

JC
599.
A36
H86
1990

Human Rights in Africa

Cross-Cultural Perspectives

Abdullahi Ahmed An-Na'im
Francis M. Deng
editors

The Brookings Institution
Washington, D.C.

EMORY UNIVERSITY

APR 29 1992

LAW LIBRARY

Copyright © 1990 by

THE BROOKINGS INSTITUTION

1775 Massachusetts Avenue, N.W., Washington, D.C. 20036

Library of Congress Cataloging-in-publication data:

Human rights in Africa: cross-cultural perspectives / Abdullahi Ahmed An-Na'im and Francis Deng, editors.

p. cm.

Includes index.

ISBN 0-8157-1796-2 (alk. paper). ISBN 0-8157-1795-4 (pbk.: alk. paper)

1. Human rights—Africa. 2. Human rights—Cross-cultural studies. I. Na'im, Abd Allāh Aḥmad, 1946—. II. Deng, Francis Mading, 1938—.

JC599.A36H86 1990

323'.096—dc20

90-37742

CIP

9 8 7 6 5 4 3 2 1

The paper used in this publication meets the minimum requirements of the American National Standard for Information Sciences—Permanence of Paper for Printed Library Materials, ANSI Z39.48-1984.

Set in Linotronic Meridien

Composition by Graphic Composition, Inc.

Athens, Georgia

Printing by R. R. Donnelley and Sons Co.

Harrisonburg, Virginia

Book design by Ken Sabol

CHAPTER THIRTEEN

Problems of Universal Cultural Legitimacy for Human Rights

Abdullahi Ahmed An-Na'im

IT IS COMMONPLACE now to decry the unacceptable discrepancy between the theory and practice of human rights. Despite the existence of elaborate and enlightened international standards of human rights for several decades, and despite the rhetoric of strong commitment to these standards by governments, which are often supported in or pressured into such commitment by an increasing number of nongovernmental organizations and groups, we continue to witness gross violations of human rights in all parts of the world. If we are to reduce this unacceptable discrepancy and promote and ensure greater respect for the full range of human rights throughout the world, then we must understand and combat not only the immediate causes of the discrepancy but also the underlying factors that contribute to it.

For example, it is often stated that the discrepancy between the theory and practice of human rights results inevitably from ineffective implementation and enforcement procedures under the international human rights instruments. This explanation begs the question—namely, why has the implementation and enforcement process lagged behind the standard-setting achievements?

Other explanations for the discrepancy point to the tendency of official authorities to resist accountability in general, and to resent accountability to external entities as inconsistent with national sovereignty and self-determination. Those in power clearly would prefer to have a free hand to implement their own view of the common good, if not to manipulate power to their own advantage. To avoid accepting this state of

I am grateful to Professor Ken Norman for useful comments on a draft of this chapter. I also wish to acknowledge the research assistance and helpful comments of Charmaine Spencer.

affairs as a fait accompli, those in power must be induced to accept internal and external accountability in the interest of implementing and enforcing human rights standards.

Some observers base the discrepancy between human rights theory and practice on the political, social, and economic processes within a given country. Once again, however, the question remains how to adjust or transform the relevant political, social, and economic processes and relationships within a given community so as to promote greater compliance with human rights standards.

Whatever the reason one accepts as the cause of the discrepancy between the theory and practice of human rights, a more positive element needs to be injected into the reform process if this discrepancy is to be reduced. The cultural legitimacy of the full range of human rights standards must be developed—that is, the concern for human rights as they figure in the standards of many different cultures should be enhanced. In particular, I believe it would be useful to challenge representations of some human rights as lacking genuine cultural legitimacy within a given sociological system.

Enhancing the cultural legitimacy for a given human right should mobilize political forces within a community, inducing those in power to accept accountability for the implementation or enforcement of that right. With internal cultural legitimacy, those in power could no longer argue that national sovereignty is demeaned through compliance with standards set for the particular human right as an external value. Compliance with human rights standards would be seen as a legitimate exercise of national sovereignty and not as an external limitation. The continuing processes of change and adjustment of political, social, and economic relationships within a community mean that internal changes can be made to accommodate a given human right, if that right is shown to be legitimate within the culture of the particular community.

The nature and role of cultural legitimacy will be discussed later in this chapter. The term *culture* is used here in its broadest sense of "totality of values, institutions and forms of behaviour transmitted within a society, as well as the material goods produced by man [and woman]. . . . [T]his wide concept of culture covers *Weltanschauung*, ideologies and cognitive behaviour."¹ If, within a given cultural tradition, a certain

1. Roy Preiswerk, "The Place of Intercultural Relations in the Study of International Relations," *Year Book of World Affairs*, vol. 32 (1978), p. 251. On the different senses in

human value or need is believed to be fundamental and is accorded or guaranteed to every human being, then that value has cultural legitimacy. Many factors and forces influence the formulation and content of a purported human right. However, it seems that a necessary prerequisite for a human right is that individuals accept its underlying validity. After all, individual convictions and motivations shape and propel action whether favoring or resisting the recognition and implementation of the claim as a human right. Institutional actors or economic and social forces may appear to be the immediate causes of the result of efforts to recognize and implement a claim as a human right. But in the final analysis institutions emerge from the interaction of individuals; economic and social forces are also the expression of the interests of individuals.

