

The Force, Frailty, and Future of Human Rights under Globalization

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The author makes the claim that human rights have become an important institution of international relations, their inherent powerlessness notwithstanding. In the first step of the analysis, the author discusses the positive correlation between a nation's socioeconomic well-being and the safe guarantee of human rights. However, the social and political disembeddedness of human rights and their universalist character actually constitute their inherent weakness, which is analyzed in the second part. In the third part, which deals with the future development of human rights, the author makes the claim that the process of globalization does not only create the functional networks of economic, political, and military power elites, but also offers hope for the emergence of a global moral community in which the idea of human rights may become an essential institutional pillar.

INTRODUCTION

For a long time scholars have regarded the idea of human rights more as a matter of moral philosophy than of real political life. Moralists and political realists alike have blamed politics for its moral shortcomings. One example of this is the insignificant role that human rights have played in the international political arena. Moreover, before the downfall of Communism, the notion of human rights was also widely discredited because it was suspected as serving as a weapon in the Cold War. Thus, paradoxically, the idea of human rights fell victim to two opposing criticisms: that of being merely moral on the one hand and purely political-instrumental on the other. Obviously, the latter largely lost its basis after the end of the Cold War. The use or abuse of the moral idea of human rights for non-moral ends like

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military power, political influence, or economic interests continues to be a real possibility; and the moralization of political issues remains a tempting option in political power play. However, this danger has subsided because moral superiority is no longer the primary goal of international political rivalry.

It is not only the political-instrumental character of human rights that has undergone considerable change in the last decade, but also its *purely moral* quality. The increased global interdependency of contemporary societies has sharpened their sense of mutual vulnerability through incidents like natural disasters, ecological damage, civil wars, and economic crises. This in turn has drawn attention to the question of whether and to what extent the protection of human rights might be part of a strategy of prevention of such occurrences. As a result, there is growing international attention to the issue of universal respect of human rights. Although the driving force behind this development is self-interest rather than moral concern, it may have significant moral consequences. If, for example, the protection of human rights were to acquire a role within the sphere of international politics that is as important as that of international security and peace, this could render it an instrument of international power politics. It is, for example, a matter of debate whether NATO's intervention in the sovereignty of Yugoslavia in order to protect the human rights of the Kosovars is indeed a step in this direction.

In the first section of this essay, I shall summarize the more or less well-known findings about the relationship between the protection of human rights on the one hand and well-being and peace on the other. These findings suggest that there is a correlation between the protection of human rights in a country and the material well-being of its population. However, they do not make clear how to overcome the impediments that prevent the institutionalization of human rights in countries in which people suffer both from destitution and from the violation of their human rights. This is part of the inherent weakness of human rights discussed in the second section. The traditional principle of state sovereignty erected an almost impenetrable barrier around each state that prevented the moral universality of human rights from acquiring legal positivity; or even from being enforced in those cases in which states had formally signed an international and legally binding treaty. Human rights' disembeddedness from the legal order of the nation-state has been a major reason for difficulties in their implementation. Humankind is a moral community, lacking the enforcement capabilities of individual states and thus is not properly equipped to guarantee human rights. A brief treatment of the evolving concept of humankind is found in the third section. In the last section I will argue that the process of

globalization is about to change this situation. The dynamics of global interdependency do not merely entail the imposition of the imperatives of the international movement of capital upon defenseless national societies. They were also conducive to the emergence of incipient forms of an international civil society, which have the potential to become guarantors of internationally recognized human rights equipped to penetrate the state's armor of sovereignty.

A few words about the notion of human rights used in this article: generally speaking, rights are instruments that protect the interests of individuals or collectives through obligating those who are in control of the means to satisfy these interests. They vary historically according to the main risks to which people are exposed, and therefore the catalogue of human rights is an open-ended one. In this article I refer to those human rights which were declared by the General Assembly of the UN on December 10, 1948, and to the International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights of December 19, 1966. They contain the rights of the first and the second generation, i.e., rights to individual freedom (negative rights) and individual rights to economic and social goods and services, like, e.g., the right to labor, to health care, or to education (positive rights).¹

I. HUMAN RIGHTS AND SOCIAL WELL-BEING

All over the world experts are puzzling over the causes of the recent financial and economic crisis in Asia. Some think that the insufficiently organized banking system is at fault, others blame the shortage of capital resources of major firms, and still others hold the natural catastrophes that have been plaguing Asia for several years to be responsible. While I do not want to deny the plausibility of any of these explanations, it may be worth taking a closer look at the relationship between this crisis and the human rights records of the affected countries. It would certainly be an overstatement to say that the oppression of human rights in the relevant Asian countries is the only cause of the far-reaching economic crisis; such causal and linear explanations are of no help when dealing with complex interdependencies. And yet, there is empirical evidence to suggest that governments that do not respect human

¹ See also T.H. Marshall, *Class, Citizenship and Social Development* 71 (1964); compare the distinction between generations of human rights in Norberto Bobbio, *The Age of Rights* at XI (1996).

rights often aggravate the already quite ominous consequences of economic crises and natural disasters. It is plausible to assume that the guarantee of basic human rights creates a free and independent society. These rights include the rights to life, bodily integrity, personal freedom, and due process of law, as well as freedoms of speech, the press, and religion. In such a society, threats to the well-being of society can be openly discussed, alternatives considered, and injustices brought out into the open. In such a society the voice option² prevents or mitigates the worst effects of economic crises or natural disasters (most of which are consequences of bad government rather than events beyond human control or *force majeure*).

