

Human Rights Working Papers

<http://www.du.edu/humanrights/workingpapers/index.html>

Number 12

Posted 12 February 2001

<http://www.du.edu/humanrights/workingpapers/papers/12-donnelly-02-01.pdf>

The Universal Declaration Model of Human Rights: A Liberal Defense

Jack Donnelly

Graduate School of International Studies

University of Denver

2201 South Gaylord Street

Denver, CO 80208 USA

jdonnell@du.edu

<http://www.du.edu/~jdonnell>

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Note: This paper will appear as a chapter in a volume edited by Gene Lyons and James Mayall. Other than the occasionally awkwardness or obscurity of the internal references to other chapters in that volume, I believe it stands well on its own.

The global human rights regime is rooted in the 1948 Universal Declaration of Human Rights and its later elaborations, especially the 1966 International Human Rights Covenants. These documents reflect what I will call "the Universal Declaration model" of international human rights. This chapter outlines, and offers a limited defense of, this model, in contrast to many others in this volume that emphasize its limitations and argue for significant supplements.

Sections 1-4 outline the Universal Declaration model and argue that it today is rooted in an overlapping consensus on a political conception of justice rooted in the notion of equal concern and respect. Sections 5-9 develop a liberal defense of this vision, focusing on issues of group rights (which appear centrally in the chapters by Eva Brems, Hurst Hannum, and especially Jennifer Jackson-Preece) and on the central role of the state in implementing these rights (a shortcoming emphasized in the chapters by Marc Weller and Nick Wheeler).

1. THE UNIVERSAL DECLARATION MODEL

Four elements of the Universal Declaration model deserve emphasis: its focus on rights; the restriction to individual rights; the balance between civil and political rights and economic, social, and cultural rights; and national responsibility for implementing internationally recognized human rights.

A. Human Rights

Internationally recognized human rights are rights, a particular sort of social practice.¹ To have a right to x is to be entitled to x and authorized to make special claims to enjoy x should it be threatened or denied. Although all rights have correlative duties, they are not reducible to those duties. Social and political duties, and the values they seek to realize, are vitally important. But they need not be -- and throughout most of history have not been -- rooted in the entitlements of right-holders. And not all important objectives are best realized through the practice of (human) rights.

Human rights are those rights held simply because one is a human being, goods, services, and opportunities to which everyone is entitled. Because one either is or is not a human being, human rights are held equally by all. Because one cannot stop being human, no matter how inhuman one's behaviour or the treatment one is forced to endure, they are inalienable rights.

Human rights are also commonly spoken of as universal rights. But this universality is more prescriptive than descriptive.² The claim of "universal" human rights is that all human beings ought to be treated in these ways, not that they are or have been, or that these norms are (let alone have been) accepted everywhere.

¹ For further conceptual analysis, see Jack Donnelly, Universal Human Rights in Theory and Practice (Ithaca: Cornell University Press, 1989), ch. 1 and James W. Nickel, Making Sense of Human Rights: Philosophical Reflections on the Universal Declaration of Human Rights (Berkeley: University of California Press, 1987).

² Donnelly, Universal Human Rights, pp. 1-2, 121-122.

B. Individual Rights

All the rights that appear in the Universal Declaration and the Covenants are, with the exception of self-determination of peoples, rights of individuals, not corporate entities. Enumerations of rights thus typically begin "Every human being ..." "Everyone has the right ..." "No one shall be ..." "Everyone is entitled ..."

Even where one might expect groups to appear as right-holders, they do not. For example, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) reads "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." Individuals belonging to minorities, not minorities (collective entities), have these rights. The chapter by Jennifer Jackson-Preece challenges the adequacy of this approach, which I defend in Sections 6-8.

Individual rights, however, are a social practice. Individual and group rights differ in who holds the right -- individuals or corporate actors -- not in their sociality. All (individual human) rights are inescapably social. A's right to x with respect to B establishes and operates through social relationships. Rights-bearing individuals alone cannot effectively implement their rights, let alone make for themselves a life worthy of human beings.

The Universal Declaration model envisions individuals deeply enmeshed in "natural" and voluntary groups ranging from families

through the state. Internationally recognized human rights impose obligations on the state, regulate relations between citizens and states, and require the state and society for their realization. And many (most?) human rights, although held by individuals, can only be enjoyed collectively. Consider, for example, workers' rights, family rights, and minority rights, which are defined by social groups or roles, as well as rights as diverse as political participation, freedom of association, social insurance, and free and compulsory primary education.

C. Civil and Political and Economic, Social, and Cultural Rights

Another striking feature of the Universal Declaration model is the balance between civil and political and economic, social, and cultural rights. Nothing in either Covenant suggests priority for one set of rights. The Universal Declaration does not even make a categorical distinction.

Although the relationship between civil and political and economic, social, and cultural rights was a matter of intense ideological controversy during the Cold War, today there is little disagreement that, as Article 5 of the 1993 Vienna Declaration puts it, "All human rights are universal, indivisible and interdependent and interrelated." For example, as of November 16, 2000 only eight states were party to just one of the Covenants, while 137 were parties to both.³ Debate focuses instead on short- and medium-run priorities

³ <http://www.unhchr.ch/pdf/report.pdf>. Although the United States is a party only to the Civil and Political Covenant, ideological attacks on

and the most effective means to realize economic and social (and civil and political) rights. Such debates, however, are not a central concern of this volume. Therefore, I will simply assume the interdependence and indivisibility of all internationally recognized human rights.

D. National Implementation of International Human Rights

A further distinctive feature of the Universal Declaration model is the national implementation of internationally recognized human rights. "Everyone has a right to x" in practice means "Each state has the authority and responsibility to implement and protect the right to x within its territory."

The Universal Declaration was formulated as "a standard of achievement," a set of aspirational norms that left states with full sovereign authority to implement human rights within their territory. The "enforcement" procedures of the Covenants -- periodic reports to committees of experts⁴ -- did not significantly alter this allocation of responsibility. Norm creation has been internationalized but

economic and social rights have largely disappeared from American diplomacy. Furthermore, the recent American emphasis on markets is regularly defended by their greater capacity to deliver economic welfare and by arguments of long-run interdependence between economic and political freedom. And in practice the U.S. has an extensive welfare state that protects a wide (although by no means adequate) range of economic and social rights. For an argument that economic rights have been central to the Western liberal approach to human rights since Locke, see Donnelly, Universal Human Rights, ch. 5.

⁴ For overviews of the international implementation machinery, see Jack Donnelly, International Human Rights, Second ed. (Boulder: Westview Press, 1998), ch. 4 and David P. Forsythe, Human Rights in International Relations (Cambridge: Cambridge University Press, 2000), ch. 3. For an authoritative examination of international human rights reporting, see Philip Alston and James Crawford, eds., The Future of UN Human Rights Treaty Monitoring (Cambridge: Cambridge University Press, 2000).

implementation remains largely with sovereign territorial states.

