123-24 n. 2 (1998).

8. The art and science of human rights reporting was pioneered and perfected by Amnesty International (AI), the International Commission of Jurists (ICJ), and Human Rights Watch (HRW), the three oldest and most influential INGOs. Other

INGOs as well as domestic human rights groups have mimicked this reporting. On the character, work, and mandate of NGOs and INGOs, *see generally* Nigel Rodley, *The Work of Non-Governmental Organizations in the World-Wide Promotion and Protection of Human Rights*, 90/1 UN BULL. HUM. RTS. 84, 85 (1991); Peter R. Baehr, *Amnesty International and Its Self-Imposed Limited Mandate*, 12 NETH. Q. HUM. RTS. 5 (1994).

9. Kenneth Roth, executive director of HRW, underscored the savior metaphor when he powerfully defended the human rights movement against attacks that it had failed to move the international community to stop the 1994 mass killings in Rwanda. He dismissed those attacks as misguided, arguing that they amounted to a call to close "the fire brigade because a building burned down, even if it was a big building." Kenneth Roth, Letter to the Editor, *Human Rights Abuses in Rwanda*, TIMES LITERARY SUPP., March 14, 1997, at 15. Turning to various countries in Africa as examples, he pointed to the gratitude of Africans "all of whom benefitted from the human-rights movement to throw off dictatorial regimes and inaugurate political freedom." He argued, further, that in "other countries, like Nigeria, Kenya, Liberia, Zambia, and Zaire [now Democratic Republic of the Congo], the human rights movement has helped numerous Africans avoid arbitrary detention, violent abuse and other violations."

10. Yet I contend here that the participation of non-European states and societies in the enforcement of human rights cannot in itself universalize those rights. It is important to note that the terms "European" or "Eurocentric" are used descriptively and do not necessarily connote evil or undesirability. They do, however, point to notions of cultural specificity and historical exclusivity. The simple point is that Eurocentric norms and cultures, such as human rights, have either been imposed on, or assimilated by, non-European societies. Thus the current human rights discourse is an important currency of cross-cultural exchange, domination, and valuation.

11. Margaret E. Beck and Kathryn Sikkink, *ACTIVISTS BEYOND BORDERS, ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (Ithaca, N.Y.: Cornell University Press, 1998), pp. 39-58.

12. *See, e.g.*, Josiah Mwangi Kariuki, "MAU MAU" DETAINEE: THE ACCOUNT BY A KENYAN AFRICAN OF HIS EXPERIENCES IN DETENTION CAMPS, 1953-1960 (Baltimore: Penguin, 1964); Kwame Nkrumah, *THE AUTOBIOGRAPHY OF KWAME NKUMAH* (London: Panaf, 1973); Mohandas K. Gandhi, *AN AUTOBIOGRAPHY: THE STORY OF MY EXPERIENCES WITH TRUTH* (Boston: Beacon Press, 1962).

13. I use the term "cross-contamination" facetiously here to refer to the idea of cross-fertilization. Many Western human rights actors see the process of multiculturalization in human rights as contaminating as opposed to cross-fertilizing in an enriching way. For example, Louis Henkin has accused those who advocate cultural pluralism or diversity of seeking to make human rights vague and ambiguous. Louis Henkin, *THE AGE OF RIGHTS* (Ithaca, N.Y.: Cornell University Press, 1990), p. x. In other words, he casts cross-fertilization as a negative process, one that is contaminating and harmful to the clarity of human rights.

14. Slater argues that the "Western will to expand was rooted in the desire to colonize, civilize and possess the non-Western society; to convert what was different and enfram as inferior and backward into a subordinated same." Slater, *supra* note 2, at 101.

15. Since the rhetoric is flawed, those who create and promote it wonder

whether it will resonate "out there" in the Third World. The use of the SVS rhetoric is in itself insulting and unjust because it draws from supremacist First World/Third World hierarchies and the attendant domination and subordination which are essential for those constructions.

16. For example, Serbs sympathized with former Yugoslav President Slobodan Milosevic possibly because they felt he had been stigmatized by the West. Milosevic played to locals' fears of the West and used the arrogance of the discourse to blunt the fact that he is an indicted war criminal. See, e.g., Niles Lathem, *Defiant Milosevic: Hell, No, I Won't Go!*, N.Y. POST, August 7, 1999, at 10.

17. UN CHARTER pmbl.

18. The term "Third World" here refers to a geographic, political, historical, developmental, and racial paradigm. It is a term that is commonly used to refer to non-European, largely nonindustrial, capital-importing countries, most of which were colonial possessions of European powers. As a political force, the Third World traces its origins to the Bandung Conference of 1955 in which the first independent African and Asian states sought to launch a political movement to counter Western hegemony over global affairs. See Robert Mortimer, *THE THIRD WORLD COALITION IN INTERNATIONAL POLITICS* (Boulder, Colo.: Westview Press, 1984). Many Third World states formed the Group of 77, a forum that called for the New International Economic Order (NIEO). See Mohamed Bedjaoui, *TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER* (New York: Holmes and Meier, 1979).

19. Diane Otto, *Subalternity and International Law: The Problems of Global Community and the Incommensurability of Difference*, 5 SOC. & LEGAL STUD. 337, 339-40 (1996).