Amartya Sen, the recent Nobel prize winner for economics, has proven in his well-known empirical studies about the causes of famine in Africa and East Asia that such famines are not necessarily the result of an actual shortage of food supplies. Faulty policies, a lack of institutional precaution, and, in particular, the lack of appropriate entitlements such as health care, welfare, and housing were often the primary causes of mass famine and squalor.³ In the cases of famine that were examined, no institutional regulations existed that would have required the government in question to enforce certain minimum standards that could have protected the people. The fact that allowing one's own countrymen to starve represents a violation of human rights seems to have been a wholly alien concept to the governments in the studies. Thus, an entire society could be put at the mercy of the ruling elite. The great bulk of the population in each of these cases was exposed to the machinations, ruthlessness, stupidity, and criminal indifference of the government in power. A glance at the enormously disastrous fires that were made possible by the corrupt government in Indonesia in the Fall of 1997 or at the famine in North Korea, which very likely continues to this day, allows one to see the correlation between the institutionalization of human rights on the one hand and the physical poverty of the masses on the other.

Indeed, the branch of the economic sciences which has not relinquished its responsibility toward moral and ethical questions has provided us with informative insights. Partha Dasgupta, a native of Bangladesh and a professor at Cambridge, came to the conclusion in his study *An Inquiry into Well-Being and Destitution* that there is a significant correlation between the prosperity of a country and its guarantee of civil and political rights. He measured affluence according to four key factors: per capita income, life expectancy

2 Albert O. Hirschman, *Exit, Voice, and Loyalty. Responses to Decline in Firms, Organizations, and States* 30 (1970).

3 Cf. Amartya Sen & Jean Drèze, *Hunger and Public Action* 20, 104 (1989).

at birth, infant mortality, and degree of literacy in the adult population. The degree to which such rights are guaranteed was measured on a scale of one to seven, whereby a rating of one described countries in which the rule of law was continuously secured and in which participation in elections, the founding of political parties, and the pluralistic nature of the political public were not in question. A rating of seven described those governments that did not guarantee any individual rights and whose rule was in no way legitimated by the will of the people.

According to Dasgupta's study, in 1979-1980, thirty-three (68%) of the poorest forty-eight countries in the world received a rating of five or worse for political rights; forty of these countries (83%) received the same rating for civil rights.⁴ That means, as Dasgupta somewhat mildly put it, that "civil and political rights are rare things in poor countries"; or, if we express this fact more drastically, that the people who all over the world are suffering from hunger are the very same people who are denied the most elementary of rights. Those who suffer are also those with no rights. These statistics demonstrate significant correlations, but not necessarily causality. Several possible interpretations of the data exist. One could come to the conclusion that the absence of justice leads to poverty, famine, and squalor; but one could also conclude that poverty and squalor lead to the absence of justice. The elite of those countries that feel annoyed by the continual demands of the West to respect human rights often claim that the latter assumption is correct:

We can't afford the luxury of human rights, as long as we are poor and underdeveloped; our citizens have other worries than human rights, namely, famine, and for that reason they willingly accept a limitation of their human rights because that is the price they have to pay for the strategy of forced economic growth.

This argument is often used, as is that of multiculturalism: Asian (or African) values are different than Western ones but just as valid.

The burden of proof for this contention is a heavy one. If it were true, this would mean that the individuals in poor countries had to make a choice between economic development or the *luxury* of human rights. But this assumption is open to question. The statistics show that of the fifty-one countries that Dasgupta evaluated, the same countries that received the highest ratings for life expectancy, infant mortality, and per capita income

4 Partha Dasgupta, *An Inquiry into Well-Being and Destitution* 108 (1993).

(astonishingly enough, not literacy rate) were also the ones that received better ratings concerning civil and political rights.⁵

The citizens of countries that respect human rights are much less likely to be involved in wars or other situations that expose them to the dangers of losing their lives, their bodily integrity, or their property. The American political philosopher Michael W. Doyle evaluated the international wars that were fought between 1816 and 1980 with regard to their internal constitutional order. He found that those countries that guarantee their citizens basic civil and political rights were, indeed, involved in quite a few wars, but they did not fight wars against each other. Even more important was the finding that since wars between only two countries are rather rare, states with liberal constitutions were never even part of a war alliance against another constitutional country.⁶

These results are astonishing, considering the fact that the Realist school within the field of international relations provides that the world of nations still finds itself in a state of nature. In such a state, nations are driven by the imperatives of strategic interest calculation and, hence, cannot afford to follow the moral principles enshrined in human rights. According to the Realist school, when countries are at peace with one another, this is due to the balance of power or to strategic calculations and is neither a result of the democratic character of their constitutions nor of a respect for human rights. But why should liberal constitutional countries carry out their economic, geo-strategic, and other disputes in non-military form if not because their constitutional law, including the guarantee of human rights for their citizens, prevents them from doing so?

This does not mean that states with liberal constitutions are inherently peaceful. There are many examples of such nations being engaged in war. They led colonial wars in the nineteenth century. They fought a substantial number of wars against non-liberal states in the twentieth century. Examples include: the American intervention in the First and Second World Wars, the alliance of several liberal countries in the Gulf War of 1991, and NATO's Kosovo intervention of 1991. However, it is reasonable to assume, in accord with Kant's idea of "International Peace," that countries with liberal constitutions, due to their institutional recognition of civil and political rights and their guarantee of a pluralistic public sphere, are inherently

5 *Id.* at 120.

6 Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs*, 12 *Phil. & Pub. Aff.* 217 (1983).

"unfavourable to the inclination for war."⁷ They are more moderate in their behavior in foreign affairs than authoritarian or dictatorial regimes and have fewer opportunities to impose the burden and suffering of war on their citizens.

Another explanation is perhaps more important, namely, that countries with a governmental structure in which human rights are protected are able to develop mutual trust and can, in this way, find cooperative forms of conflict resolution. Both explanations amount to the fact that the domestic and external sovereignty of a state, that is, its ability to pursue its strategic interests free from both internal and external hindrances, is restricted in constitutional countries. The governments of these countries are forced to give in to the civilizing power of an open political process and to the basic principles of confidence-building justice.

One thing is certain: the citizens of those countries that secure the human rights of their citizens and, thereby, on the international level, replace the state of nature with a state of lawfulness are statistically better off financially and have a greater life expectancy than citizens of other nations. Also, they can be quite sure that their governments will not put them through the torment of war against liberal states.