This chapter argues that the difficulties in implementing established human rights effectively, and in recognizing other claims and interests as human rights and implementing them also, derive from the insufficiency of cultural support for the particular right or claim. Culture mediates power and acts as the framework within which self-interest is defined and realized in any community. Cultural legitimacy, moreover, cannot be deduced or assumed from the mere fact of official recognition of the claim as a human right in existing formal documents. As explained later, the process through which the current international human rights standards were formulated and adopted did not address issues of cultural legitimacy in relation to most of the cultural traditions of the world.

To address this fundamental need for universal cultural legitimacy as the basis for international efforts to protect and promote human rights, this chapter begins with a brief explanation of the notion of cultural legitimacy and its impact on public policy and action in relation to human rights. The second section of the chapter reviews the beginning and subsequent stages of modern international efforts to protect and promote human rights in order to assess the nature and quality of such concern with cultural legitimacy as was displayed during those formative and subsequent stages. The third section focuses on the Islamic tradition to illustrate a working model for assessing and enhancing the cultural legitimacy of human rights within indigenous cultural tradi-

which the term *culture* is used, see T. S. Eliot, *Notes towards the Definition of Culture* (Harcourt, Brace, 1949); and Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (Oxford University Press, 1976), pp. 76-82.

tions. The possibilities and problems of using the processes of cultural dynamics and change in support of universal standards of human rights are discussed in the final section.

On the Nature and Role of Cultural Legitimacy

Many definitions of *culture* in the wider sense adopted here are found in anthropological or sociological literature, some emphasizing social heritage, others stressing shared ideas or shared (standardized) behavior, and so on.² According to one source, culture can generally be seen to comprise the "inherited artifacts, goods, technical processes, ideas, habits, and values" of society, which endow human beings "with an additional extension of [their] anatomical apparatus, with a protective armor of defenses and safeguards, and with mobility and speed." Culture is the cumulative creation of human beings, which "transforms individuals into organized groups and gives these [groups] an almost indefinite continuity."³

A more recent approach to the study of culture presents it in terms of symbols and meanings.⁴ Geertz, for example, defines culture as "an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men [and women] communicate, perpetuate, and develop their knowledge about and attitudes toward life."⁵ The proponents of this approach within a number of disciplines would challenge the assumption of the behaviorists who maintain that most things about people—personality, culture, and language—can be understood as a complex of stimulus and response connections, or patterns of behavior.⁶ Instead, they view culture as shared information or knowledge encoded in systems of symbols.

2. For a critique of some of these anthropological definitions, see Albert Carl Cafagna, "A Formal Analysis of Definitions of 'Culture,'" in Gertrude E. Dole and Robert L. Carneiro, eds., *Essays in the Science of Culture: In Honor of Leslie A. White* (Thomas Y. Crowell, 1960), pp. 111–32; and A. L. Kroeber and Clyde Kluckhohn, *Culture: A Critical Review of Concepts and Definitions* (Vintage Books, 1963).

3. Bronislaw Malinowski, "Culture," in *Encyclopaedia of the Social Sciences*, vol. 4 (Macmillan, 1931), pp. 621–45.

4. See generally, Richard A. Shweder and Robert A. Levine, eds., *Culture Theory: Essays on Mind, Self, and Emotion* (Cambridge University Press, 1984).

5. Clifford Geertz, *The Interpretation of Cultures: Selected Essays* (Basic Books, 1973), p. 89.

6. Roy G. D'Andrade, "Cultural Meaning Systems," in Shweder and Levine, eds., *Culture Theory*, p. 89.

In the context of international relations, Preiswerk has identified four conceptual levels of culture:

Conceptually, we can differentiate between at least four levels of culture: (1) *micro-culture* can be used to describe the particularity of smaller units such as tribes, minorities, village communities, social classes and sub-cultures; (2) one speaks of *national culture*, a very frequently used expression (e.g. "French culture"), mostly in the narrow sense of artistic and intellectual creation. But, insofar as the nationals of a country, despite differentiated micro-cultures, have certain common values, institutions and forms of behavior, one can here also speak of culture in the broad sense; (3) the cultural particularity of a nation is limited to specific cultural characteristics; in other respects it is part of a wider cultural area in so far as it shares other characteristics with neighbouring nations within a *regional culture*; (4) beyond this level one can speak, in the broadest sense, of *macro-culture* to describe characteristics which are common to a number of cultures despite local, national and regional differences.⁷

Cultural legitimacy for human rights might be sought at all these levels and certainly should be discussed in relation to all societies. No society, regardless of material development, has yet been able to demonstrate that it is capable of sustaining the full range of human rights envisaged by the United Nations' International Bill of Human Rights. This failing is particularly true with regard to the so-called third-generation rights, such as a right to development, a right to peace, and a right to the protection of the environment.⁸ In other words, the scope and significance of culture should be understood in the broadest sense, with a view to applying the proposed analysis to Western liberal and Marxist societies as well as to societies of the developing world.