20. But genuine reconstructionists must not be mistaken with cynical cultural manipulators who will stop at nothing to justify repressive rule and inhuman practices in the name of culture. Yash Ghai powerfully exposed the distortions by several states of Asian conceptions of community, religion, and culture to justify the use of coercive state apparatuses to crush dissent, protect particular models of economic development, and retain political power within the hands of a narrow, largely unaccountable political and bureaucratic elite. Yash Ghai, *Human Rights and Governance: The Asia Debate*, 15 AUSTL. Y.B. INT'L L. 1 (1994).

Such cultural demagoguery is clearly as unacceptable as is the insistence by some Western academics and leaders of the human rights movement that the non-West has nothing to contribute to the human rights corpus and should accept the human rights corpus as a gift of civilization from the West. See Aryeh Neier, *Asia's Unacceptable Standard*, 92 FOREIGN POL'Y 42 (1993). Henkin has written that the United States viewed human rights "as designed to improve the condition of human rights in countries other than the United States (and a very few like-minded liberal states)." Henkin, *supra* note 13, at 74. Elsewhere, Henkin has charged advocates of multiculturalism and ideological diversity in the reconstruction of human rights with desiring a vague, broad, ambiguous, and general text of human rights, one that would be easily manipulated by regimes and cultures bent on violating human rights.

21. For examples of critical legal scholarship, see generally Karl E. Klare, *The Public/Private Distinction in Labor Law*, 130 U. PA. L. REV. 1358 (1982); Mark V. Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1363 (1984).

22. For examples of feminist critiques of the law, see generally Frances Olsen,

Statutory Rape: A Feminist Critique of Rights Analysis, 63 TEX. L. REV. 387 (1984); Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589 (1986).

23. For examples of critical race theory scholarship, see generally Kimberle Crenshaw, *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (New York: New Press, 1995); Kimberle Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Anti-Discrimination Law*, 101 HARV. L. REV. 1331 (1988). For critical race feminism, an offshoot of critical race theory, see generally Adrienne Katherine Wing, *CRITICAL RACE FEMINISM: A READER* (New York: New York University Press, 1997); Leila Hilal, *What Is Critical Race Feminism?*, 4 BUFF. HUM. RTS. L. REV. 367 (1997) (reviewing *CRITICAL RACE FEMINISM: A READER*).

24. For other probing critiques of the human rights movement, see Raimundo Panikkar, *Is the Notion of Human Rights a Western Concept?*, 120 DIOGENES 75 (1982); Bilahari Kausikan, *Asia's Different Standard*, 92 FOREIGN POL'Y 24 (1993); Josiah A. M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 HUM. RTS. Q. 309 (1987).

25. UN CHARTER art. 55(c). See also UN CHARTER *supra* note 17, at pmbl.

26. The UDHR argues in its preamble that it is the "disregard and contempt for human rights that have resulted in barbarous acts" and that human dignity, freedom, justice, and peace can only be achieved if human rights are respected. See UDHR, *supra* note 1, pmbl.

27. As noted by Mary Ann Glendon, the UDHR "is already showing signs of having achieved the status of holy writ within the human rights movement." Mary Ann Glendon, *Knowing the Universal Declaration of Human Rights*, 73 NOTRE DAME L. REV. 1153, 1153 (1998). Glendon also notes that "Cults have formed around selected provisions [of the UDHR]."

28. Henkin has called this the age of rights and asserted, unequivocally, that "Human rights is the idea of our time, the only political-moral idea that has received universal acceptance." Henkin, *supra* note 13, at ix). Philip Alston has argued that the naming of a claim "as a human right elevates it above the rank and file of competing societal goals" and provides it with "an aura of timelessness, absoluteness and universal validity." Philip Alston, *Making Space for New Human Rights: The Case of the Right to Development*, 1 HARV. HUM. RTS. Y.B. 3, 3 (1988). See also Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).

29. As noted by Thomas Buergenthal, the rise and development of the human rights movement "can be attributed to the monstrous violations of human rights of the Hitler era and to the belief that these violations and possibly the war itself might have been prevented had an effective international system for the protection of human rights existed." Thomas Buergenthal, *INTERNATIONAL HUMAN RIGHTS IN A NUTSHELL* (St. Paul, Minn.: West Publishing Company, 1988), p. 21.

30. Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, August 8, 1945, 59 Stat. 1544 [hereinafter London Agreement].

31. The International Military Tribunal at Nuremberg was established in 1945 by the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, resulting from conferences held among the United States, Britain, France, and the Soviet Union to determine what policies the victorious

Allies should pursue against the defeated Germans, Italians, and their surrogates. *Id.*

32. Howard B. Tolley, Jr., *THE INTERNATIONAL COMMISSION OF JURISTS: GLOBAL ADVOCATES OF HUMAN RIGHTS* (Philadelphia: University of Pennsylvania Press, 1994).

33. Nuremberg has been criticized for the Allies' selective prosecution of war criminals and the inventiveness of the applicable law and has been labeled a gross demonstration of the powers of the victors over the vanquished. Kenneth Anderson, *Nuremberg Sensibility: Telford Taylor's Memoir of the Nuremberg Trials*, 7 HARV. HUM. RTS. J. 281 (1994). Also, U.S. Chief Justice Harlan Fiske Stone said the Nuremberg trials had a "false facade of legality" and were "a little too sanctimonious a fraud to meet my old-fashioned ideas." Alpheus Thomas Mason, *HARLAN FISKE STONE: PILLAR OF LAW* (New York: Viking Press, 1956), pp. 715-16.