II. THE INHERENT FRAILTY OF HUMAN RIGHTS

When we speak of human rights we have some particular properties in mind.

First, there is a discrepancy between the moral universalism of their justification and the particularism of their obligees. Generally, the concept of rights, be they legal or moral, presupposes a relationship of one person (the obligee) to another person or collectivity (the right-holder). The right originates in this special relationship, be it a promise, a contract, the status within a group, or something else. By contrast, human rights are bestowed upon every human being *qua* human being, independent of any particular relationship; they originate in a quality that all human beings share. Kant stated that a human being "possesses a dignity (an absolute inner worth) by which he exacts respect for himself from all other rational beings in the world ... Humanity in his person is the object of the respect which he can demand from every other man ..."⁸ The United Nations Universal Declaration of Human Rights of December 10, 1948, declared the inherent

7 See the discussion on the Doctrine of Right in Immanuel Kant, *The Metaphysics of Morals* § 60, at 156 (Cambridge Univ. Press 1991) (1797).

8 See the discussion on the Doctrine of Virtue in *id.* § 11, at 230.

dignity of all members of the human family as the source of the inalienable rights of man. Consequently, each declaration or legal stipulation of human rights has an international character because it oversteps the boundaries of particular communities. If every human being has certain rights no matter where and under which government she lives and to which community she belongs, the existence of these rights does not depend upon the promise and the guarantee of a particular community and its government.

Yet what seems to be a strength of human rights is at the same time also its weakness. Dignity is a moral quality that we can only imagine in a moral community, and if every human being possesses this quality, humankind constitutes a moral community. Each member of this moral community has the moral right to have his or her dignity recognized by the other members of the community. Not only is every human being, by virtue of being human, the bearer of this moral right, but she likewise owes moral recognition to every other human being. But human rights include much more than this basic moral recognition. The aforementioned Universal Declaration of 1948 enumerates some twenty-eight specific rights, including the rights to: life, liberty, the security of the person, equal access to public service, equal suffrage, social security, and protection against unemployment. Obviously not every member of humankind or of the moral community of humankind is the obligee of these human rights. Nor are they natural rights, i.e., rights that every human is assumed to hold in the state of nature and which cannot be abridged by any government. They presuppose a government that allocates the resources necessary for their realization and which, therefore, is the obligee of these rights. A moral community, which is no more than this — a moral community — would not be able to perform the duties imposed by human rights because it lacks the means to provide the necessary resources. It is the discrepancy between the universalist source of human rights — human dignity — and the requirement of a particular obligee responsible for their implementation that constitutes the unique character of human rights.

However we may justify a right,⁹ its characteristics are always quite demanding. A right requires the corresponding duty of an addressee, i.e., of a person or institution obligated. Moreover, the person or institution obligated must be in the position to fulfill the obligation. Thirdly, the morally binding force of rights changes and restricts the behavior of the obligee. In the words of H.L.A. Hart, the conduct required by the right may,

while benefiting others, conflict with what the person who owes the

9 Cf. Peter Jones, *Rights* 94 (1994).

duty may wish to do. Hence, obligations and duties are thought of as characteristically involving sacrifice or renunciation, and the potential for conflict between obligation or duty and interest is, in all societies, a truism for both the lawyer and the moralist.¹⁰

The obligee must be motivated to benefit others at the expense of his own well-being, and this is ultimately what Kant called "benevolence."¹¹

Benevolence may generally suffice to recognize every other human being as the bearer of an absolute inner worth, and this recognition may also include the Christian maxim "love your fellow man as yourself." It is questionable whether this is enough to induce people to make indiscriminate sacrifices for every human being by virtue of his or her human quality. Even Kant's universalism recognized that "in wishing, I can be *equally* benevolent to everyone, whereas, in acting, I can, without violating the universality of the maxim, 'love your fellow man as yourself,' vary the degree greatly in accordance with the different objects of my love."¹² This is particularly true with respect to the obligations of a government. It is plausible to assume that the government's obligation to protect the rights of individuals is based on the social contract. Rights protection requires resources and implies the government's refraining from acting in ways that might otherwise benefit the common good. This does not only apply to so-called positive rights but to negative rights (like freedom of religion, freedom of speech, or personal freedom) as well. In other words, rights are costly for society, and the parties to the social contract have to share the cost. However, they are not likely to be prepared to share the benefits of the social contract with outsiders. They owe them respect, but there is no reason why they should owe material sacrifices to those who do not belong to their political community. Obviously there is a discrepancy between the moral universalism of human rights and the particularistic character of the duties that they impose on obligees. It is no accident that the modern state makes a clear distinction between citizens and all other human beings, reserving some rights and benefits for the former and thus excluding the latter from equal enjoyment of its resources.

From a legal point of view the discrepancy described above can be referred to as the discrepancy between "noble but vague aspirations and just but weak demands" on the one hand and the lack of legal positivism on the other. In other words, it refers to the absence of a legal community

10 H.L.A. Hart, *The Concept of Law* 85 (1961); see also Joseph Raz, *The Morality of Freedom* 166 (1986).

11 See the discussion on the Doctrine of Virtue in Kant, *supra* note 7, § 23, at 243.

12 *Id.* § 28, at 246.

that defines moral aspirations as legal claims and, consequently, provides the means for their enforcement.¹³ The legal positivism of human rights and their universalism do not go easily together: if they are universally recognized, they are merely rooted in the moral conscience of mankind without imposing binding force upon governments. On the other hand, once human rights have been legally encoded in a particular country, they obligate a particular government, mobilize a particular country's resources, and benefit the citizens of that country, not all human beings. They are rights of the citizen rather than the rights of man. It is apparently difficult to universalize citizens' rights, i.e., to extend them to all human beings or, conversely, to conceive of the rights of man as positive (legal) rights. Norberto Bobbio's claim that today we have reached a stage in which "the assertion of human rights is both universal and positive" seems a bit premature.¹⁴ I shall come back to this point.

The second peculiarity of human rights is closely connected to the first. It lies in the discrepancy between the international character of human rights and the necessity of implementing them in individual nation-states.