It may be argued that this definition of culture is too broad. This would be a valid objection if it is suggested that culture is everything. What is suggested is that there is a cultural dimension to every aspect

7. Preiswerk, "Place of Intercultural Relations," p. 252.

8. The term "third generation rights" was coined to refer to these collective or solidarity rights; civil and political rights are considered "first generation rights," and economic, social, and cultural rights are second generation rights. See, for example, Stephen P. Marks, "Emerging Human Rights: A New Generation for the 1980s?" in Richard Falk, Friedrich Kratochwil, and Saul H. Mendlovitz, eds., *International Law: A Contemporary Perspective*, Studies on a Just World Order, 2 (Boulder, Colo.: Westview Press, 1985), pp. 501-13.

of human consciousness and activity. I understand the phrase quoted earlier, "this wide concept of culture covers *Weltanschauung*, ideologies and cognitive behaviour," to mean that these aspects of human consciousness and activity are anchored in cultural norms and institutions.

Like the term *culture*, the term *legitimacy* can be defined in different ways for different purposes. In relation to the present discussion, legitimacy is the quality or state of being in conformity with recognized principles or accepted rules and standards. Cultural legitimacy may be defined as the quality or state of being in conformity with recognized principles or accepted rules and standards of a given culture.

The prime feature underlying cultural legitimacy is the authority and reverence derived from internal validity. A culturally legitimate norm or value is respected and observed by the members of the particular culture, presumably because it is assumed to bring satisfaction to those members. Because there may be conflicts and tensions between various competing conceptions of individual and collective satisfaction, there is constant change and adjustment of the norms or values in any culture which are accorded respect and observance. Such change and adjustment appears related to prevailing perceptions of whether a specific normative behavior does or does not bring sufficient satisfaction to warrant its continuation.

Cultural Legitimacy and Public Policy and Action

The interdependence and essential compatibility of the individual and society underlie the relationship between cultural legitimacy and public action and policy. As correctly observed by Ruth Benedict:

Society . . . is never an entity separable from the individuals who compose it. No individual can arrive even at the threshold of his potentialities without a culture in which he participates. Conversely, no civilization has in it any element which in the last analysis is not the contribution of an individual. Where else could any trait come from except from the behaviour of a man or a woman or a child?⁹

This suggests two interconnected propositions. Every society is dependent on individual members for the development of its institutions,

9. Ruth Benedict, *Patterns of Culture* (Houghton Mifflin, 1959), p. 253. Alexander Goldenweiser expressed the same notion in *History, Psychology, and Culture* (Gloucester, Mass.: Peter Smith, 1968), p. 59.

norms, values, and action. Each individual is also dependent on society for his or her very existence and for the prospects of realizing a meaningful and gratifying life.

This fundamental interdependence and compatibility does not suggest, however, that there is no tension between individuals and their society. Although there is an overlap between individual perceptions of norms, values, and institutions, these perceptions are by no means identical. The degree of incompatibility and tension varies from person to person, and often between one stage and another in the life of the same person. Although most people find it possible to conform, or are pressured into conforming, with prevailing attitudes and behavioral patterns, others fail or refuse to do so. Depending on many factors, including the personal endowments of the individual and the susceptibility of the culture to change under the particular circumstances, "deviant" individuals may either succeed in bringing about change that favors their perspectives or be branded as abnormal, even psychopathic.¹⁰ Society's great reformers as well as its psychopaths are manifestations of this creative tension.

In addition, society may retrospectively perceive change as positive and beneficial, but such changes can be perceived initially as negative and detrimental by the carriers or guardians of the previous order. In a contemporary debate over social change, appreciating this point enables each side to understand and deal with the other's point of view. Both proponents and opponents of social change are not necessarily malicious, deviant, or reactionary people. Whereas the proponents of change may serve the legitimate needs of their evolving society, opponents may serve the needs of the same society by resisting change until the case for it has been made. These and other elements of the dynamics of cultural change are discussed later in the context of analyzing how a given norm or value attains cultural legitimacy and influences public policy and action.

Cultural norms are not the only determinants of behavior.¹¹ Cultural habits are conceptualized as ideal norms or patterns of behavior. Since a person behaves in response to his or her perception of the total situa-

10. See Benedict, *Patterns of Culture*, pp. 254-78.

11. Melford E. Spiro, "Some Reflections on Cultural Determinism and Relativism with Special Reference to Emotion and Reason," in Shweder and LeVine, eds., *Culture Theory*, p. 323. See the assumptions underlying cross-cultural studies summarized later in this chapter.

tion, including physical stimuli and psychological factors such as the degree of the person's identification with the cultural model, actual behavior may not necessarily coincide with the ideal norms or patterns of behavior.

Given the individual's dependence on society, and society's formidable capacity to instill or enforce conformity in its members, public policy and action are more likely to accord with ideal cultural norms and patterns of behavior than private action. Whereas the individual may succumb to deviant impulses and drives in private, and may even consider rebellion against the established ideal, open deviance and rebellion are rare. The powerful force of conforming to the established ideal is illustrated by the fact that most people seek to keep their deviant behavior and views secret and, if discovered, try to explain them as temporary lapses in judgment rather than as a deliberate rejection of the ideal norm or pattern of behavior. Even the few who choose to come out in open revolt, whether or not they claim a commitment to an alternative model, would normally attempt to explain or rationalize their position as reflecting a more genuine commitment to the ideals of society, or as resulting from a reinterpretation of those ideals.