The normative adequacy of this statist approach to implementation is a central matter of controversy within this volume, especially in the chapters by Marc Weller and Nick Wheeler. I return to it in Section 9 below.

2. HEGEMONY AND SETTLED NORMS

The next several sections provide a series of increasingly deep and substantive, and thus increasingly controversial, justifications of the Universal Declaration model. I begin with a descriptive, empirical claim: human rights have become a hegemonic political discourse, or what Mervyn Frost calls "settled norms" of contemporary international society,⁵ principles that are widely accepted as authoritative within the society of states. Both nationally and internationally, political legitimacy is increasingly judged by and expressed in terms of internationally recognized human rights.

The six leading international human rights treaties (on civil and political rights, economic, social, and cultural rights, racial discrimination, discrimination against women, torture, and the rights of the child) had an average of 154 parties at the end of 2000.⁶ Even more notable is the penetration of human rights into bilateral, multilateral, and transnational diplomacy. In the 1970s, considerable controversy still raged over whether human rights were even an

⁵ Mervyn Frost, Ethics in International Affairs: A Constitutive Theory (Cambridge: Cambridge University Press, 1996), pp. 104-111.

⁶ <http://www.unhchr.ch/pdf/report.pdf>

appropriate concern of foreign policy. As late as 1980, only a handful of states had explicit international human rights policies, and most of those usually were supported only with verbal and symbolic policy instruments. Today, however, human rights are a standard subject of bilateral and multilateral diplomacy.

Human rights norms and values are also penetrating more deeply into a growing number of national societies. Both governments and their opponents appeal to human rights not only much more frequently but more centrally than just a few decades ago. Compare, for example, the terms of debate and the range of political options considered nationally and regionally today in Latin America, Africa, and Asia with those in the 1960s and 1970s.

This does not mean that human rights have been enthusiastically embraced everywhere. For many, they are a "default option,"⁷ accepted only because the leading competitors have been delegitimized. But even cynical uses pay tribute to the moral imperative of a commitment to human rights. And as the Helsinki Final Act illustrates, such norms can take on an independent life of their own, with consequences very different from those intended by cynical endorsers.

The prominence of human rights in contemporary international society is not unrelated to their endorsement by the world's leading power, the United States, and its principal allies. The Universal Declaration model, however, also responds to some of the most important social and political aspirations of individuals, families,

⁷ I take this term from Claus Offe, who used it at a conference on

and groups in most countries of the world. Human rights dominate political debate not only because of the support of materially dominant powers but also because they are at least quasi-voluntarily accepted by a wide range of states, groups, and individuals. They have authority, as well as the backing of force, and thus have become internationally hegemonic in a Gramscian sense of the term.

3. AN OVERLAPPING CONSENSUS ON INTERNATIONAL HUMAN RIGHTS

John Rawls distinguishes "comprehensive religious, philosophical, or moral doctrines" from "political conceptions of justice."⁸ Because the latter address only the political structure of society, defined (as far as possible) independent of any particular comprehensive doctrine, adherents of different comprehensive doctrines may reach an "overlapping consensus" on a political conception of justice.⁹ I will argue that there is an international overlapping consensus on the Universal Declaration model.¹⁰

The idea of overlapping (rather than complete) political (rather than moral or religious) consensus offers a plausible answer to the question "how is it possible that there can be a stable and just society whose free and equal citizens are deeply divided by

globalization and human rights at Yale University in the Spring of 1999.

⁸ John Rawls, Political Liberalism (New York: Columbia University Press, 1996), pp. xliii-xlv, 11-15, 174-176, and The Law of Peoples (Cambridge: Harvard University Press, 1999), pp. 31-32, 172-173.

⁹ Rawls, Political Liberalism, pp. 133-172, 385-396.

¹⁰ My arguments, however, should be read as drawing on, rather than simply elaborating, Rawls; as Rawlsian, but in some details different from Rawls.

conflicting and even incommensurable religious, philosophical, and moral doctrines?"¹¹ This answer seems especially attractive in a "postmodern" world skeptical of foundations. It also has special attractions for a culturally and politically diverse pluralist international society.

Moral theories and other comprehensive doctrines have rarely (until recently) been founded on human rights. For example, human rights, despite their political prominence, have played a tiny part in the history of (Western) moral theory.¹² Nonetheless, human rights can be relatively easily derived from many moral theories: for example, they can be seen as encoded in or derived from the natural law, as political means to further human good (utility), or political institutions designed to produce virtuous citizens. And the increasing political prominence of human rights over the past few decades has led more and more adherents of a growing range of comprehensive doctrines to endorse human rights -- but (only) as a political conception of justice. For example, Muslims of various political persuasions in many parts of the Islamic world have in recent decades developed Islamic doctrines of human rights that are strikingly similar in substance to the Universal Declaration.¹³

Although internationally recognized human rights "do not depend

¹¹ Ibid., p. 133.

¹² No major moral philosopher prior to World War II took human rights as a moral primitive. More recently, Alan Gewirth stands as a moderately prominent exception that proves the rule. See Human Rights: Essays on Justification and Applications (Chicago: University of Chicago Press, 1982).

¹³ xxx

on any particular comprehensive religious doctrine of human nature,"¹⁴ they are not compatible with all comprehensive doctrines. Claims such as those in the Covenants that "these rights derive from the inherent dignity of the human person" or in the Vienna Declaration that "all human rights derive from the dignity and worth inherent in the human person" set the range of possible comprehensive doctrines within an overlapping consensus. The link between human rights and comprehensive doctrines, although loose, is a matter of substance, not just procedural agreement. Certain comprehensive doctrines are in principle excluded from the consensus. Most importantly, human rights, because they are held equally by all human beings, are incompatible with all fundamentally inegalitarian comprehensive doctrines.

4. EQUAL CONCERN AND RESPECT

Elsewhere,¹⁵ drawing heavily on Ronald Dworkin,¹⁶ I have shown that the full list of rights in the Universal Declaration and the Covenants is easily derived from the requirement that states treat each citizen with equal concern and respect. Here I will argue that the practice of equal and inalienable rights held by all human beings can be seen as a political conception of justice based on equal

¹⁴ Rawls, Law of Peoples, p. 68. Although Rawls refers here explicitly to a short list of rights comprised principally of life, liberty, property, and formal equality, (p. 65) the argument holds for the Universal Declaration model more generally. See also pp. 78-81.

¹⁵ Donnelly, Universal Human Rights, pp. 71-73.