34. See Tolley, *supra* note 32, at 25-44.

35. Dudley Bonsal, *Lawyers and the Cold War, in Cooperation with the ICJ*, Minutes of the Association of the Bar of the City of New York, May 4, 1953, quoted in Tolley, *supra* note 32, at 34.

36. Ian Martin, *The New World Order: Opportunity or Threat for Human Rights*, Edward A. Smith Lecture at the Harvard Law School Human Rights Program (April 14, 1993), available at, <www.law.harvard.edu/programs/HRP/Publication<www.law.harvard.edu/programs/HRP/Publications/martin.html> (visited September 11, 2001).

37. The European human rights system, which includes the European Commission on Human Rights and the European Court of Human Rights, is central to the European Union. The system was put in place following the atrocities of the Second World War. See, e.g., Buergenthal, *supra* note 29, at 102-73; Laurence R. Helfer and Anne-Marie Slaughter, *Toward a Theory of Effective Supranational Adjudication*, 107 YALE L.J. 273 (1997).

38. Slater, *supra* note 2, at 100.

39. Basil Davidson, *AFRICA IN HISTORY: THEMES AND OUTLINES* (New York: Collier Books, 1991), p. xvi.

40. A description of Henry the Navigator is telling:

The heathen lands were kingdoms to be won for Christ, and the guidance of their backward races was a duty that must not be shirked. Henry shouldered this responsibility. If he had the spirit of crusader, he had that of a missionary as well. Wherever he explored, his aim was to evangelize, to civilize, and to educate the simple savages. . . . He sent out teachers and preachers to the black men of Senegal.

Elaine Sanceau, *HENRY THE NAVIGATOR* (New York: Hutchinson, 1945), p. 139.

41. Slater, *supra* note 2, at 100.

42. The term "Age of Europe" denotes a historical and philosophical paradigm that describes European hegemony imposed over the globe.

43. Dana G. Munro, *INTERVENTION AND DOLLAR DIPLOMACY IN THE CARIBBEAN, 1900-1921* (Princeton, N.J.: Princeton University Press, 1964), p. 76. William Alford has captured well the evolution of this American sense of predestination:

The United States has a long history of endeavoring to enlighten, if not save, our foreign brethren by exporting ideas and institutions that we believe we have realized more fully. These include efforts to bring "civilization," principally in the form of Christianity, to age-old

civilizations in Asia, Africa, and elsewhere; to foster "modernization," especially as manifested through economic development; and to expound a gospel of science and technology. With the ebbing of the Cold War, democracy promotion—a capacious term used to encompass efforts to nurture electoral processes, the rule of law, and civil society, all broadly defined—has become a key organizing principle of American foreign policy, if not this nation's broader interface with the world.

William P. Alford, *Exporting the "Pursuit of Happiness"*, 113 HARV. L. REV. 1677, 1678-79 (2000), reviewing Thomas Carothers, *AIDING DEMOCRACY ABROAD: THE LEARNING CURVE* (Washington, D.C.: Carnegie Endowment for International Peace, 1999).

44. Mohamed Bedjaoui of the International Court of Justice has written "This classic international law thus consisted of a set of rules with a geographical bias (it was a European law), a religious-ethical inspiration (it was a Christian law), an economic motivation (it was a mercantilist law) and political aims (it was an imperialist law)." Mohamed Bedjaoui, *Poverty of the International Order*, in Richard Faulk, Friedrich Kratochwil, and Saul H. Mendlovitz, eds., *INTERNATIONAL LAW: A CONTEMPORARY PERSPECTIVE* (Boulder, Colo.: Westview Press, 1985), pp. 153-54.

45. Otto, *supra* note 19, at 339-40.

46. See Jack Donnelly, *Human Rights and Western Liberalism*, in Abdullahi A. An-Na'im and Francis M. Deng, eds., *HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES* (Washington, D.C.: Brookings Institution Press, 1990), p. 31; Virginia Leary, *The Effect of Western Perspectives on International Human Rights* in An-Na'im and Deng, eds., *supra* note 46, p. 15.

47. Antonio Cassese, *The General Assembly: Historical Perspective 1945-1989*, in Philip Alston, ed., *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* (Oxford: Clarendon Press, 1992), pp. 31-32.

48. UDHR, *supra* note 1, pmbl. See also Makau Mutua, *A Noble Cause Wrapped in Arrogance*, BOSTON SUNDAY GLOBE, April 29, 2001, p. D8.

49. See Franck, *supra* note 28, at 47; see also Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L L. 539 (1992).

50. Franck, *supra* note 28, at 49.

51. In a substantial body of work, Glendon takes the view that the construction of the UDHR was more "universal" than its critics admit. See Mary Ann Glendon, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (New York: Random House, 2001). Other writers have tended to emphasize the role of "small" states in the writing of the UDHR. See Susan Waltz, *Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights*, 23 HUM. RTS. Q. 44 (2001). But Virginia Leary, another prominent Western academic, has noted that:

Western influence, dominant in the origin of the development of international human rights norms, is now only one of a number of cultural influences on the development of international human rights standards. Its contribution to the development of human rights has been great, but it has not been unique, and other cultures have made and are making significant contributions to our collective conception of human dignity.