Open and systematic nonconformity gravely threatens those in authority over the society—the ruling class or group that over time comes to have a vested interest in the status quo. Using the powers explicitly or implicitly vested in them by society, these people will naturally seek to suppress nonconforming behavior, often in the name of preserving the stability and vital interests of society at large. In other words, the self-interest of those in power in political, economic, religious, or other spheres, who claim a monopoly over the determination of what is in the public good, tends to shape public policy and action in terms of the cultural ideal.

This analysis emphasizes the desirability of seeking the support of the cultural ideal for any proposition of public policy and action, especially for the protection and promotion of human rights. Whether the rights are individual or collective, civil and political, or economic, social, and cultural, their protection requires mobilizing and harnessing the relevant resources of society. That is more likely to be achieved, and more likely to achieve the desired objectives, if the purpose is seen to be consistent with cultural ideals. Because individual action is the ultimate resource at the disposal of any society, it is vital to motivate people to act in favor of a given human right. Such motivation involves a mental attitude that accepts the particular human right as worth working for.

This may require discarding or modifying previously held attitudes or perceptions in order to create or discover new ones.

Basic to this hypothesis is the proposition that all cultural positions have some problems with some human rights, yet where this is so, it is probable that an *internal* value or norm can be used to develop or supplement the cultural legitimacy of any given human right. The goal is to adopt an approach that realistically identifies the lack of cultural support for some human rights and then seeks ways to support and legitimize the particular human right in terms of the values, norms, and processes of change belonging to the relevant cultural tradition.

Cultural Relativism and the Universality of Human Rights

The controversy among anthropologists over cultural relativism can be used to clarify the implications of the need to provide cultural legitimacy for human rights advocated in this chapter. Many scholars have recognized that our perception of the world is conditioned by our pre-existing conceptual categories. Although this generally accepted proposition applies to many facets of life, such as perceptions of beauty, I am concerned here with its ethical implications. Although it may therefore be more appropriate to use the term *ethical relativism*,¹² I use the term *cultural relativism* because it is commonly used in the field with specific reference to ethical issues.

Emphasis on cultural relativism in modern anthropological literature evolved as a reaction against cultural evolutionism—that is to say, the view that human societies tend to progress from “primitive” or “savage” to “modern.” With their Eurocentric disposition, nineteenth-century anthropologists ranked Western societies highest and made Western values the standards of their universal model for the “evolution” of societies. Cultural relativism was introduced to combat these Eurocentric and racist notions of progress.¹³

Although there are various formulations of cultural relativism, some perceived to be problematical,¹⁴ the basic thrust of the theory is clear and very useful. “It is aimed at getting people to admit that although it

12. See Alison Dundes Renteln, “Relativism and the Search for Human Rights,” *American Anthropologist*, vol. 90, no. 1 (1988), p. 59.

13. George W. Stocking, Jr., *Race, Culture, and Evolution: Essays in the History of Anthropology* (Free Press, 1968), pp. 115–17; and Melford E. Spiro, “Culture and Human Nature,” in George Spindler, ed., *The Making of Psychological Anthropology* (University of California Press, 1978), p. 336.

14. Renteln, “Relativism and the Search for Human Rights,” pp. 58–62.

may seem to them that their moral principles are self-evidently true, and hence seem to be grounds for passing judgment on other peoples, in fact the self-evidence of these principles is a kind of illusion."¹⁵ According to its strongest proponents, cultural relativism acknowledges the equal validity of diverse patterns of life, and lays "stress on the dignity inherent in every body of custom, and on the need for tolerance of conventions though they may differ from one's own."¹⁶

The critics of cultural relativism perceive it as undermining the ability to condemn repressive practices in other countries that are sanctioned by the particular culture.¹⁷ For example, some scholars have charged that relativism provides a notion that can be used to justify slavery and genocide.¹⁸

There is certainly substance to this criticism if one believes cultural relativism implies the complete tolerance of all norms and practices sanctioned by the respective cultures. But some scholars have argued that cultural relativism does not logically entail tolerance, and could entail intolerance.¹⁹ In other words, tolerance of diverse moral practices may be part of a particular culture rather than a necessary consequence of cultural relativism. "It is not the theory of relativism that makes tolerance supreme," Alison Renteln suggested, "but rather the uncritical acceptance of this value by Americans."²⁰ Although aware that cross-cultural criticism is weakened by being more or less ethnocentric, a relativist may still criticize what violates his or her deeply held beliefs.²¹ Despite its ethnocentricity, criticism can be effective in bringing various economic and political pressures to bear on the "offending" culture. In this respect, I agree with Renteln when she says:

15. John Cook, "Cultural Relativism as an Ethnocentric Notion," in Rodger Beehler and Alan R. Drengson, eds., *The Philosophy of Society* (London: Methuen, 1978), p. 294.