The moral duties of mankind are not imposed on a unitary body called humankind, but on the *pluriverse* of independent and sovereign states, which are collectively responsible for the well-being of humankind. Consequently, every state is responsible for the well-being of its population. Since today every human being lives under the jurisdiction of a sovereign state whose government in principle protects the human rights of its population, it is not altogether clear why human rights need to be guaranteed through international declarations and covenants. In fact, if every single state protected the rights of its inhabitants, international bills of rights would not be necessary. As we know, this is not the case.¹⁵ There are a number of states whose governments deny their populations basic rights, mostly because the elites would have to give up their power monopolies and their privileges if they established an accountable government and a sphere of free political discourse. The concept of human rights is based on the assumption that the treatment of a population by its government is not a purely domestic affair, but a moral concern of mankind at large. The concept of human rights makes the assertion that every government has to respect human rights as stipulated in international agreements and declarations, irrespective of the reasons and interests that may justify their violation. This means that the sovereignty of a particular state is subject to certain conditions in the handling of its domestic

13 Bobbio, *supra* note 1, at 47.

14 *Cf. id.* at 16.

15 *Id.* at 26.

affairs. Human rights penetrate the states' armor of sovereignty on behalf of the moral community of mankind — this is a morally elevating idea, but it suffers from a basic deficiency.

The paradoxical aspect of international human rights is reflected in the fact that they are unnecessary in countries that have already established fundamental rights in their constitutional order; while in those countries that lack national human rights and in which the population must, therefore, rely solely upon the international community's guarantee of human rights, this guarantee is largely useless.¹⁶ In the latter case, human rights are not rooted in the people's country but in the abstract morality of humankind. This abstract morality, as we have seen, has neither the resources nor the organizational structure with which to enforce these rights — assuming that there would be a willingness to make the sacrifices that enforcement would require. If every human being is responsible for the well-being of her fellow humans, this amounts to the statement that nobody is responsible. This explains the fact that individual, homogeneous communities are much more competent to protect the special interests and rights of their members than all-inclusive entities.¹⁷ In other words, when a particular state is not able or willing to guarantee basic human rights for its population, the universal human community will be much less capable of doing so. Thus we can hardly escape the conclusion that "the special function of human rights virtually requires that they be claimed precisely when they are unenforceable by ordinary legal or political means."¹⁸

There is a third difficulty closely related to the one just mentioned.¹⁹ In advanced industrial societies, people have legal rights in their diverse social relationships: the family, the workplace, the voluntary associations in which they participate, and, of course, in their relationship with the government. These rights are usually not invoked in everyday life. Respect for an individual's rights is built-in in the routines, rituals, and institutions of everyday life. Rights are invoked only in the rare cases in which the regularities of normal life are disturbed. The necessity to assert one's rights usually entails a jolt to the status quo because it means the disruption of both symbolic and material social rewards like recognition, respect, or goods and services. In normal life, ordinary people can cope with this situation because they are embedded in a plurality of social interactions; the pathology of one of them can relatively easily be offset by the mobilization of the resources of the other

16 *Id.*

17 Compare the classical elaboration of this reality in Mancur Olson, *The Logic of Collective Action. Public Goods and the Theory of Groups* (1977).

18 Jack Donnelly, *Universal Human Rights in Theory and Practice* 13 (1989).

19 *Cf. id.* at 12.

ones. If you have trouble with your employer and must struggle for your rights in the workplace, you can rely on the solidarity of your family, your friends, your professional organization, etc. You fight as a socially armored person. Yet this does not apply to persons who have nothing more to rely upon than their human rights. As stated, these persons are in a situation in which normal social institutions and their stabilizing and protective power have failed; and this forces a person deprived of almost all moral and material resources to assert her human rights. This means that human rights are in a permanent state of emergency and conflict and are never dormant. They are needed most urgently and are most dependent upon moral and material resources in situations in which the individual has been severed from those social situations that generally provide these resources.

The paradox that the rights most compellingly needed are at the same time the frailest ones is reflected in Hannah Arendt's famous conclusion that "it seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man."²⁰ A human being who has nothing to rely upon other than her human rights is stripped of her embeddedness in communities that recognize her as a member and include her in the dense protective web of reciprocal communication and actions. The rights of man conceive of her as a member of the human species and grant only those rights that are necessary for the protection of the species. Arendt quotes Burke who, referring to the French Declaration of the Rights of Man and Citizen of August 26, 1789, suspected that the "inalienable rights" would confirm only the "'right of the naked savage."²¹

Quite the same argument was made, if more cautiously, by Raymond Aron who emphasized the distinction between the rights of man and those of the citizen.

Whoever has experienced the loss of his political collectivity has suffered ... the full existential anguish of solitude; for in times of crisis, when the individual can no longer claim membership in any political collectivity, what rights are left him besides his human rights? The Jews of my generation cannot forget how fragile these human rights become when they no longer correspond with citizenship rights.²²

20 Hannah Arendt, *The Origins of Totalitarianism* 300 (1973) (1951).

21 *Id.*

22 Raymond Aron, *Is Multinational Citizenship Possible?*, 41 *Soc. Res.* 652 (1974).

III. TWO CONCEPTS OF MANKIND AND MAN

Obviously it was the social and political disembeddedness of universal human rights that caused both Arendt's and Aron's qualms. Human rights seem to view the individual as disconnected from the community in which he or she participates as a member; in which he or she matters; to which he or she has the duty to contribute; and which, in turn, protects his or her life, liberty, and property.