Leary, *supra* note 46, at 30.

52. See Amnesty International, *UNITED STATES OF AMERICA: RACE, RIGHTS, AND POLICE BRUTALITY* (London: Amnesty International, 1999); Human Rights Watch

and American Civil Liberties Union, *HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES* (New York: Human Rights Watch and American Civil Liberties Union, 1993).

53. For example, Human Rights Watch recently declined to copublish a study on trade and human rights, although it had jointly commissioned it with the Montreal-based International Centre for Human Rights and Democratic Development (ICHRDD). See Makau Mutua and Robert Howse, *PROTECTING HUMAN RIGHTS IN A GLOBAL ECONOMY: CHALLENGES FOR THE WORLD TRADE ORGANIZATION* (Montreal: ICHRDD, 2000).

54. For a history of South Africa, and in particular the struggle against apartheid, see Nelson Mandela, *LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA* (Boston: Little, Brown, 1994).

55. For a discussion of the abolitionist impulse in human rights, see Makau Mutua, *The Politics of Human Rights: Beyond the Abolitionist Paradigm in Africa*, 17 MICH. J. INT'L L. 591 (1996), reviewing Claude E. Welch, *PROTECTING HUMAN RIGHTS IN AFRICA: ROLES AND STRATEGIES OF NONGOVERNMENTAL ORGANIZATIONS* (Philadelphia: University of Pennsylvania Press, 1995).

56. For example, the Legal Resources Centre (LRC), one of the best known anti-apartheid human rights organizations, was established by white lawyers in 1979 as a public interest law firm. Among the more famous white liberals to lead the LRC was Arthur Chaskalson, who in 1994 became the first president of the Constitutional Court, South Africa's highest court. For a brief history of the LRC, see Julius L. Chambers et al., eds., *PUBLIC INTEREST LAW AROUND THE WORLD* (New York: Columbia Human Rights Law Review, 1992), pp. 159-63.

57. Among the more famous whites to participate in South Africa's liberation struggle were the late Joe Slovo, the leader of the South African Communist Party, a key ally of the African National Congress, and Albie Sachs, the renowned jurist-activist who in 1994 became a justice of South Africa's Constitutional Court. Mandela recalled with fondness the lifelong political relationships he formed with whites, including Slovo, whom he had met while a law student at the University of the Witwatersrand. Mandela, *supra* note 54, at 84.

58. For example, in 1961, Jack Greenberg, a white man, was hand-picked by Thurgood Marshall to succeed him as the director-counsel of the NAACP Legal Defense and Educational Fund. Jack Greenberg, *CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* (New York: Basic Books, 1994), pp. 294-95. He was also instrumental in the establishment of the Legal Resources Centre in South Africa. Chambers, ed., *PUBLIC INTEREST LAW AROUND THE WORLD*, *supra* note 56, at 159.

59. The Iranian Constitution provides for the supremacy of the Islamic Consultative Assembly and the Guardian Council over many areas including legislation and the adoption of international agreements. IRAN CONST. arts. 71-99.

60. Elvin Hatch, *CULTURE AND MORALITY: THE RELATIVITY OF VALUES IN ANTHROPOLOGY* (New York: Columbia University Press, 1983), p. 8.

61. Burns H. Weston, *Human Rights*, NEW ENCYCLOPEDIA BRITANNICA, 20: 656 (15th ed., Chicago: University of Chicago Press, 1992); Henry J. Steiner, *Political Participation as a Human Right*, 1 HARV. HUM. RTS. Y.B. 77 (1988); Henkin, *supra* note 13, at x.

62. Steiner has stated that "observers from different regions and cultures can

agree that the human rights movement, with respect to its language of rights and the civil and political rights that it declares, stems primarily from the liberal tradition of Western thought." Henry J. Steiner and Philip Alston, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* (New York: Oxford University Press, 1996), p. 187.

63. Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS 14 at pt. 1, art 5(a) (entered into force September 3, 1981).

64. *Id.*

65. Women's Rights Project, *BRAZIL: CRIMINAL INJUSTICE: VIOLENCE AGAINST WOMEN IN BRAZIL* (New York: Human Rights Watch/Women's Rights Project, 1991).

66. Women's Rights Project, *RUSSIA—TOO LITTLE, TOO LATE: STATE RESPONSE TO VIOLENCE AGAINST WOMEN* (New York: Human Rights Watch/Women's Rights Project, 1997); *INDONESIA: THE DAMAGING DEBATE ON RAPES OF ETHNIC CHINESE WOMEN* (New York: Human Rights Watch/Women's Rights Project, 1998); *SECOND CLASS CITIZENS: DISCRIMINATION AGAINST WOMEN UNDER BOTSWANA'S CITIZENSHIP ACT* (New York: Human Rights Watch/Women's Rights Project, 1994); *RAPE IN HAITI: A WEAPON OF TERROR* (New York: Human Rights Watch/Women's Rights Project, 1994); *A MATTER OF POWER: STATE CONTROL OF WOMEN'S VIRGINITY IN TURKEY* (New York: Human Rights Watch/Women's Rights Project, 1994). In an encouraging move, however, HRW also produced a report on the violations of women's human rights in Michigan state prisons. See Women's Rights Project, *UNITED STATES—NOWHERE TO HIDE: RETALIATION AGAINST WOMEN IN MICHIGAN STATE PRISONS* (New York: Human Rights Watch/Women's Rights Project, 1998).