16. Melville J. Herskovits, *Man and His Works: The Science of Cultural Anthropology* (Knopf, 1948), p. 76.

17. Barry Barnes and David Bloor, "Relativism, Rationalism and the Sociology of Knowledge," in Martin Hollis and Steven Lukes, eds., *Rationality and Relativism* (MIT Press, 1982), pp. 21, 47; and Elvin Hatch, *Culture and Morality: The Relativity of Values in Anthropology* (Columbia University Press, 1983), p. 12.

18. Frank E. Hartung, "Cultural Relativity and Moral Judgments," *Philosophy of Science*, vol. 21 (1954), pp. 122-23.

19. Robert Redfield, *The Primitive World and Its Transformations* (Cornell University Press, 1953), pp. 146-47.

20. Renteln, "Relativism and the Search for Human Rights," p. 63.

21. David Bidney, "The Concept of Value in Modern Anthropology," in A. L. Kroeber, ed., *Anthropology Today: An Encyclopedic Inventory* (University of Chicago Press, 1953), p. 698.

Although it is appropriate to draw a distinction between criticisms corresponding to internal standards, on the one hand, and external ones, on the other, the theory of relativism blocks neither. It says nothing about the desirability of social criticism. It holds that every society will utilize its own standards. Sometimes there will be a fundamental conflict among the various standards, and sometimes there will be convergence or consensus on standards. What one makes of the conflicting or consensual standards depends not on relativism but on the role one wishes to play in the international community. There is nothing in the theory of relativism that requires one posture as opposed to another.²²

Moreover, insofar as criticism is based on values accepted by a wide range of cultures, the charge of ethnocentricity is weakened, especially if it can be shown that such criticism is based, even indirectly, on values or norms accepted by the culture being criticized. This would seem to recommend the sort of cross-cultural search for universal human values in support of universal human rights advocated here.

One may ask, why should a proponent of one cultural view accept a judgment of the majority of other cultures? Insofar as a person believes in the validity of a norm, that person is unlikely to accept an opposing norm: the more strongly we believe in our values, the less likely we are to tolerate the values of others.

In response to this point, there appears to be a universal rational principle to the effect that strong evidence of a contrary view should induce a person to reexamine her or his position. In my own culture of northern Sudan, this notion is expressed in this maxim: if two people tell you that your head is missing, you better check to see if it is still there. In other words, the more widely our positions are challenged by others, the more likely we are to reconsider those positions.

As for the dangers of excessive cultural relativism, it is extremely unlikely that any culture will condone an inhumane practice. This may be an article of faith, but it is one worth having. Moreover, probably any inhumane practice that may persist within a given culture can be challenged by an alternative interpretation of the underlying cultural norms. Unless we take this article of faith seriously by looking for its empirical verification, we would prematurely condemn the human experience on this planet to catastrophic failure.

22. Renteln, "Relativism and the Search for Human Rights," p. 64.

As correctly stated by Jack Donnelly, "the problem of cultural relativism and universal human rights cannot be reduced to an either-or choice. Claims of cultural relativism show a great diversity in meaning, substance, and importance."²³ Accordingly, he suggests that a "weak" cultural relativist position may be justified, primarily at the level of form and interpretation, without violating the essential universality of human rights. For example, a weak cultural relativist position would accept a certain degree of practices as legitimate *interpretations* of "the right to political participation," while it would reject other practices as illegitimate and as amounting to a complete denial of the right.²⁴

Arguing in terms of the general values sought to be protected by human rights today, and the relative universality of "human nature," Donnelly asserts that basic human rights must at least initially be assumed to be similarly universal. His review of the provisions of the Universal Declaration of Human Rights and the two covenants seems to support this proposition. However, some of the rights recognized by the declaration and covenants may be viewed as "interpretations" or "forms" with which some cultures may differ without necessarily denying universal human rights.²⁵

Donnelly proposed the following test for assessing claims of cultural relativism:

Rights are formulated with certain basic violations, or threats to human dignity, in mind. Therefore, the easiest way to overcome the presumption of universality for a widely recognized human right is to demonstrate either that the anticipated violation is not standard in that society, that the value is (justifiably) not considered basic in that society, or that it is protected by an alternative mechanism. In other words, one would have to show that the underlying cultural vision of human nature or society is both morally defensible and incompatible

23. Jack Donnelly, "Cultural Relativism and Universal Human Rights," *Human Rights Quarterly*, vol. 6 (November 1984), p. 410.