¹⁶ See especially Ronald Dworkin, A Matter of Principle (Cambridge: Harvard University Press, 1985), ch. 8.

concern and respect that has been accepted in significant measure for intrinsic or moral reasons, not just as a modus vivendi.¹⁷

Human rights are both constitutive and regulative norms. We are most immediately familiar with their regulative aspects. "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment." Even more importantly, though, human rights constitute individuals as a particular kind of political subject, as citizens entitled to a government that will recognize, implement, and protect their human rights. And by defining the requirements and limits of legitimate government, they constitute states fit to govern rights-holding citizens.

The equality of all human beings leads "naturally" to a political emphasis on autonomy. To justify denying or severely restricting individual autonomy almost necessarily involves an appeal to inequality. Equal and autonomous rights-bearing individuals are entitled to make fundamental choices about what constitutes the good life (for them), with whom they associate, and how. And the state musts treat such individuals with equal concern and respect.

A list of (human and legal) rights reflects a particular understanding of the meaning of equal concern and respect, based on a substantive conception of human dignity, of the conditions required for human flourishing. Human rights promise to (re)shape political

¹⁷ For the importance of this distinction, see Rawls, Political

and social relations so that this moral vision will be realized. Equal, inalienable rights held by all against state and society provide a mechanism to realize a world of equal and autonomous human beings. The effective implementation of the specified rights will produce the envisioned person/life (assuming a certain coherence and practicality in that vision).

The underlying vision of human possibilities in the Universal Declaration model cannot be separated from the political principles and institutions by which those possibilities are to be realized. Human rights thus are simultaneously a "utopian" vision and a set of institutions -- equal and inalienable rights -- for realizing at least an approximation of that vision. The substantive attractions of this particular "realistic utopia"¹⁸ go a long way toward explaining the hegemonic power of the Universal Declaration model.

5. DEFINING LIBERALISM

Equal concern and respect, understood as a political conception of justice, can be endorsed by a variety of comprehensive doctrines. I turn now to one, liberalism. In so doing, the chapter moves from description to an increasingly prescriptive argument. Starting from the common association of human rights with "Western liberalism," both in their historical development and in contemporary political practice, I argue that (a particular type of) liberalism provides a strong normative foundation for the substance of the Universal

Liberalism, pp. 145-150.

Declaration model and for its continuing refinement and elaboration in the coming decades.

Although "liberalism" is a complex, and contested, set of orientations and values it is relatively uncontroversial to say that it is rooted in a commitment to liberty, freedom, or, in the formulation I prefer, autonomy. More particularly, liberals give central political place to individual autonomy, rather than the liberty of society, the state, or other corporate actors. Liberals see individuals as entitled to "govern" their lives, to make important life choices for themselves, within limits connected primarily with the mutual recognition of equal opportunities for others.

Liberalism also is specially committed to equality -- although most liberal (and non-liberal) theories and all liberal (and non-liberal) societies ultimately permit substantial economic, social, or political inequality. Liberty is seen not as a special privilege of an elite but as (in principle) available to all. Equal liberty for all is at the heart of any liberal political vision.¹⁹

¹⁸ Rawls, Law of Peoples, p. 11.

¹⁹ It is often argued that liberals (and non-liberals as well) face an inescapable tradeoff between liberty and equality. Even if true, this underscores the commitment of liberalism to both values. What distinguishes liberal theories is their commitment to equal liberty for all, rather than, for example, liberty simpliciter, equality for all, or liberty for some. Of course, different liberal theories have very different accounts of the meaning of "equal liberty for all." But even where liberals accept substantial inequality, it requires special defense -- Rawls' "difference principle" (A Theory of Justice [Cambridge: Harvard University Press, 1971], pp. 65-73) is a much discussed example -- and is subject to liberal (as well as non-liberal) critique. Dworkin, Matter of Principle, ch. 9, offers an especially forceful argument for the centrality of equality to liberalism.

Figure 1: A Typology of Liberal Theories

	Rights-Based	Good-Based
Thick		
Thin		

Figure 1 categorizes liberal theories along two dimensions: the extent to which they emphasize rights or the good (or virtue, or some other value) and the substantive "thickness" of their conceptions of those core values.

Locke is the seminal figure in the strand of liberalism that grounds the commitment to equal liberty on natural, or what we today call human, rights. Its roots go back at least to Leveler and Digger arguments during the English Civil War. Kant, Paine, and Rousseau were leading eighteenth century proponents. Rawls and Dworkin are prominent recent American representatives.

Liberalism, however, also has a strong historical association with utilitarianism, a good-based theory. The roots of this tradition run back at least to Hobbes. The seminal figure is Bentham. It was the dominant vision of liberalism in Britain in the nineteenth century. A microeconomic version underlies contemporary "neo-liberal"

market-oriented economic reforms.

My purpose here is to advance a rights-based liberal defense of the Universal Declaration model. Good-based conceptions, however, make human rights at best a second-order or derivative political principle. Therefore, although many good-based liberals participate in the overlapping consensus on international human rights, their views will not be considered here.

In fact, micro-economic, utilitarian "neo-liberalism" is fundamentally opposed to the liberal human rights perspective I defend. Its logic of efficiency is aggregate, and thus collectivist, in sharp contrast to the logic of individual human rights.²⁰ Neo-liberal equality involves political indifference to competing preferences -- unbiased treatment in the marketplace -- rather than guaranteed access to essential goods, services, and opportunities. And neo-liberal structural adjustment is very different from the welfare states of Europe and North America with which the Universal Declaration model has (rightly) been specially associated.

Turning to the second dimension of our typology, the range of recognized rights, three important contemporary variants of rights-based liberalism can be identified. At the end points of the continuum are what I label "European" (or social democratic) or "minimalist" (or libertarian) liberalism, with the "American" variant lying somewhere in the middle.

A liberalism compatible with the Universal Declaration model must

²⁰ See Jack Donnelly, "Human Rights, Democracy, and Development," Human

be strongly egalitarian, must actively embrace an extensive system of economic and social rights, and must reflect a robust (procedural and substantive) conception of democracy.²¹ The European welfare state is the leading practical exemplar of such a position, especially in its social democratic conception. It is distinguished by a dual emphasis on the equal enjoyment of all human rights by all members of the political community and an extensive list of economic and social rights. All internationally recognized human rights are seen as entitlements of individuals -- social and political claims that impose duties on the state and society -- rather than mere liberties. Even with recent welfare state retrenchments, all the states of Western Europe lie towards the top left of Figure 1.

At the bottom left of Figure 1 lies a minimalist liberalism that emphasizes individual personal liberties and includes only a short list of economic and social rights. In some circles this is referred to as "classical" liberalism. In the United States it is perhaps most neutrally described as "libertarian."

Minimalist liberalism's truncated list of human rights is substantively incompatible with the Universal Declaration model. Whatever its historical or philosophical merits, it is best seen as a critique of the substance of the Universal Declaration model, despite the considerable overlap on civil and political rights. And for the past half century no liberal democratic regime in Western Europe and

Rights Quarterly 21 (August 1999): 608-632, at pp. 626-630.