67. UN ESCOR, 50th Sess., agenda item 11(a), at para. 67, UN Doc. E/CN.4/1995/42 (1994).

68. The following provisions are illustrative: arts. 21 and 22 on the rights to assembly, art. 25 on political participation, art. 19 on expression, and art. 18 on free speech (ICCPR). See also art. 21 on political participation, art. 20 on assembly, and art. 19 on expression (UDHR). UDHR, *supra* note 1.

69. Henry J. Steiner, *The Youth of Rights*, HARV. L. REV. 917, 930-31 (1991).

70. See Carothers, *supra* note 43; Stephen B. Cohen, *Conditioning U.S. Security Assistance on Human Rights Practices*, 76 AM. J. INT'L L. 246 (1982).

71. Henkin notes the extensive U.S. efforts in human rights abroad, a phenomenon attributable to conceptions of individual rights that "dominate [America's] constitutional jurisprudence, and are the pride of its people, their banner to the world." Henkin, *supra* note 13, at 65.

72. *Contemporary Forms of Slavery: Working Paper on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices During Wartime, Including Internal Armed Conflict*, Submitted by Ms. Linda Chavez in Accordance with Subcommission Decision 1994/109, UN ESCOR, 47th Sess., agenda item 16, at 2-3, UN Doc. E/CN.4/Sub.2/1995/38 (1995). See also M. Cherif Bassiouni and Marcia McCormick, *SEXUAL VIOLENCE: AN INVISIBLE WEAPON OF WAR IN THE FORMER YUGOSLAVIA* (Chicago: International Human Rights Institute, 1996).

73. Todd A. Salzman, *Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural and Ethnic Responses to Rape Victims in the Former Yugoslavia*, 20 HUM. RTS. Q. 348, 349-52 (1998).

74. For a helpful overview of the investigative process of INGOs, see Diane F.

Orentlicher, *Bearing Witness: The Art and Science of Human Rights Fact-Finding*, 3 HARV. HUM. RTS. J. 83 (1990).

75. Some of the major INGOs are AI, headquartered in London; Human Rights Watch (HRW), based in New York City; International Commission of Jurists (ICJ), based in Geneva; the Lawyers Committee for Human Rights (LCHR), based in New York City; and the International Human Rights Law Group (IHLRG), based in Washington, D.C. None of the major INGOs have located their headquarters in the Third World. See, e.g., Mutua, *supra* note 55, at 610-12; Issa G. Shivji, *THE CONCEPT OF HUMAN RIGHTS IN AFRICA* (London: Codesria Book Series, 1989), pp. 34-35.

76. Steiner, *DIVERSE PARTNERS*, *supra* note 5, at 22-25.

77. See, e.g., Africa Watch, *KENYA: TAKING LIBERTIES* (New York: Africa Watch, 1991), pp. 362-82 (calling on the British and American governments to push Kenya proactively toward democracy and more respect for human rights); Alice Jay, *PERSECUTION BY PROXY: THE CIVIL PATROLS IN GUATEMALA* (Washington D.C.: Robert F. Kennedy Memorial Center for Human Rights, 1993), pp. 69-71 (urging the United States to press Guatemala to abolish and disarm abusive civil patrols).

78. Of the three forms of female circumcision practiced, two are often described in particularly graphic and cruel language. The mildest form is "circumcision proper" in which only the clitoral prepuce is removed. Excision involves the amputation of the clitoris and all or part of the labia minora. Infibulation, also known as Pharaonic circumcision, involves the amputation of the clitoris, the whole of the labia minora, and at least the anterior two-thirds and often the whole of the medial part of the labia majora. The two sides of the vulva are then stitched together with silk, catgut, or thorns, and a tiny sliver of wood or a reed is inserted to preserve an opening for urine and menstrual blood. The girl's legs are usually bound together from ankle to knee until the wound has healed, which may take anything up to forty days. World Health Organization, *A Traditional Practice That Threatens Health—Female Circumcision*, 40 WORLD HEALTH CHRON. 31-32 (1986).

79. Images of African savagery, for example, are standard fare in the American press. Reporting on the killings of eight Western tourists in Uganda in March 1999, a journalist characterized the suspected killers as "100 Rwandan Hutus, screaming and brandishing machetes and guns," and expressed surprise that there were not more fatalities "given the killers' barbarism." Romesh Ratnesar, *In Uganda, Vacation Dreams Turn to Nightmares*, TIME, March 15, 1999, 64.

80. Philip Gourevitch, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES* (New York: Farrar, Straus, and Giroux, 1998), p. 3 (emphasis added).

81. See generally Lewis and Gunning, *supra* note 5; Jomo Kenyatta, *FACING MOUNT KENYA: THE TRIBAL LIFE OF THE GIKUYU* (London: Secker and Warburg, 1953), pp. 130-54.

82. AAWORD, *A Statement on Genital Mutilation*, in Miranda Davies, ed., *THIRD WORLD—SECOND SEX: WOMEN'S STRUGGLES AND NATIONAL LIBERATION* (London: Zed Books, 1983), pp. 217-18.

83. *Id.* at 218 (emphasis added). As further expressed by Lewis:

A primary concern in African feminist texts is the tendency among Western human rights activists to essentialize the motivations for practicing FGS [Female Genital Surgery] as rooted in either superstition or in the passive acceptance of patriarchal domination. In rejecting

these characterizations, African feminists seek to recapture and control the representation of their own cultural heritage.