When the ideas of humanity and of human rights came about during the eighteenth century, they were genuine political concepts with a clear polemical thrust. They became powerful weapons of philosophers and intellectuals of the Enlightenment against the *ancien regime*. It was at this time that the concept of mankind became truly universal in that it included all humans. In Greek and Roman antiquity, mankind been identified with civilized mankind; hence, barbarians were excluded. In Europe in the Middle Ages, the concept of mankind excluded the wild peoples of America and other non-European parts of the world. In the second half of the eighteenth century, mankind became a critical counter-concept against the hierarchical order of unequal statuses, the traditional identification of Christendom with humankind, and the status of subjecthood under the unlimited sovereign state power. *Man* and *mankind* denoted the idea of the individual's autonomy, independence, subjectivity, and self-interpretation that denounced the given social and political order as particularistic, parochial, and backward. Moral superiority became more important than social status. The concept of human dignity replaced the feudal-medieval concept of honor²³ that measures the value of a person according to his or her status in the social hierarchy. Consequently, the rights of man were universal, and the absolutism of the sovereign state was counteracted by the absolutism of the universality of the rights of man.²⁴ This interpretation of man and mankind clearly reflected the ideals of the rising class of manufacturers, industrialists, merchants, entrepreneurs, artists, and intellectuals (in short, the bourgeoisie). However, the inherent dynamics of the concept drove it to the extreme of including even those parts of the human species that hitherto had been excluded, namely, the black populations of the non-European continents.²⁵

23 Cf. Hans Erich Bödeker, *Menschheit, Humanität, Humanismus*, in 3 *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland* 1063, 1082 (1982) (German).

24 *Id.* at 1079-84.

25 *Id.* at 1089.

In addition to this politicized moral concept of humankind, at the end of the eighteenth century, a second understanding emerged: humankind denotes the entirety of human beings. This notion reflected the idea of oneness of the world. Mankind as a universal collectivity pointed to the idealist project which, simultaneously, emerged as an empirical reality. This replaced the distinctions, differences, and particularities that separated people and fragmented the world with the idea of one world, one people, one common history and destiny.²⁶ The concept of mankind, humankind, and humanity mirrored developments in areas of technology, economics, industrial production, and communications, which constituted, for the first time in human history, something close to global interconnectedness. This new concept of mankind did not, like its predecessor, refer to particular qualities that are common to every human being *qua* human being; rather, it made the claim that common experiences and prospects shared by all members of the species justify the idea of one world, one human people, and one standard of civilization. Of course this did not mean that there was already a universally established reality of a homogeneous civilization; rather, that the standard by which the real development of different parts of the world could be measured was universal. And the standard was, of course, European.

If we relate the idea of human rights to this latter concept of humankind, it acquires a meaning quite different from the Kantian understanding of the embodiment of human dignity. It means that every person is part of mankind as an emerging society, a world civilization that may develop appropriate institutional devices for action, particularly for the defense of its normative standards. The weakness of human rights, which Hannah Arendt and Raymond Aron deplored, was due to the fact that mankind, lacking institutional coherence and, thus, being unable to act on behalf of its values, could not simultaneously play the roles of the obligee and the guardian of rights. A right brings about the corresponding duty of an addressee, i.e., of a person or institution obligated that disposes of the means to perform the duty. Obviously the moral community of mankind was not an appropriate addressee of any kind of right. After the political emancipation of the bourgeois class, which had become the leading social and political force in all European states during the nineteenth century, the critical dimension of the concepts of man and humankind had crystallized. In fact, in the nineteenth century, the very idea of human rights appeared to have become obsolete or even counter-productive. The European states were either fully enmeshed in the process of nation-state building (like Italy and

26 *Id.* at 1087.

Germany) or in finding an equilibrium between antagonistic social forces under appropriate constitutional rules (like France or Belgium). They were, in other words, much too preoccupied with their domestic problems to be much concerned with the idea of humanity as a criterion of the quality of their polity. On the other hand, after the proclamation of the Communist Manifesto in 1848, the idea of humanity was adopted by the emerging proletariat class, which now claimed to be the universal class, identifying its interests and values with the interests and values of mankind itself.

Thus, in the nineteenth century, the concept of human rights as developed at the end of the eighteenth century somehow got lost between the particularism and the positivism of the main European states and the revolutionary collectivism of the socialist movement. Moreover, although the human rights of the French Declaration were laid down in a legal document, they constituted more a philosophical idea than a legal instrument able to protect an individual's interests vis-à-vis the government. From a practical legal point of view, human rights suffered from an inherent weakness which stemmed from the fact that humankind was organized as a "pluriverse" of sovereign states, each of whom had exclusive jurisdiction over its own population. The relationship of the citizen to his government was a matter of domestic jurisdiction and, therefore, lay outside the reach of international law. Hence, an individual looking for protection of her human rights against her own government could find no help from another state. However, a violation of her rights by another state in which she had the status of an alien was a matter of international law, i.e., because it concerned the relationship between the state of which she was a national and the host state. In the sphere of international law, the individual had no capacity for rights, a fact that provides another reason why human rights that refer to the moral community of mankind have no appropriate obligee. There were a few exceptions, the most important being the international efforts to abolish slavery and the slave trade.²⁷ But as a general rule, we can state that despite some important changes brought about by the foundation of the League of Nations in 1919,²⁸ the doctrine of equal sovereignty of states which embodied the principle of civilized mankind within their territorial confines prevailed until present times. Since this system was rooted in the ancient and medieval European tradition, it was not necessary to establish a distinct guardian of

27 Cf. Dennis J. Driscoll, *The Development of Human Rights in International Law*, in *The Human Rights Reader* 42 (Walter Laqueur & Barry Rubin eds., 1979).

28 See Article 23 of the League of Nations Covenant, *reprinted in The Human Rights Reader*, *supra* note 27, at 151.

these universal human rights in addition to the sovereign states. Human rights appeared to be sufficiently guaranteed by each of them.

It was not by accident that a breakthrough in the development towards real responsibility on the part of the international community did not occur until the establishment of the United Nations. Following the moral catastrophe of the Holocaust, it became clear that the moral community of mankind required an institutional framework and that a guarantee of basic human rights by the international community was of paramount importance. The basic moral assumptions of the international system of sovereign states had collapsed. This was true not only because one of them — Germany — had violated the basic moral standards underlying the international system of sovereign states in an unprecedented and hitherto unimaginable manner, but also because the system had proved unable to prevent the Holocaust from occurring.