²¹ On the complex relations between democracy and human rights, with an emphasis on their differing logics, see Ibid., pp. 619-621.

North America, not even the United States, has pursued libertarian minimalist policies.

An important "intermediate" rights-based perspective emphasizes personal and civil liberties, a modest list of economic and social rights to be provided by a welfare state, and primarily procedural democracy. This "American" vision is much more willing than the libertarian to restrict personal liberties in order to remedy invidious inequalities. It also is somewhat more sympathetic to the idea of state action to assure minimum access to social and economic goods, services, and opportunities. But the American welfare state is much less robust than those of Europe. In the United States this perspective is usually referred to as "liberal," pejoratively by the right. I will treat it as the thinnest plausible liberal conception of the Universal Declaration model.

"American" and "European" liberalisms are both committed to a democracy that operates only within the substantive requirements of equal human rights for all and to a welfare state that supplements a market system of production with substantial "welfare state" redistribution, again in order to assure equal human rights for all.²² I will use "liberal" without qualification to refer to this shared political ideal of the liberal democratic welfare state and the underlying vision of equal concern and respect.

²² For a further development of these claims, see Ibid., pp. 619-621, 627-631.

6. LIBERAL APPROACHES TO GROUP DIFFERENCE

A standard, and theoretically important, complaint against liberalism is its excessive individualism. Most liberals, and the Universal Declaration model, do generally deny human rights to groups. But they assume that individuals will exercise their rights collectively, as members of both "natural" and voluntary groups, not as atomistic or deracinated individuals.

All liberal regimes in practice recognize legal rights of groups ranging from businesses and trade unions to churches and civic associations to bowling leagues and hunt clubs. And a great range of internationally recognized human rights are of special interest and value to marginalized or despised groups. For example, freedoms of thought, conscience, religion, opinion, and expression protect group, as well as individual, difference. Family rights, including the right of parents to choose the kind of education given to their children, protect the transmission of group beliefs and practices.

Nonetheless, issues that some see as matters of "group rights" are addressed by liberals and by the Universal Declaration model primarily through individual rights. In this and the following two sections I argue that a liberal individual rights strategy to remedying the sufferings of members of despised, oppressed, or disadvantaged groups remains viable in the contemporary world.

A. Non-Discrimination

Liberal approaches to difference span a continuum lying between two very different kinds of communitarianism. At one end are

communitarians that allow or require the state to impose civil and legal disabilities against members of certain groups. At the other end are visions of a society of "separate but equal" groups. Where communitarians see individuals, and the social options available to them, as appropriately defined in significant measure by their group membership, liberals argue that group affiliations ought to be largely irrelevant to the rights and opportunities available to individuals.²³ Each individual, irrespective of race, gender, religion, or any other group affiliation, is entitled to be treated equally.

Non-discrimination is thus the liberal starting point for addressing issues of group difference. And the Universal Declaration model's general prohibition of discrimination is powerfully supplemented by a set of civil liberties -- e.g., rights to freedom of expression, belief, and assembly -- that specify particularly important activities where the state must respect individual liberty, whether that liberty is expressed in private or in public, alone or in association with others.

We can distinguish three ideal type interpretations of the requirement of non-discrimination, which I will call toleration, equal protection, and multiculturalism. Toleration requires not imposing disabilities on individuals based on (voluntary, ascriptive, or imposed) group membership or disapproved behavior associated with a

²³ I certainly do not want to deny that many people approach others significantly, even primarily, in group terms. But this sociological fact -- to the extent that it is indeed a fact -- has little moral force. In fact, I would suggest that "othering" group identities are the human rights problem, not a potential solution.

group.²⁴ Toleration involves a principled political decision not to impose special burdens on (members of) despised groups. But they may still be marginalized and socially excluded.

Equal protection requires active efforts to insure that members of disadvantaged or despised groups enjoy the (equal) rights that they formally hold. At minimum it involves an active effort to assure that people are not excluded from goods, services, and opportunities that would be available to them were they not members of despised or disadvantaged groups. In its stronger forms -- "affirmative action" and even certain kinds of "reverse discrimination" -- equal protection seeks to assure that members of targeted groups achieve full legal and political incorporation into society.

Equal protection, however, allows a neutral, even negative, evaluation of diversity. "Multiculturalism" positively values diversity, implying policies that recognize, celebrate, preserve, or foster group differences. Rather than attempt to abstract from group differences, as in toleration and equal treatment, those differences are highlighted and positively valued, within a general context of equal concern and respect.

B. Liberal Neutrality and the Protection of Difference

The legitimacy of the liberal state is defined by its respect for and endeavors to assure the realization of the human rights of its

²⁴ I do not mean to suggest that this thin conception is the only, let alone the best, conception of toleration. It simply marks an end point on the continuum of approaches to non-discrimination I consider here. For a characteristically subtle study of toleration, see Michael Walzer, On

citizens. The purposes of the state thus ordinarily are subordinated to the rights of its citizens. This subordination is often expressed in the claim that the liberal state must be neutral with respect to the values, purposes, and life plans of its citizens, in so far as they are rooted in protected autonomous exercises of human rights. This formulation of the requirement of non-discrimination places the emphasis on respect for individual autonomy.

Liberal neutrality, however, is not a sign of indifference to the decisions of citizens. It reflects an active commitment, rooted in the principle of equal concern and respect, to fostering citizens' enjoyment of their rights. And neutrality operates only within the boundaries of human rights.

To require identical treatment of all individual or group differences would be morally perverse. Consider, for example, the consequences of tolerating pedophiles, violent racists, those who derive pleasure from kidnapping and torturing strangers, and religious missionaries committed to killing all those they cannot convert. Such differences fall outside the range of the overlapping consensus and thus should not be treated neutrally by a liberal state. As Charles Taylor notes, "liberalism can't and shouldn't claim complete ... neutrality."²⁵

Political liberalism's overlapping consensus does not (and should not) include all possible views. "Liberalism is not a possible

Toleration (New Haven: Yale University Press, 1997).

²⁵ Charles Taylor, "The Politics of Recognition," in Multiculturalism: Examining the Politics of Recognition, Amy Gutmann, ed. (Princeton: Princeton

meeting ground for all cultures, but is the political expression of one range of cultures, and quite incompatible with other ranges."²⁶ Neutrality, in other words, should be seen as an expression of the core value of equal concern and respect.

The liberal state is required to be neutral with respect to (that is, not discriminate against) exercises of human rights. It need not be neutral to those activities not protected by human rights. And it is required not to be neutral towards activities that infringe or violate human rights.