Lewis, *supra* note 7, at 31.

84. UN CHARTER pmbl.

85. Henry Shue, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE AND U.S. POLICY* (Princeton, N.J.: Princeton University Press, 1996), p. 52.

86. Images of the victim painted by a recent AI report on refugees are standard fare. In addition to the gloomy descriptions in the report, accompanying pictures show Rwandese refugees in the wild with their worldly belongings on their heads, Afghan and Sri Lankan "boat people" arriving in Denmark, and Sudanese youths caught between government and rebel forces fleeing on a raft. The images of despair and defeat are overwhelming. Amnesty International, *AMNESTY INTERNATIONAL REPORT 1997* (London: Amnesty International, 1997), pp. 3, 11, 17.

87. For a recent survey of human rights victims, see Human Rights Watch, *HUMAN RIGHTS WATCH WORLD REPORT 2000* (New York: Human Rights Watch, 2000).

88. Andrew Whitley, ed., *THE ANFAL CAMPAIGN IN IRAQI KURDISTAN: THE DESTRUCTION OF KOREME* (New York: Middle East Watch, 1993), pp. 46-47.

89. See AMNESTY INTERNATIONAL REPORT 1997, *supra* note 86.

90. See Salzman, *supra* note 73, for descriptions of the female gender as the victim.

91. Amnesty International, *RAPE AND SEXUAL ABUSE: TORTURE AND ILL TREATMENT OF WOMEN IN DETENTION* (London: Amnesty International, 1992), p. 4.

92. A 2000 poll of Kosovo Albanians found that 52 percent thought that the 1999 American-led NATO intervention, ostensibly to create an autonomous Kosovo, was the most important event for Kosovo in the second half of the twentieth century. *NATO Intervention Was the Biggest Event, Say Kosovar Albanians*, DEUTSCHE PRESSE-AGENTUR, January 7, 2000, available in LEXIS, News Library, CURNWS File.

93. Incidentally, Bernstein claimed the mantle of savior without equivocation: "When you meet [a victim] . . . you really personalize it. It is not just some person being beat up. You think, *She could be my daughter*." Meryl Gordon, *Freedom Fighter*, N.Y. TIMES, November 16, 1998, p. 42.

94. Other factors may, of course, enter the decision-making calculus and drive public opinion and determine whether Western states will intervene. It is unlikely, for example, that the West would rush to intervene in a domestic conflict involving a nuclear power such as Russia. For a discussion of the calculus of intervention, see Editorial, *The Intervention Debate*, THE DETROIT NEWS, January 10, 2000, p. A8 (discussing the rationale for intervention in Kosovo and Rwanda).

95. For a discussion of the "good" versus the "bad" Serb, see Thomas Goltz, *An Anti-Ethnic Diatribe*, 22 WASH. Q. 113, 118-21 (1999).

96. *Chechnya Reveals Western Hypocrisy*, TORONTO SUN, November 25, 1999, at 15.

97. This perception is often grounded in reality. Even in the United States the typical victim of human rights violations is more likely to be African American or Hispanic. A rare report by human rights groups on human rights violations in the United States focused on the death penalty, immigrants' rights, race discrimination, prison conditions, police brutality, and language rights—all areas in which the victims predominantly are African American, Hispanic, or another nonwhite minority, such as Asian Americans. Only three areas—religious liberty, freedom of

expression, and sex discrimination—did not focus on persons of color. Human Rights Watch and American Civil Liberties Union, *supra* note 52; Amnesty International, UNITED STATES OF AMERICA: RACE, RIGHTS AND POLICE BRUTALITY, *supra* note 52.

98. The intense media coverage of the tragic cases of Abner Louima and Amadou Diallo, two black immigrants in New York City who were subjects of police violence, has dramatically reinforced the perception of nonwhites as "victims" to the American public. For examples of the media coverage of these cases, see Helen Peterson, *600 Respond to 2nd Louima Jury Trial Call*, N.Y. DAILY NEWS, January 4, 2000, at 12; Alan Feuer, *Jury Selection Begins for Trial in Louima Case*, N.Y. TIMES, January 4, 2000, at B3; Kevin Flynn, *Officers in Diallo Trial Want Experts to Testify*, N.Y. TIMES, January 8, 2000, at B5; Kathleen Kenna, *New York Police Dogged by Cruelty Charges*, TORONTO STAR, January 3, 2000; Leonard Levitt, *Newspapers: Keep Diallo Court Open*, NEWSDAY, January 6, 2000, at A37. For a detailed report on the relationship between law enforcement agencies, the criminal justice system, and the victimization of persons of color in the United States, see Amnesty International, AMNESTY INTERNATIONAL REPORT 1999 (London: Amnesty International, 1999).

99. Susan D. Moeller, COMPASSION FATIGUE: HOW THE MEDIA SELL DISEASE, FAMINE, WAR AND DEATH (New York: Routledge, 1999).

100. Denys W. T. Shropshire, THE CHURCH AND THE PRIMITIVE PEOPLES (London: SPCK, 1938), p. xix. Or consider, for example, the repugnant views of Lord Asquith, an arbitrator in the dispute between the Sheikh of Abu Dhabi and Petroleum Development Ltd. In his view, Qur'anic law was primitive at best:

no such law can reasonably be said to exist. The Sheikh administers a purely discretionary justice with the assistance of the Koran; and it would be fanciful to suggest that in this very primitive region there is any settled body of legal principles applicable to the construction of modern commercial instruments.