When in 1948, the United Nations proclaimed the Universal Declaration of the Rights of Man, this was clearly a reference to the spirit of the Declaration of 1789, but this time the invocation of humankind had another meaning. This time humankind was conceived as a real collectivity that was ready to assume responsibility for the well-being of all members of the human species. Although this amounted to a revolution in international affairs, it was still a modest achievement if gauged by the standard of effective enforcement of rights within polities. Given the sovereign state's monopoly of authority within the confines of its territory and the dominant role of sovereign states in the sphere of international relations, it was clearly a major accomplishment that in the Charter, the founding members of the United Nations pledged to further international cooperation by "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Article 1). In Article 55, they promised to promote "universal respect for, and observance of, human rights and fundamental freedoms," and in Article 56, to "take joint and separate action in cooperation with the Organization for the achievement of the Purposes set forth" in Article 55. This was still relatively vague, but it was a legally binding recognition of the responsibility of the international community for the respect of human rights. Although the Declaration of 1948 lacked a legally binding character, it set a standard of civilization²⁹ which could hardly be ignored by the states in view of the growing degree of their interdependency and of the increasing transparency of the political situations

29 Jack Donnelly, *Human Rights: A New Standard of Civilization?*, 74 *Int'l Aff.* 1 (1998).

within their confines. The international trials against German and Japanese war criminals in Nuremberg and Tokyo, respectively, after World War II deprived criminals who had committed genocide, mass destruction, and other heinous crimes of the shield of state sovereignty to protect them. The trials similarly established the principle of personal responsibility of the states' political leaders for the legality of their actions within the sphere of international relations.³⁰ Moreover, the covenants of 1966³¹ and other international treaties on human rights established mechanisms of implementation that rendered the obligations of the signatory states more operative. In 1993 and 1994, respectively, the Security Council established International Criminal Courts for Rwanda and the former Yugoslavia in order to bring perpetrators of genocide and other severe human rights violations committed to court, both to punish them and to deter potential criminal acts against the population. It is worth noting that the Security Council made use of its authority based on Chapter VII of the UN Charter which requires a threat to peace and international security in order to set up international courts. Obviously it regarded genocidal acts and other gross violations of human rights of the civilian population of these countries as grounds for international concern. The gradual re-interpretation of internal states of affairs as issues that affect the international community is most apparent in the Security Council's Resolution on Somalia.³² Here UN military intervention in a purely domestic situation of a country was justified.

IV. THE MULTIFACETED CHARACTER OF GLOBALIZATION

The legal procedures for the protection of human rights lie outside the scope of this article. Let it suffice to call attention to the general tendency towards the weakening of the sovereignty of individual states in this arena. Nations can no longer exercise unrestricted control over their populations. Their citizens have become the beneficiaries of concern and, to a certain degree, also of basic legal protection by the international community when their states either fail to protect them or are themselves the perpetrators of

30 Cf. M. Cherif Bassiouni, *From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court*, 10 Harv. Hum. Rts. J. 11 (1997).

31 International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, 993 U.N.T.S. 3.

32 U.N. Doc. S/RES/794.

violations of their basic rights. Bosnia, Rwanda, and Somalia are obvious cases of collective humanitarian intervention authorized by the UN.³³ Yet it is a matter of intense controversy among international lawyers and political scientists whether the UN Charter permits the use of military force against a sovereign state in order to protect the human rights of its population.³⁴ The unilateral military intervention of NATO in Yugoslavia for the purpose of protecting the human rights of the ethnic Kosovars against the cruel and systematic ethnic cleansing, mass expulsion, and mass murder by Serbian troops is even more controversial. While from a moral point of view, it is indubitable that a sovereign state that commits or tolerates acts of this kind has forfeited its right to the respect of its sovereignty, the legal question is unsettled. Some claim that the prohibition of the use of military force not authorized by the UN is a basic principle which safeguards international safety and peace and which, therefore, has to prevail even in a conflict in which human rights are being violated. Others maintain that peace and international security are severely disrupted if gross human rights violations occur that shock the situations; individual nations should then have the right to act unilaterally as *trustees* of the UN to protect the basic values of mankind. Whatever the merits of the various arguments, the recognition of human rights in international law mirrors a widespread distrust in the capacity or willingness of the ruling elite of many states to protect the basic rights of their citizens. And the debates regarding the admissibility of humanitarian intervention display fundamental changes in the basic tenets of international law.

At the end of the twentieth century, the fantasy of mankind as a moral community is becoming ever more real. Mankind is evolving into a social

33 Cf. Oliver Rambotham, *Humanitarian Intervention 1990-5: A Need to Reconceptualize?*, 23 Rev. Int'l Stud. 445 (1997).

34 Cf. Anthony C. Arend & Robert J. Beck, *International Law and the Use of Force* 112, 131 (1993); Mattias Falk, *The Legality of Humanitarian Intervention* 23 (1996); Stanley Hoffmann, *Sovereignty and the Ethics of Intervention*, in *The Ethics of Humanitarian Intervention* 12-37 (1996); Peter Malanczuk, *Humanitarian Intervention and the Legitimacy of the Use of Force* (1993); Sean D. Murphy, *Humanitarian Intervention. The United Nations in an Evolving Order* 42 (1996); Oliver Ramsbotham & Tom Woodhouse, *Humanitarian Intervention in Contemporary Conflict. A Reconceptualization* (1996); Nigel S. Rodley, *Collective Intervention to Protect Human Rights and Civilian Populations: The Legal Framework*, in *To Loose the Bands of Wickedness. International Intervention in Defence of Human Rights* 34 (1992); Richard B. Lillich, *Humanitarian Intervention and the United Nations* (1973); Fernando R. Tesón, *Humanitarian Intervention: An Inquiry into Law and Morality* (2d ed. 1997).