24. Donnelly, "Cultural Relativism," p. 408.

25. Donnelly, "Cultural Relativism," pp. 414-18. The two covenants are the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights. Donnelly quotes the "right of free and full consent of intending spouses" under the declaration, and the requirement of segregation of juvenile defendants under the civil and political rights covenant. Since the first right reflects a specific cultural interpretation of marriage, and since the very notion of a juvenile criminal defendant does not exist in many cultures, his version of weak relativism would exclude these rights from the universal scope of human rights.

ible with the implementation of the "universal" human right in question. I would argue that such a test can be met only rarely today, and that permissible exceptions usually are relatively minor and generally consistent with the basic thrust of the Universal Declaration.²⁶

In my view, two main conclusions are warranted by the preceding analysis. First, as a manifestation of the right to self-determination and as a safeguard against the dangers of ethnocentrism, the theory of cultural relativism provides a good approach to cross-cultural evaluations without necessarily undermining our ability to criticize and condemn repressive or morally abhorrent practices. Cultural relativism does not necessarily require allowing cultures total autonomy in accepting a given human right as culturally legitimate or rejecting it as culturally illegitimate. As I argue elsewhere, the basic premise of international efforts to protect and promote human rights is the belief that there are limits on cultural relativism.²⁷ What I find to be at issue, however, is the manner in which outsiders can challenge practices that they deem to be in violation of human rights.

Second, cross-cultural evaluations, which are unavoidable for any international effort to protect and promote human rights, are most effective when based on universal human values. The more it can be shown that a particular human right is based on a value or norm accepted by the widest range of cultural traditions, the less our efforts to protect and promote that right will be open to charges of ethnocentricity or cultural imperialism.

Adda Bozeman argues that "ideas . . . are not transferable in their authenticity . . . [and] in the final analysis cultures are different because they are associated with different modes of thought."²⁸ According to Bozeman, given the difficulty and complexity of perceiving the other in his authenticity, "cross-cultural communications lead to misunderstandings by virtue of their very nature" (p. 27). Although intended to challenge the tenability of international law, Bozeman's thesis has obvious implications for international efforts to protect and promote human rights. In fact, she states expressly in her conclusion:

26. Donnelly, "Cultural Relativism," p. 417.

27. Abdullahi A. An-Na'im, "Religious Minorities under Islamic Law and the Limits of Cultural Relativism," *Human Rights Quarterly*, vol. 9 (February 1987), pp. 1-18.

28. Adda B. Bozeman, *The Future of Law in a Multicultural World* (Princeton University Press, 1971), p. 14. Bozeman's heavy bias against non-Western traditions is revealed very early in her book.

Present efforts aiming at an extension of international law to the sphere of individual life by drafting, for example, universally valid covenants of human rights, appear in this perspective to be exercises in futility—all the more so as most non-Western governments are not constrained by locally dominant moral orders to assure respect for individual liberties within their respective local jurisdictions [pp. 183–84].

It is interesting to note that Bozeman's conception of human rights as exclusively "individual liberties" betrays the reality of her Western ethnocentricity despite the pretense of an effort toward universalism. In her introduction she states that "European peoples escaped the restrictions which came to bind societies in China, India, the Near East, and Africa because they have been continuously responsive to the unsettling forces emanating from biography . . . among them most particularly the commitment to cultivate rational yet daring thought" (p. xv). Nevertheless, I concede the element of truth in what she says but from a constructive perspective. I would take the difficulty and complexity of perceiving the other in his or her authenticity, and the consequent dangers of misunderstanding, as guidelines in searching for cross-cultural support for human rights, and international law in general, rather than as reasons for abandoning the effort. The moral imperative and the practical need for upholding the rule of law in international relations, and protecting and promoting human rights in particular, are too strong to abandon merely because of the complexity and difficulty of the effort. Moreover, each person should work from within her or his own culture precisely in order to avoid the dangers of misunderstanding.

It should be emphasized, however, that in advocating the search for cross-cultural support for human rights, I am not suggesting that universal human rights are only those expressly articulated or overtly supported by existing cultural traditions. I do not believe that universal human rights can only be justified in terms of the least common denominator among the cultural traditions of the world. In my view, human rights should be based on the inherent dignity and integrity of every human being. Cross-cultural studies can be helpful from both substantive and tactical points of view. From a substantive point of view, cross-cultural studies can help to discover the actual content and necessary implications of the inherent dignity and integrity of the human being. It is vital to do this without violating the paramount human right of self-determination by imposing external standards. From a tactical

point of view, cross-cultural support for human rights helps to gain legitimacy and efficacy for national as well as international efforts to protect and promote human rights.

It may be necessary, failing internal reinterpretation, to appeal to external standards in order to uphold fundamental human rights against inhumane or seriously objectionable practices sanctioned by any culture. Although this endeavor should not be undertaken lightly, its possibility is the ultimate safeguard against the excesses of cultural relativism. The obvious question here is the criteria by which a given practice may be judged inhumane or seriously objectionable for the purposes of justifying appeal to external standards. In my view, the proper criterion is what may be called the principle of *reciprocity*—namely, that one should not tolerate for another person any treatment that one would not accept for oneself. Placing oneself in the position of the other person, one is able to see if he or she would find the treatment to which the other person is subjected inhumane or seriously objectionable.

In placing oneself in the position of the other, one should not impose one's own perceptions on the other's position. For example, it should not be open to a Muslim to say that since he accepts for himself to be subject to the application of Islamic law (*shari'a*), he would conform with the principle of reciprocity in imposing *shari'a* on non-Muslims. In this context, the principle of reciprocity means that since Muslims would demand the right to decide what law should apply to them, and would not accept being subjected to the religious law of non-Muslims, they should grant the same right to non-Muslims.