For example, a (liberal) state must not discriminate against any religion but need not be neutral toward (show equal concern and respect for) all conceptions of the purpose of sport (which are not ordinarily understood to be protected by internationally recognized human rights). Equal concern and respect for all political beliefs is required, but not for all beliefs about the origin of life. Creationism based on a literal reading of Genesis, for example, must be protected in so far as it reflects an exercise of human rights to freedoms of religion and speech. It need not -- probably should not -- be treated equally in science classes or natural history museums.

Each state/society has considerable latitude in how it treats, for example, particular minority religions. It would be completely consistent with international human rights standards to (merely) tolerate minority religion a, while actively supporting the majority

University Press, 1994), p. 62.

²⁶ Ibid., p. 62.

religion and minority religion b. Such decisions fall within the margin of appreciation left to states by the broadly stated norms of the Universal Declaration. States may choose to treat all religions identically -- for example, no state support for any, as in the United States -- but that is required neither by the Universal Declaration model nor by liberalism, as I amusing that term here.

As Michael Walzer nicely puts it, liberalism thus understood is "permissive, not determinative." It

allows for a state committed to the survival and flourishing of a particular nation, culture, or religion, or of a (limited) set of nations, cultures, and religions - - so long as the basic rights of citizens who have different commitments or no such commitments at all are protected.²⁷

There is not merely a place for difference within liberalism, the protection of (many forms of) difference is one of its most important political objectives.

C. Freedom of Association and Guaranteed Participation

Non-discrimination, however, is only one part of the liberal approach to difference. Remedying systematic discrimination usually requires collective action, which in the Universal Declaration model is enabled by rights to freedom of association and democratic

²⁷ Michael Walzer, "Comment," in Multiculturalism: Examining the Politics of Recognition, Amy Gutmann, ed. (Princeton: Princeton University Press, 1994), pp. 99-100.

political participation. Furthermore, active participation in society -- including a right to work, understood as a right to economic participation -- is an intrinsically important value, an essential aspect of (personal or group) autonomy.

Non-discrimination protects a sphere of personal/group liberty and offers protection against suffering imposed for group membership. Freedom of association and rights of participation make individuals members of the public entitled to act individually and collectively, with others of their own choosing, to realize their visions of the good life.

Taken together, non-discrimination and freedom of association, broadly understood, provide a wide-ranging and coherent set of protections for groups and individuals rooted in the core (liberal and human rights) values of equality and autonomy. But this liberal approach is not without difficulties.

Freedom of association, because it is a right of individuals, models group membership as a "voluntary" exercise of the protected autonomy of its members. Descriptively, this is obviously inaccurate for groups whose identity is in significant measure externally imposed. It may also be problematic groups marked by biological signs such as skin color or sex -- although, it must be emphasized, race and gender are social constructs not natural categories.

Nonetheless, the liberal approach has considerable leverage even in such cases. When individuals are subjected to suffering without any voluntary association with the group in question, non-discrimination often will provide the appropriate remedy. And when,

for example, women or racial minorities begin to act collectively to realize their interests or protect their rights, freedom of association usually moves to the forefront of the struggle for equality and social justice.

7. GROUP HUMAN RIGHTS: A SKEPTICAL VIEW

Without denying the achievements and attractions of this liberal approach, the chapters by Eva Brems and Jennifer Jackson-Preece argue for supplementing it with group human rights. In this section I pose seven questions that I think should lead us to be extremely wary of such a move.²⁸

1) How do we identify the groups that (ought to) hold human rights? Not all groups have human rights. Consider, for example, states, multinational corporations, gangs, and barbershop quartets.

New substantive (individual or group) rights typically emerge as responses to the appearance or recognition of new "standard threats" to human dignity.²⁹ Consider, for example, the rise of the practice of

²⁸ In order to be as clear as possible at the outset, I want to emphasize that I do not argue that we should treat any of the issues raised in this or the following section "on a purely individual basis." (Kristin Henrard, Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination (The Hague: Martinus Nijhoff, 2000), p. 241.) I have already emphasized the essentially social character of human rights. I argue only against groups as holders of human rights. I am not even arguing categorically against recognizing legal (rather than human) rights for groups.

In addition, I am concerned here only with group rights that are not reducible to individual rights. (Compare Marlies Galenkamp, Individualism versus Collective Rights: The Concept of Collective Rights (Rotterdam: Rotterdams Filosofische Studies, 1993), pp. xxx.) Such irreducibly group rights pose a real and significant challenge to the Universal Declaration model that ought to be taken seriously however we evaluate it.

²⁹ Henry Shue, Basic Rights: Subsistence, Affluence, and U.S. Foreign

disappearances in the 1970s and the ensuing international response. This standard threat provides a self-limiting character to such expansions of the list of internationally recognized human rights. But group human rights are distinguished by right-holder not the substance of the threat/right. There is thus a serious danger of excessive proliferation of human rights.

Suppose that we were to agree that group human rights for, say, minorities would be desirable. By what criteria can we restrict group human rights only to minorities? This is not necessarily an intractable problem, but it is an important one to which advocates of groups rights seem to have largely ignored.

The most obvious criterion, namely, a long history of ongoing, systematic suffering, would yield group human rights for women, (racial, ethnic, religious, and linguistic) minorities, indigenous peoples, homosexuals, the disabled, the aged, children, and the poor, to mention just some of the more prominent groups. Pretty much everyone except prosperous white males -- and many of them as well -- would have group human rights. Such a radical expansion of right-holders and associated claims of rights seems to me extremely problematic.

2) Having identified group x as a potential holder of human rights, what particular substantive rights does/should x have? Certainly it is not enough that x wants r in order to establish a

(human) right of x to r.³⁰ On what ground can we say that others owe r to x as a matter of (human) rights?

The most limited move would be to recognize those rights needed to enjoy already recognized human rights. These, however, would be only temporary, remedial measures, and thus probably best seen as practical measures to achieve non-discrimination. A more interesting (because more genuine) class of group rights would appeal instead to the particular character of the group or to values or attributes not already recognized. Claims of threatened values that merit group human rights protection need to be evaluated on a case by case basis. My point for now simply is that in order to avoid debasing the currency of human rights with a flood of new, unregulated coinage, advocates of such rights ought to face a considerable burden of proof.

3) Who exercises group rights? Rights work not simply by being voluntarily respected by duty-bearers but, most importantly, by being claimed or otherwise exercised by right-holders. The rights of states are exercised by governments. The rights of business corporations by shareholders, directors, and managers. Who ought -- and is able -- to exercise, for example, minority rights, understood as rights of a group?