Petroleum Dev. Ltd. v. Sheikh of Abu Dhabi, 18 I.L.R. 144, 149 (1951).

101. International Labour Organization, CONDITIONS OF LIFE AND WORK OF INDIGENOUS POPULATIONS OF LATIN AMERICAN COUNTRIES, Fourth Conference of American States Members of the International Labour Organization, Report II (Geneva: International Labour Organization, 1949).

102. See Ruth Gordon, *Growing Constitutions*, 1 U. PA. J. CONST. L. 528 (1999).

103. See Christopher Weeramantry and Nathaniel Berman, *The Grotious Lecture Series*, 14 AM. U. INT'L L. REV. 1515 (1999).

104. See Antony Anghie, *Francisco de Vitoria and the Colonial Origins of International Law*, 5 SOC. AND LEGAL STUD. 321 (1996). For example, not only does the world use the Gregorian calendar, time is universally calibrated from Greenwich Mean Time. It is the "centrality" of England in the social and political construction of the world that gave rise to designations of places as the "Middle East," "Far East," "remote," and so on.

105. Makau Mutua, *Critical Race Theory and International Law: The View of an Insider-Outsider*, 45 VILL. L. REV. 841 (2000) (Keynote Address); Makau Mutua, *What Is Twail?* PROCEEDINGS OF THE 94TH ANNUAL MEETING OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW (Washington, D.C.: American Society of International Law,

2000), p. 31. See also James Thuo Gathii, *International Law and Eurocentricity*, 9 EUR. J. INT'L L. 154 (1998); Nathaniel Berman, *Beyond Colonialism and Nationalism? Ethiopia, Czechoslovakia, and "Peaceful Change"*, 65 NORDIC J. INT'L L. 421 (1996).

106. S. Prakash Sinha, LEGAL POLYCENTRICITY AND INTERNATIONAL LAW (Durham, N.C.: Carolina Academic Press, 1996), p. 15.

107. For a very insightful and groundbreaking discussion of the ethnocentricity of international law, see Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT'L L.J. 1 (1999). Anghie writes that:

The association between international law and universality is so ingrained that pointing to this connection appears tautological. And yet, the universality of international law is a relatively recent development. It was not until the end of the nineteenth century that a set of doctrines was established as applicable to all states, whether these were in Asia, Africa, or Europe. . . . The universalization of international law was principally a consequence of the imperial expansion that took place towards the end of the "long nineteenth century." The conquest of non-European peoples for economic and political advantage was the most prominent feature of this period, which was termed by one eminent historian, Eric Hobsbawm, as the "Age of Empire."

Id. at 1-2. See also Christopher Weeramantry, NAURU: ENVIRONMENTAL DAMAGE UNDER INTERNATIONAL TRUSTEESHIP (New York: Oxford University Press, 1992).

108. Fox, *supra* note 49, at 112.

109. Thomas Merton, CONJECTURES OF A GUILTY BYSTANDER (Garden City, N.Y.: Doubleday, 1966), p. 87.

110. See, e.g., Chris Tennant, *Indigenous Peoples, International Institutions, and the International Legal Literature from 1945-1993*, 16 HUM. RTS. Q. 1 (1994), reviewing literature on indigenous peoples and concluding, among other things, that indigenous peoples have been represented as the "other" that needs saving by the West.

111. Anghie, *supra* note 107, at 7.

112. John Norton Pomeroy, LECTURES ON INTERNATIONAL LAW IN TIME OF PEACE, ed. Theodore Salisbury Woolsey (1886), p. 96. Similarly, Edward Said has identified this European predestination in the construction of Orientalism as the "corporate institution of dealing with the Orient—dealing with it by making statements about it, authorizing views of it, describing it, by teaching it, settling it, ruling over it: in short, Orientalism as a Western style for dominating, restructuring, and having authority over the Orient." Edward Said, ORIENTALISM (New York: Pantheon Books, 1978), p. 3.

113. Frederick Lugard, *Treaty-Making in Africa*, 2 GEOGRAPHICAL J. 53 (1983).

114. Alfred Henry Barrow, FIFTY YEARS IN WESTERN AFRICA (London, 1900; reprint New York: Negro Universities Press, 1969), p. 29.

115. Anghie, *supra* note 107, at 7.

116. Henkin, *supra* note 13, at ix.

117. *Id.* at x.

118. Cf. arts. 18 and 19, UDHR, *supra* note 1; arts. 18 and 19, ICCPR, *supra* note 1.

119. It is useful here to refer to Steiner's discussion of the connections among

liberalism, constitutionalism, and human rights. He notes that all three concepts are linked in that human rights, as it is known today, would not be possible without liberal thought and the notion of constitutionalism. *See* Steiner and Alston, *supra* note 62, at 187–92, 710–12.

120. In 1993, the United Nations established the Office of the High Commissioner for Human Rights, and mandated the High Commissioner for Human Rights to be the UN's "official with principal responsibility for United Nations human rights activities under the direction and authority of the Secretary-General," in effect a UN human rights czar. G.A. Res. 141 UN GAOR, 48th Sess., Supp. No. 49, agenda item 114(b), at para. 4, UN Doc. A/RES/48/141 (1994).