As usual, there are clear or strong cases and marginal or weak ones. Whereas appeal to external standards to prevent a culture from sanctioning torture or slavery would be universally accepted as justified and proper, that may not yet be true of some aspects of equality for women. However, to recall that even torture and slavery were not accepted as justification for outside intervention a few decades ago is to appreciate that the scope of protection is expanding. Applying the principle of reciprocity, one can see that as more and more men are faced with the normative imperative of not tolerating for others what they would not accept for themselves, consensus on complete equality for women will grow. In other words, men can be made to concede that women are entitled to the same status and rights men would demand for themselves if they were women. The same normative imperative applies to the status and rights of ethnic, religious, and linguistic minorities and other victims of human rights violations.

Cultural Legitimacy in the Formulation of Current Standards

The degree and quality of concern with cultural legitimacy in the formulation and adoption of current international human rights instruments have been determined by several factors. One is the nature and content of traditional international law as the formal framework for international action generally, including the field of human rights. Another is the reality of national and international relations and differential levels of development, which affect the capacity of participants to articulate an effective cultural perspective in the process of drafting and adopting human rights standards.

This second factor manifests itself in many ways. For example, in an early study on the history and evolution of human rights prepared by the UN Secretariat in 1947, the accessibility of Western perspectives and the presumed inaccessibility of non-Western perspectives were determining elements in excluding the latter.²⁹ The authors of that study decided to exclude material prior to the Middle Ages because they felt it would be too difficult to go back to antiquity. In doing so, however, they effectively excluded much of the civilizations of African and Asian peoples. Even for its limited time frame, the twelfth to the eighteenth centuries, the study focused on Europe, especially England, because this focus was thought to be particularly interesting and to provide "solid" information. Thus the lack of articulation of non-Western perspectives in manners and languages accessible to officials of the United Nations led to the exclusion of those perspectives at the earliest stages of consultation and conceptualization of human rights.

Related to this factor are the nature and quality of the representation of non-Western countries at the international forums where decisions on international human rights standards and the machinery for their implementation were made. As I suggest later, it seems that the "representatives" of non-Western countries may have been more representative of Western cultural perspectives than of their own. Moreover, different levels of material development may have retarded the efforts of peoples in the developing countries to articulate indigenous cultural perspectives on human rights at home and communicate those perspectives at the international level. Peoples of the developing world lacked both clear articulations of their perspectives and the material resources

29. United Nations, Commission on Human Rights, Second Session, E/CN.4/30 (November 12, 1947).

to contribute significantly to the formulation of the International Bill of Human Rights.

International Law and the Realities of International Relations

Since international efforts for the promotion and protection of human rights were undertaken through either international treaties or state action at the international level, or within established international organizations, it is necessary to consider relevant aspects of international law and relations to assess their effect on the concern with cultural legitimacy during the formulation and adoption of international human rights instruments.³⁰ In this regard, the primary consideration is that traditional international law recognizes states and organizations of states as its only subjects. In other words, the only entities that have the capacity to acquire rights and obligations under traditional international law are states and organizations of states. Although recent developments support the view that individuals may also acquire some rights and obligations under international law, such rights and obligations have thus far been exclusively enforced through the medium of states.³¹

In accordance with the primary role of states under international law, all *legal* international action, including action in the field of human rights, tends to take the form of communications, agreements, and other actions by a state in relation to other states. Even in political, diplomatic, economic, and other spheres, the state format continues to influence the options and efficacy of action. Private or nonofficial forces within society often have their effect on international action, but mostly through the medium of the national state or through appeals and pressure on other states.³² The principles and rules of international law on

30. See generally, Robert W. Tucker, *The Inequality of Nations* (Basic Books, 1977); Charles R. Beitz, *Political Theory and International Relations* (Princeton University Press, 1979); M. Donelan, ed., *The Reason of States* (London: Allen and Unwin, 1979); and Stanley Hoffman, *Duties beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse University Press, 1981).

31. Rosalyn Higgins has argued convincingly that there is no conceptual reason to prevent individuals from being subjects of international law. "Conceptual Thinking about the Individual in International Law," in Falk, Kratochwil, and Mendlovitz, eds., *International Law*, pp. 476-94. Nevertheless, it is still correct to say that individuals are not subjects of international law in the traditional sense of the term.

32. International nongovernmental organizations, such as the International Committee of the Red Cross and Amnesty International, operate through contacts with government officials.

the formulation, interpretation, and enforcement of international treaties are of fundamental importance for human rights, not only because of the central role of treaties in setting the relevant substantive standards and procedures but also because international organizations, such as the United Nations, which play an increasingly important role in the human rights field, are created and operated in accordance with treaties. Thus the essential format of treaties as instruments negotiated and ratified by states that have the sole competence to pursue their implementation under international law determines the scope and form of contributions to the content of such treaties. Therefore, if there is to be any concern with cultural legitimacy in a human rights treaty, it must come from or through the action of states party to the negotiation and ratification of the treaty.