The problems of group agency may be modest for small, concentrated, and homogenous groups with a strong tradition of collective action. (Indigenous peoples come readily to mind.) When

³⁰ Compare Marlies Galenkamp, "The Rationale of Minority Rights: Wishes rather than Needs?," in Do We Need Minority Rights? Conceptual Issues, Juha Raikka, ed. (The Hague: Martinus Nijhoff, 1996).

the group is largely voluntary (for example, some religious minorities) the officers of the association (e.g., a clerical hierarchy) may be a plausible agent. But where the group is "natural," ascribed, or coercively defined and maintained, agency is likely to be highly problematic, especially when the group is large or heterogeneous.³¹ The "solution" of having group rights exercised by individuals or associations of group members, beyond its irony, raises serious questions as to whether such rights really are group rights, rather than exercises of individual rights.

4) How do we handle conflicts of rights? Although all rights conflict with at least some other rights or important social interests, introducing group rights will not only increase the number of conflicts but will create competition between qualitatively different kinds of rights that is likely to be unusually intense. How should we respond to native North American tribes that discriminate against women who claim equal treatment? Related issues may be raised by defining who is (and is not) in the group. Especially problematic from a human rights perspective are efforts to block or punish exit from the group.

5) Are the purported group rights necessary? Is the problem a lack of group rights or rather inadequate efforts to implement individual human rights? Most often it seem to me the latter. Once more, the burden of proof ought to lie with advocates of the rights.

³¹ For a thoughtful and balanced philosophical discussion of the problem of group agency in the context of rights, see James W. Nickel, "Group Agency and Group Rights," in Ethnicity and Group Rights, Ian Shapiro and Will Kymlicka, eds. (New York: New York University Press, 1997).

6) Why should we expect group rights to succeed where individual rights have failed? If a government refuses to respect the individual rights of a despised minority, often -- although not always (see the end of Section 8.C below) -- it will be hard to imagine it being convinced to treat those people better as members of a group. In fact, if the difference between "us" and "them" is emphasized by group rights, might this not lead to even worse treatment?

7) Are group rights the best way to protect or realize the interests, values, or desires of a group? "Proponents of collective rights ... often seem to move in a rather cursory way from the claim that communities are good things to the claim that communities have rights."³² We must demand an argument for protecting the value in question through the mechanism of rights. In particular, we must ask whether the global recognition of a new group human right is either necessary or desirable. At this point we begin to circle back to the questions of which groups ought to be added to list of internationally recognized holders of which human rights?

None of these problems is fatal. Many are largely matters of "negative externalities," undesirable unintended consequences, where the required calculus of costs and benefits may vary dramatically with circumstances. Some group human rights may overcome all of these problems. (In Section 8.D I suggest that this is true for at least some indigenous peoples.) Nonetheless, I think that the above

³² Michael Hartney, "Some Confusions Concerning Collective Rights," in The Rights of Minority Cultures, Will Kymlicka, ed. (Oxford: Oxford University Press, 1995), p. 203.

discussion does caution prima facie skepticism towards (although not automatic rejection of) most (but not necessarily all) group human rights claims.³³ At the very least, we should insist on clarity in specifying the "gap" in the Universal Declaration model that is being addressed and careful attention to unintended consequences of the proposed remedy.

8. WOMEN, MINORITIES, AND INDIGENOUS PEOPLES

In this section I briefly examine human rights claims for three groups that receive extended discussion in later chapters: women, minorities, and indigenous peoples.

A. Women

Although women have a sad history of near universal, systematic suffering in virtually every area of the globe, the idea of group human rights for women is fatally undermined by problems of collective agency for a diverse group that includes half of humanity.³⁴ It is also unclear what rights women as a group might be held to possess. Unless we accept gender roles that postulate qualitative differences between men and women, all the obvious candidates for special women's

³³ For a sympathetic approach to at least some group rights issues, from a liberal perspective that draws heavily on Will Kymlicka, Multicultural Citizenship: A Liberal Theory of Minority Rights (Oxford: Oxford University Press, 1995), see Maleiha Malik, "Communal Goods as Human Rights," in Understanding Human Rights, Conor Gearty and Adam Tomkins, eds. (London: Mansell, 1996). Malik also gives thoughtful consideration to the limitations of individual rights strategies for realizing communal goods.

³⁴ Groups of women in particular localities or concerned with particular issues may have the necessary collective personality. But non-discrimination and freedom of association usually will allow such groups to act effectively.

rights seem to me best formulated in gender-neutral terms.³⁵

For example, family rights, reproductive rights, or protection against domestic violence are not special rights of women. Although the majority of adult victims of violence in the home are women, this no more makes protection against domestic violence a (group) right of women than the fact that the majority of those exercising (or suffering violations of) trade union rights are men makes the right to bargain collectively a (group) right of men. The principle in each case is independent of sex or gender: no one should be subject to violent assault by anyone, including a domestic partner; everyone is entitled to bargain collectively.

In practice, of course, women in all countries continue to suffer (more or less severe) deprivations and indignities as women. But this simply does not entail the appropriateness, let alone the necessity, of group human rights. Compare workers who suffer as workers and political dissidents who suffer as dissidents. In each case the suffering arises from coercively imposed norms that create a subordinate status group.

But let us grant women as a group special collective human rights. Why should we expect these rights to be better implemented than already established rights? Especially in light of the insurmountable problems of collective agency, such rights would most likely turn out to be, at best, irrelevant abstractions -- when they

³⁵ The obvious exception is child bearing. But not all women choose to or are capable of bearing children. The relevant group then would be (potentially) pregnant women. Any group (or individual) rights that they might have would involve only minor additions to the Universal Declaration.

were not used by patriarchal forces to divert attention and resources from efforts to establish true non-discrimination and equal participation for women in all aspects of society.

B. Minorities

To evade controversy over the term "minorities,"³⁶ I will follow Article 27 of the ICCPR and restrict discussion to ethnic, religious, and linguistic minorities.³⁷ The established international approach to minority protection rests on the dual pillars of non-discrimination and "measures to protect and promote the separate identity of the minority groups."³⁸ Protecting and promoting minority identity, and its political expressions in the form of minority autonomy, are the principal locus of potential group rights claims.

Religious minorities, however, present a relatively easy case for a liberal, individual rights approach. Freedoms of religion, expression, and association ordinarily will provide a context for perpetuating religious identity, particularly in conjunction with established international human rights norms that provide family

³⁶ See p. xxx of the chapter by Jackson-Preece below and, more extensively, Henrard, Minority Protection, pp. 16-55.

³⁷ Racial minorities have been treated in international human rights law separately (and with a greater sense of importance and urgency). And other minority groups have been largely excluded. On homosexuals, see Jack Donnelly, "Non-Discrimination and Sexual Orientation: Making a Place for Sexual Minorities in the Global Human Rights Regime," in Innovation and Inspiration: Fifty Years of the Universal Declaration of Human Rights, Peter R. Baehr, Cees Flinterman and Mignon Senders, eds. (Amsterdam: Royal Academy of Arts and Sciences, 1999). In international human rights law, it is decidedly not the case that all "minorities," in the broad sense of that term, are treated equally.