community that provides the moral community with the means to protect its moral principles through action. What is succinctly referred to as globalization includes manifold processes in the spheres of economics, politics, and culture, as well as many other areas in which the physical and the symbolic boundaries between states become increasingly less significant. Through mass communication, migration, financial transactions, sports events, scientific research, and cultural exchange, the nation-state has lost control as a sovereign actor. Whatever one may think of the metaphor of the global village, in the area of mass communication, a huge amount of knowledge and information as well as the cultural symbols that give them meaning have become global. Thus, the conduct of states is increasingly exposed to the critical scrutiny of a no longer virtual but real world public. It is not mere wishful thinking to understand the Charter of the United Nations as the constitution of an emerging world community.³⁵ In view of this development, the individual state's monopoly over domestic jurisdiction is becoming less enforceable. The Kantian idea that the violation of the dignity of a single human being is, at the same time, an attack upon the moral principles of mankind itself is about to acquire empirical verification.³⁶

Yet, this interpretation seems to be overly optimistic because it leaves the ambiguous character of globalization unaccounted for. We cannot and we must not equate globalization with universalization. Globalization is a process largely driven by anonymous market forces: a situation that causes a purely functional integration of national economies into one world economy.³⁷ Obviously the functional imperatives of the market are blind vis-à-vis moral standards and claims. By contrast, the concept of universalization aims at the ideal situation in which all human beings are able and willing to recognize each other as equals, which means that they are involved in a moral undertaking. Not only do globalization and universalization not mean the same thing; the former may even be hostile to the latter. The process of globalization renders territorial boundaries between states increasingly less significant. It undermines the power of governments to control transactions carried out by potent economic and financial actors. This has far-reaching social, political, and cultural consequences. The democratic nation-state of the twentieth century embodies a more or less stable equilibrium between

35 Bardo Fassbender, *The United Nations Charter as Constitution of the International Community*, 36 *Colum. J. Transnat'l L.* 529 (1998).

36 See the discussion of the Doctrine of Virtue in Kant, *supra* note 7, § 38, at 255.

37 See David Held, *Democracy and Globalization*, in *Re-imagining Political Community*. *Studies in Cosmopolitan Democracy* 11 (1998) [hereinafter *Re-imagining*].

the dynamics of the capitalist economy and institutions of mass democracy through which citizens can defend their basic rights against the inherently *unjust* and *immoral* forces that breed inequality. In the age of globalization this equilibrium seems undermined.

For should both the physical and the symbolic boundaries of the nation-state wear down, this would also mean a gradual disempowerment of the democratic polity and, consequently, of its citizens. History teaches us that the democratic state has been the most efficient promoter of the interests and rights of its citizens, in particular, of the rights to economic and social security.³⁸ Consequently, the decrease of the regulatory power of the nation-state through globalization will tend to weaken the protection of human rights if this disadvantage is not offset by new institutional devices. This then raises several questions: how significant will the role of national citizenship in the near future be? Are the concepts of world citizenship and global democracy viable responses to the challenges of globalization?³⁹ Is there a chance that the growing intensity of global interconnectedness and interdependency in more and more areas of human life will cause a kind of spill-over effect into the moral sphere? More generally: will the process of functional integration of different societal systems result in universalization of norms and values?

Empirical evidence does not yield unequivocal answers to these questions. On the one hand, unrestrained, international, economic, and financial transactions have triggered harsh competition among states, deepened the gap between developed and developing nations, and intensified the dependency of the governments of the developing countries upon the financial interests and conditions of big international financial institutions (the World Bank, the International Monetary Fund) as well as private capital funds. On the other hand, the number and intensity of transnational communication and actions that aim at improving the quality of life of

38 For the general role of statehood for the organization of social life, compare Hendrick Spruyt, *The Sovereign State and Its Competitors* (1994).

39 Fred Stewart, *Citizens of Planet Earth*, in *Citizenship* 65 (1991); see the essays of Daniele Archibugi, *Principles of Cosmopolitan Democracy*, in *Re-imagining*, *supra* note 37, at 198; David Beetham, *Human Rights as a Model for Cosmopolitan Democracy*, in *Re-imagining*, *supra* note 37, at 58; Derk Bienen et al., *Democracy and the United Nations System: Cosmopolitan and Communitarian Principles*, in *Re-imagining*, *supra* note 37, at 287; James Crawford & Susan Marks, *The Global Democracy Deficit: An Essay in International Law and Its Limits*, in *Re-imagining*, *supra* note 37, at 72; Held, *supra* note 37; James N. Rosenau, *Governance and Democracy in a Globalizing World*, in *Re-imagining*, *supra* note 37, at 28-57.

individuals and groups have also increased considerably. One significant indicator is the increase of international governmental organizations (IGOs) and international non-governmental organizations (INGOs) (eight-fold in the former case and twenty-six-fold in the latter case) between 1909 and 1989.⁴⁰ There is reason to assume that the increase has become even greater in the decade since the collapse of the Berlin Wall. Transnational networks have emerged in areas such as: sports, culture, environmental protection, health, reproduction, and the family. These may be viewed as incipient forms of a transnational civil society. Even in the military sphere, the core of nation-state action, changes are occurring. The traditional role of national armies in defending national territory has become largely obsolete; military actions are increasingly undertaken by international military units such as the blue helmets of the UN or military alliances that act on behalf of the international community. In sum, the universalization of moral standards and human rights is not a necessary result of globalization. However, there is a chance that the decline of the nation-state's regulatory power and the subsequent weakening of democratic rule may be compensated for. Perhaps a new arena of political action, fragmented and opaque as it may be, will evolve, in which transnational actors like NGOs, social movements, mass media, scholarly networks, and the like form a web of governance.⁴¹ This web may ultimately assume a key role in the protection of human rights. However, existing international law has not yet developed the concepts and institutions to support such a development.