121. Steiner and Alston, *supra* note 62, at 362–63.

122. Philip Alston, *Appraising the United Nations Human Rights Regime*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL*, *supra* note 47, at 1.

123. *See* letter dated 99/12/15 from the Secretary-General, addressed to the President of the Security Council, UN Doc. S/1999/1257 (1999). *See generally* United Nations, *THE UNITED NATIONS AND RWANDA: 1993–1996* (New York: United Nations, 1996); Peter Rosenblum, *Dodging the Challenge*, 10 HARV. HUM. RTS. J. 313 (1997), reviewing *THE UNITED NATIONS AND RWANDA: 1993–1996*.

124. In 1993, the UN Security Council established on an ad hoc basis the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the Former Yugoslavia Since 1991. *See* S.C. Res. 808, UN SCOR, 3175th mtg. UN Doc. S/Res/808 (1993).

125. In 1994, the UN Security Council established the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Such Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwanda Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, Between January 1, 1994 and December 31, 1994. *See Report of the Secretary-General Pursuant to Paragraph 5 of the Security Council Resolution 955* (1994), UN Security Council, UN Doc. S/1995/134 (1995).

126. *Rome Statute of the International Criminal Court*, UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, UN Doc. A/Conf/183/9 (1998).

127. Benjamin B. Ferencz, Introduction to Virginia Morris and Michael P. Scharf, *AN INSIDER'S GUIDE TO THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA* (Ardsey, N.Y.: Transnational Publishers, 1994) p. xxi. *See also* Makau Mutua, *Never Again: Questioning the Yugoslav and Rwanda Tribunals*, 11 TEMPLE INT'L AND COMP. L.J. 167 (1997).

128. Human Rights Watch, *HUMAN RIGHTS WATCH WORLD REPORT 1995* (New York: Human Rights Watch, 1994), p. xiv.

129. The World Bank has started to consider the linkages between human rights, governance, and economic performance. *See generally* Caroline M. Robb, *CAN THE POOR INFLUENCE POLICY?* (Washington, D.C.: World Bank, 1998); David Gillies, *Human Rights, Democracy, and Good Governance: Stretching the World Bank's Policy Frontiers*, in Jo Marie Griesberger and Bernhard G. Gunter, eds., *THE WORLD BANK: LENDING ON A GLOBAL SCALE* (London: Pluto Press, 1996), p. 101; Lawyers Committee for Human Rights, *THE WORLD BANK: GOVERNANCE AND HUMAN RIGHTS*

(New York: Lawyers Committee, 1993).

130. The reports are called COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES and catalogue violations of civil and political rights.

131. Myers, *supra* note 6, at A1.

132. Babington, *supra* note 7, at 21.

133. Although the Statute of the Council of Europe did not do so when only Western European states were members, it now requires that all Central and Eastern European states, namely the former Communist states, ratify the European Convention on Human Rights as a condition for membership in the Council of Europe. The Statute of the Council of Europe provides that "Every member of the Council of Europe must accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms." Statute of the Council of Europe, May 5, 1949, art. 3, 87 UNTS 103, 106. *See also* European Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950, 213 UNTS. 221; Buergenthal, *supra* note 29, at 102–3.

134. Turkey, which historically was referred to as the "sick man of Europe," is now a candidate to join the European Union, after centuries of fruitless attempts to become a full member of Europe. *See Looking West Europe, the United States and Turkey Have Much to Gain from Turkey's Joining the European Union*, FORT WORTH STAR-TELEGRAM, December 14, 1999, at 10, available at LEXIS, News Library, CURNWS File; *Turkey Invited to Join EU, With Conditions*, NEWSDAY, December 12, 1999, at A23.

135. Thomas Carothers, *Democracy and Human Rights: Policy Allies or Rivals?*, 17 WASH. Q. 106, 109 (1994).

136. Steiner, *supra* note 5, at 22.

Chapter 2. Human Rights as an Ideology

1. In the wake of World War II, member states of the United Nations adopted on December 10, 1948, the Universal Declaration of Human Rights, G.A. Res. 217 A(III), UN Doc. A/810, at 71 (1948) [hereinafter UDHR]. Although the UDHR was adopted without opposition by a vote of 48 to zero, it was the subject of eight abstentions: Byelorussia, Czechoslovakia, Poland, Soviet Union, Ukraine, Yugoslavia, Saudi Arabia, and South Africa. *See* Antonio Cassese, *The General Assembly: Historical Perspective 1945–1989*, in Philip Alston ed., *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* (Oxford: Clarendon Press, 1992), p. 31 n.22.

2. *Cf.* Karen Engle, *International Human Rights and Feminism: When Discourses Meet*, 13 MICH. J. INT'L L. 517, 518–19 (1992), exploring the different "affirmative" human rights approaches taken by advocates of international women's rights even as they have critiqued extant rights frameworks to better the lives of women; Karl E. Klare, *Legal Theory and Democratic Reconstruction: Reflections on 1989*, 25 U. BRIT. COLUM. L. REV. 69, 95 (1991), arguing that the "critique of rights" debate raises issues that should play a role in the democratic legal reconstruction of Eastern Europe.

3. I use the term "authors" more broadly here to describe all those individuals