³⁸ Henrard, Minority Protection, p. 8.

control over the type of education children receive.³⁹ Furthermore, "church" structures, which are readily conceptualized in terms of freedom of association, are an obvious mechanism for collective action, without the need for additional group rights.

Ethnic and linguistic minorities may pose more serious problems. Language rights for linguistic minorities may be especially problematic because almost all aspects of public life are touched by language.⁴⁰ And if there are serious social or economic disabilities associated with use of a minority language, mere toleration is unlikely to be enough to preserve group identity.

Even in these cases, though, non-discrimination, freedom of association, and family education rights provide considerable leverage. For example, one could readily argue that it is discriminatory to provide access to public services -- including schooling -- only in a dominant language. Single language public media might also be seen as involving invidious linguistic discrimination. Whether such measures are adequate is an empirical, not a theoretical, issue.

My sense, however, is that advocates of group rights for minorities are likely to see the preceding paragraphs as "missing the point." They are interested in protections for group identity that go

³⁹ This right is explicitly recognized in all three of the major international instruments: Universal Declaration, Article 26; ICESCR, Article 13.3; ICCPR, Article 18.4.

⁴⁰ For an overview of linguistic human rights issues, see Tove Skutnabb-Kangas, and Robert Phillipson, "Linguistic Human Rights, Past and Present," in Linguistic Human Rights: Overcoming Linguistic Discrimination (Berlin: Mouton de Gruyter, 1995).

well beyond those provided by strong and effective measures of non-discrimination and freedom of association.

Consider Jacob Levy's typology of cultural rights: exemptions, assistance, self-government, external rules restricting non-members, internal rules controlling members, recognition or enforcement of traditional rules, minority representation in government bodies, and symbolic acknowledgement of worth or status.⁴¹ Non-discrimination and freedom of association principally encompass measures involving exemptions, assistance, symbolic acknowledgement, and some forms of external rules on outsiders. Group rights claims, by contrast, are most likely to lie in the other categories.

But are all minorities, as a matter of human rights, entitled to, for example, self-government or guaranteed group representation in governmental bodies? A just society certainly may legitimately choose to grant some form of self-government to particular minorities. But is it a human rights violation if the society does not? I can see no reason why minorities, or any other group, should be universally entitled to self-government, or even guaranteed group representation. And I am aware of no morally attractive principle that would grant such rights to minorities that does not also grant them to an impractically large number of other groups as well.

Should minority communities have guaranteed legal rights to discipline members? Again the precise form of the question is

⁴¹ Jacob T. Levy, "Classifying Cultural Rights," in Ethnicity and Group Rights, Ian Shapiro and Will Kymlicka, eds. (New York: New York University Press, 1997), p. 25.

important. We are interested here in legal rights. (Members of the community are already free to shun those who violate group norms.) And because we are dealing with a putative human right, the issue is not whether it is permissible or desirable in particular cases to recognize such legal rights, but whether all minorities everywhere are entitled to such powers over their members.

Given space constraints let me simply suggest that such rights are likely to be least problematic when the minority can be understood as a free association of individuals. Voluntary membership is readily conceived as implying acceptance of discipline by the group. And by allowing effective exit options, conflicts between the human rights of individuals and the group rights of minorities can be moderated to perhaps acceptable levels.

Under any other interpretation, individual rights would be subordinated to the group rights of the minority. I can see no reason why minorities should have such superior rights, which are, I think rightly, denied to other groups. In any case, if this is where the argument takes us, we are no longer talking about modest supplements to the Universal Declaration model. These are major changes that require the sort of argument that few advocates of group human rights for minorities even attempt to make.

I am not, let me repeat, challenging the idea of minority rights as they are already established in the major international human rights instruments (i.e., as individual rights that provide special protections to members of minority groups). I am not even challenging group rights of minorities. For example, the Singaporean practice of

reserving legislative seats for representatives of Hindu and Malay communities clearly is (and ought to remain) defensible on human rights grounds. Rather, I am questioning the idea of group human rights for minorities.

Singapore's system of reserved legislative seats, or India's much more extensive system of reservations for (members of) scheduled castes and tribes, falls within the realm of discretion allowed states in discharging their human rights obligations and coordinating them with the pursuit of other important social purposes. Although such practices have been controversial, both nationally and internationally, they are not clearly prohibited by the Universal Declaration model. But neither are they required. And it would be a serious error to view the absence of such reservations -- or any other group rights of minorities -- as a violation of human rights.

C. Protecting Group Identity

This liberal approach to difference may, it must be acknowledged, lead to the weakening, or even demise, of some minority (and other group) identities. Group identities, however, are not now, and I think ought not become, subjects of international human rights protection. Only individual autonomy gives rise, and value, to the sorts of identities that must be respected by others. Any particular identity is entitled to protection only because it is an expression of the rights and values of those who carry it.

Others may choose to value difference for its own sake, or for the social benefits that diversity provides. They are required, as a

matter of human rights, only to respect the decisions that people choose to act on for themselves, within the limits of their rights. Neither individually nor collectively do others have a right to impose any particular identity on a resistant individual or group because, for example, their ancestors bore that identity or because particular social roles are widely endorsed.

In almost all societies almost all adults have multiple identities. It is for such real, and realistically complex, human beings⁴² to balance the varied roles and histories that shape their life. Such choices are, of course, conditioned, and thus in some (relatively uninteresting) sense not "free." But if equal treatment and freedom of association are fully realized, those choices can appropriately be seen as autonomous exercises of internationally recognized human rights.

In a social and political environment marked by equal treatment and freedom of association, groups of all sorts have a "fair" opportunity to compete in shaping the identities of "its" members. If a particular identity is valued sufficiently, it will survive, perhaps even thrive. If not, then it will not. And that is the way it should be.⁴³ The only alternative is to say that identities are things that

⁴² As Jeremy Waldron notes, many advocates of group rights and minority cultures instead assume that individuals are (if not exclusively, at least primarily) members of a single, coherent, even homogenous "culture." "Minority Cultures and the Cosmopolitan Alternative," in The Rights of Minority Cultures, Will Kymlicka, ed. (Oxford: Oxford University Press, 1995), pp. 105-108.

⁴³ This does not preclude active state support for the group in question. But such support should be seen as an expression of the values and choices of the society as a whole, operating through established political

can rightly be imposed on those who reject, deny, or seek to modify them. This is not an extension of the Universal Declaration model but a rejection of its foundations.

People should be -- and through the rights of non-discrimination, freedom of association, and a variety of other internationally recognized human rights are -- entitled to develop, express, and modify their identities, acting both individually and collectively.⁴⁴ No particular identity ought to be entitled to special protection as a matter of human rights beyond that which derives from the (individual and collective) choices of its members.