Another difficulty further complicates the already complex and motley picture of the changing international sphere. Almost everywhere — in Europe, the United States, Asia, and the Near East — individuals and groups tend to insist on their own cultural, religious, ethnic, or national identities as members of specific communities. The concept of universally valid human rights is frequently challenged through the idea of multiculturalism. Through a multiculturalist lens, the assignment of universal human rights is viewed as an attack upon the unique identity of the individual person or society. Thus, functional globalization seems to be paralleled by moral particularism. Yet this is not necessarily the case. There are both functional and normative reasons why human rights universalism is likely to play an important role in a globalized world.

The functional reason is this: the paradox of modern particularism — the prevalence of "socially local practices"⁴² and the perseverance of

40 For exact statistical data, see Held, *supra* note 37, at 20.

41 See the analysis of Rosenau, *supra* note 39.

42 Steven Lukes, *Five Fables about Human Rights*, in *On Human Rights* 29 (1993).

identity — lies in the fact that localism, parochialism, and tribalism now take place before the eyes of the world. Localism claims recognition through the whole world. To put it pointedly, localism has become a universalist strategy. This requires codes of communication and social exchange that presuppose a minimal degree of mutual recognition; a kind of functional universalism which renders the many particularisms compatible with each other. The concept of rights is an appropriate medium for the realization of this objective, despite its rootedness in the European cultural context. Human rights address ubiquitous experiences of suffering, degradation, injury, cruelty, and arbitrariness⁴³ and may be capable of being understood in varying cultural, political, economic, and religious contexts. But there is also a normative reason for the necessity of universalist human rights in a globalized world. Today the quest for identity has become a cultural and political response to the imperatives of functional integration. Even cultural particularists, who struggle for recognition of their cultural particularity, do not communicate merely for functional reasons. Their quest for recognition is addressed to interlocutors in a moral community, because otherwise, reciprocity, which recognition presupposes, would not be possible. It is not only the speech community that constitutes a moral community,⁴⁴ but also the moral principles whose validity is presupposed in the other if I demand that he recognize my particularity. In other words, the particularist striving for identity needs the recognition of the other as a partner in a reciprocal undertaking. Clearly this other must not be an inferior to me, somebody who lacks dignity and qualities that make his recognition valuable to me.

CONCLUSION

To conclude, the declining role of the nation-state in the protection of human rights is neither unequivocally positive nor negative. We have not yet become entirely powerless and disenfranchised by the processes of globalization. Similarly, we do not yet live in an age in which the international community of humankind has replaced the nation-state and assumed the role of the patron of human rights. Today humankind includes two elements that, in the past, were separated from each other, namely, the concept of a universal moral community and the idea of a collectivity

43 *Cf. id.* at 30.

44 Jean-François Lyotard, *The Other's Rights, in On Human Rights*. The Oxford Amnesty Lectures 1993, at 139 (1993).

of individuals who are really connected to one another. These individuals share certain common experiences and are subject to common functional imperatives. They develop common normative principles in order to protect their cultural particularities against the seemingly irresistible trend towards functional globalization. Humankind is capable of assuming responsibility for guaranteeing human rights, probably for the first time in history. But contrary to the hopes of many universalists of the past, the implementation of human rights will not be accomplished through world government. It remains true that humankind is not a community, let alone a political community. Yet it is not exclusively a *pluriverse* of sovereign states either. The formerly almost impermeable boundaries among them have become porous, and this is likewise true of the states' control over the conditions of the lives of their people. The concept of citizenship, which has been inseparably connected with the notion of the nation-state, is undergoing considerable change. For instance, in the European Union, the emergence of the institution of supranational citizenship has given rise to the development of fragmented or multi-layered citizenships.⁴⁵ Mass immigration to many Western states has created increasingly more heterogeneous populations in terms of ethnicity, language, religion, and cultural traditions; this, too, has called the traditional concept of equal national citizenship into question.

On the other hand, in the international sphere, new private actors have emerged that influence the character of what we may call world society. Single individuals (George Soros, Ted Turner), private non-profit organizations (Greenpeace, Amnesty International), semi-public institutions (the European Youth Forum), private and public mass communication services (CNN, the BBC), and transnational companies all contribute to the shaping of a world in which the sovereign state has lost its monopoly on power and influence.⁴⁶ The Brent Spar campaign of Greenpeace⁴⁷ is a prominent example of this. Although similar efforts by Amnesty International have as yet failed to be equally successful, it is beyond question that they have some influence on governments if they succeed in arousing a world conscience.

We are witnessing the emergence of a global civil society that quite

45 Cf. Ulrich K. Preuss, *The Relevance of the Concept of Citizenship for the Political and Constitutional Development of the EU*, in *European Citizenship, Multiculturalism, and the State* 11 (1998).

46 Thilo Bode, *Weltvolk probt Aufstand. Organisierter Umweltschutz als Nährboden der Demokratie*, *Frankfurter Allgemeine Zeitung*, Dec. 31, 1998, at 46.

47 See Gwen Prins & Elizabeth Sellwood, *Global Security Problems and the Challenge to Democratic Process*, in *Re-imagining*, *supra* note 37, at 252.

easily ignores physical boundaries between states and thus undermines traditional state sovereignty. This civil society lacks institutional coherence and cannot replace the realm of international relations among states. Yet it complements this realm and has become the contemporary form of humankind. The appropriate concept for the understanding of its institutional property is not government in the sense of a particular governing power, but rather governance. Governance embodies the plurality of largely spontaneous, decentralized, autonomous, interactive and, frequently, non-profit corporations, firms, local groups, civic initiatives, and similar associations. They are not necessarily associated with any particular nation, and they participate in the ordering of an increasingly complex world in which states are but one category of agents, albeit an important one. Transnational governance is an incipient form of institutional cohesion that has the power to connect human rights to humanity in more than a merely metaphorical sense. There are many reasons to be confident that transnational civil society will continue to develop the moral authority that will enable mankind to guarantee the enforcement of the human rights whose absence was lamented by Hannah Arendt and Raymond Aron. If we succeed in developing the appropriate concepts and institutions, the method applied in Kosovo — military intervention to protect human rights through the destruction of a country's civil infrastructure — will belong to an age that future generations may see as one of transition; one that leads to an era of universal civilization.