Nonetheless, where equal treatment and effective freedom of association are systematically violated, there may be no viable alternative to minority self-government. Where it can be plausibly argued that equal treatment is decidedly less likely without minority self-government, then that may indeed be the best human rights strategy. But this does not make minority self-government a human right. Rather, it is a local political decision about means of implementing internationally recognized human rights, within the margin of discretion allowed by international human rights norms. Such instances of minority self-government are best understood as extensions of the right to non-discrimination, rather a new class of human rights. And when such rights come to be implemented

practices, rather than a matter of group human rights.

⁴⁴ I find particularly attractive Waldron's suggestion ("Minority Cultures," p. 112) that we think of personal identity "not in terms of hierarchical management, but in terms of democratic self-government of a pluralistic population."

territorially, turning an oppressed minority into a potentially oppressing majority -- e.g., Kosovo -- vigilance is required to minimize unintended negative human rights consequences.

D. Indigenous Peoples

Indigenous peoples may be seen as posing an extreme example of just such a situation where effective equal treatment, perhaps even survival, requires a group right to self-government. To simplify the discussion, let us imagine an indigenous community with the following characteristics.⁴⁵ The community is small; if not a face-to-face society, at least one in which the lineages of most members are known to most other members. It is geographically and culturally largely separate from the mainstream society. Mainstream institutions thus appear to most members of the community as alien. But because there are also regular contacts with the "outside" world, we can think of those who reside in the community as having chosen to stay. Finally, the indigenous community is fragile, in the sense that well-established mainstream institutions (e.g., private property in land) would as an unintended consequence radically alter the community's way of life in a fashion that most members would reject if given a choice.

In such circumstances it seems to me plausible to argue that the indigenous community has chosen a way of life. That choice demands, on its face, a certain degree of respect from mainstream society and institutions, extending in at least some cases to accommodation and protection of the chosen way of life. In fact, in the conditions I

have outlined there would appear to be no effective alternative to group rights involving both considerable self-government -- which would be facilitated by the group's small size, geographical concentration, and cultural history -- and restrictions on the activities of non-members, in light of the fragility of the indigenous community and its way of life. Furthermore, the negative externalities of these particular group rights are modest, imposing severe burdens on relatively few outsiders in return for immense benefits to the group and its members.

The broader significance of this "exception" bears noting. Even if most claims for group human rights are profoundly defective, no particular claim can be rejected without examining its merits in detail. Even where skepticism is the appropriate general attitude, every claim for recognizing a new human right deserves careful scrutiny.

Systematic threats to human dignity change over time. In addition, our understandings of the nature of the life worthy of a human being, and of the practical meaning of equal concern and respect, may change. Although I am critical of most proposed additions to the list of internationally recognized human rights, I am profoundly sympathetic to the collective project of this volume of exploring gaps in and needed additions to the Universal Declaration model. The Universal Declaration and the Covenants may be (for us, now) authoritative, even definitive. It would be tragic, however,

⁴⁵ I claim only that some indigenous peoples approximate such a model.

were we to see them as the last word on international human rights.

9. INTERNATIONAL HUMAN RIGHTS AND THE STATE

However skeptical of group human rights one might be, we cannot overlook the deep, although usually obscured, communitarianism in the Universal Declaration model. As we saw above, states are the near exclusive instrument for implementing internationally recognized human rights. The assumed political community for the practice of human rights, in the current hegemonic understanding, is the sovereign territorial state. In effect, one group, the state, is privileged over all others. And even in the post-Cold War world, state sovereignty generally insulates governments that fail to discharge their human rights obligations from coercive international action.

The Universal Declaration model in effect transforms human rights into rights of citizens, a transformation that is explicit in classical contractarian theorists such as Hobbes and Locke. The rights that one enjoys thus depend heavily on accidents of birth or residence, especially in a world with huge legal and practical barriers to migration. And because life opportunities vary both dramatically and systematically from country to country, the resulting inequalities are largely indefensible, on moral grounds, from a human rights perspective.⁴⁶

The priority given to states in the Universal Declaration model

⁴⁶ For a brief argument to this conclusion, focusing on the issue of open immigration, see Joseph H. Carens, "Aliens and Citizens: The Case for Open Borders," in The Rights of Minority Cultures, Will Kymlicka, ed. (Oxford: Oxford University Press, 1995).

thus should be seen as practical rather than moral or theoretical; a concession to the international political reality of the primacy of sovereign territorial states. Rather than a political conception of justice in the strong sense of a view endorsed for largely intrinsic reasons, it is instead a political modus vivendi endorsed largely for instrumental reasons.

If the Universal Declaration model's essential character is cosmopolitan rather than nationalist, the challenge we face is to push the hegemonic understanding away from this near exclusive reliance on states for implementation, to move beyond this morally defective modus vivendi. The developing post-Cold War practice of humanitarian intervention, discussed below by Wheeler, represents one small but significant step in that direction.

The limitations of contemporary practice should not be underestimated. Even today, the best we can say is that humanitarian intervention in the face of genocide or extreme humanitarian emergency is legally permissible (but not required). As Kosovo clearly indicates, the permissible modalities of such intervention remain contentious. Furthermore, there seems to be little evidence that this exception is spilling over into other, more common, kinds of gross and systematic human rights violations.

Nonetheless, the international immunity of the state has been punctured. And a strong argument of an emerging (substantive, not merely instrumental) overlapping consensus can be made. For these kinds of violations, the relevant community for protecting human rights seems to be becoming the society of states, supplemented,

perhaps, by regional communities.

We should remember, however, that not all forms of cosmopolitanism have the same, or even necessarily positive, human rights consequences. For example, the cosmopolitan vision of certain evangelists of global capitalism is profoundly problematic from a human rights perspective. Therefore, without minimizing the threats to human rights that states pose, it is no less important to remember that the state is our principal contemporary mechanism for implementing and enforcing human rights. Most people still enjoy most of their internationally recognized human rights through the agency or mediation of the states of which they are a national. We thus should be wary of anti-statist arguments, such as those by neo-liberal international financial institutions, until we have been convinced that an alternative to state provision of human rights -- civil and political rights no less than economic and social rights -- has been identified and has plausible prospects of being put in place.

In summary, I have tried to suggest that the principal human rights tasks facing us today lie not in developing new rights but rather in better implementing the rights enumerated in the Universal Declaration and the Covenants. And even in the area of implementation, without denigrating the possibilities represented by new surpranational institutions, much more is to be gained by directing our limited resources to protecting and perfecting existing state-based mechanisms. Rather than substantially alter the Universal Declaration model, the key to human rights progress in the coming decades lies in more, more creative, and more effective efforts by

states, citizens, and other national and international actors to implement and enforce it.