This emphasis on states should not obscure the fact that they are not completely autonomous entities which act independently from the social and political forces within their populations or from the constraints of their resources or other factors.³³ In fact, the nature and structure of the state and its options in international action are very much the product of internal sociological, economic, and political processes. Moreover, in today's increasingly interdependent world, even the most powerful states are influenced by the actions of other states. Thus any contribution made by a state to international action for the protection and promotion of human rights would be partly determined by the effect of internal and external sociological, economic, and political factors on its domestic and foreign policy. I say "partly determined" because the influence of ideas operating through the personalities of individual state officials should not be discounted.

To evaluate the degree and quality of concern with cultural legitimacy in the development of the current human rights instruments, it is necessary to look at the states involved in the process, at the background of their representatives, and for indications of the positions they took during the drafting and adoption processes.

As regards the states that participated in those processes in the initial stages after the establishment of the UN in 1945, the vast majority of the peoples of Africa and Asia were still suffering external domination by the colonial Western powers. Thus of the fifty-one original members of the UN there were only three from Africa and eight from Asia, with

33. Gidon Gottlieb, "Global Bargaining: The Legal and Diplomatic Framework," in Falk, Kratochwil, and Mendlovitz, eds., *International Law*, pp. 210-35.

seven more Asian states joining over the next ten years.³⁴ Of the sixteen states that joined the organization in 1955, only one was from Africa, and five from Asia. However, with the rapid decolonization of the late 1950s and early 1960s, thirty-four African states joined the UN between 1956 and 1967. In terms of our inquiry, it is clear that few African and Asian states participated in the drafting of the Universal Declaration of Human Rights and the formative early stages of the two covenants. Moreover, two related considerations need to be noted in regard to the quality of representation accorded to the few states that did participate.

The more obvious consideration has to do with the nature of the government that was accorded UN recognition. Thus, for example, that China was represented at the UN by the national government established in Taiwan in effect disenfranchised and excluded from all UN procedures the People's Republic of China, where the vast majority of Chinese people lived. Less obvious, but equally true, some governments of the time purported to represent their native populations yet barely allowed them participation in making decisions over their national and international policies. The imperial government of Ethiopia, one of only three African states at the UN before 1955 (the others being Egypt and Liberia), is an example of a government that was in effective control of the country but did not allow most of its population to participate in making policy decisions.

State Representation of Non-Western Countries at International Forums

The orientation and cultural identification of the elites who ruled African and Asian states and represented them at international forums determined their participation in the drafting and adoption of the International Bill of Human Rights. Some insights into the cultural perspectives and philosophical orientation of those African and Asian "representatives" who were most influential in the early stages can be gained through an examination of their educational background and careers. The significance of this factor has been underscored at a human rights conference:

The previous speaker said that different nations accepted the human rights conventions. This is a surrealistic statement that could only be made by a lawyer. These laws were not adopted by nations but by a

34. On the stages of the expansion of the membership of the United Nations, see C. Wilfred Jenks, *The World beyond the Charter in Historical Perspective: A Tentative Synthesis of Four Stages of World Organization* (London: Allen and Unwin, 1969), pp. 92-93.

small clique of lawyers, bureaucrats and intellectuals who are highly westernized and most of whom have absolutely nothing to do with the cultures in which most of their fellow nationals live. . . . The most interesting problem to me is how notions of human rights, which are clearly of Western provenance and which are now institutionalized are related to the values by which human beings live in most of the world.³⁵

Although it is a slight exaggeration to describe the small clique who represented African and Asian countries as having "absolutely nothing to do" with their native cultures, there is obvious validity in the point. The drafting committee of the Universal Declaration of Human Rights consisted of representatives of the governments of Australia, Chile, China, France, Lebanon, the United Kingdom, the United States, and the Soviet Union. The only representatives of non-Western countries in that committee were Chang Peng-Chung of China and Charles Habib Malik of Lebanon.³⁶ Both had been educated in American universities, and both reflected their "westernization" in the positions they took during the debates. For example, Chang and Malik emphasized individual rights over collective or peoples' rights, and the need for the protection of the individual from the state.³⁷ Regardless of one's agreement or disagreement with their position, it clearly reflects more the Western than the Chinese and Middle Eastern perspectives.

It is true that the Universal Declaration went through many stages of debate and drafting at the levels of the Human Rights Commission, the Third Committee of the General Assembly, and the General Assembly itself. But African and Asian countries were probably represented at all those levels by people of similar orientation to Chang and Malik.³⁸ For example, General Carlos Romulos was ambassador extraordinary and

35. Peter Berger of Boston College, as quoted in Theodor Meron, ed., "A Report on the N.Y.U. Conference on Teaching International Protection of Human Rights," *New York University Journal of International Law and Politics*, vol. 13, no. 4 (1981), p. 901.

36. As far as non-Western cultural perspectives are concerned, the Soviet Union is a Western country, though not a liberal one.

37. Peter Meyer, "The International Bill: A Brief History," in Paul Williams, ed., *The International Bill of Human Rights* (Entwhistle Books, 1981).

38. Malik represented Lebanon in twelve out of the first thirteen sessions of the United Nations. Karem Azkoul, another prominent representative of Lebanon, was educated at St. Joseph's University, Beirut, at the Sorbonne, and at Munich and Berlin universities. He was acting representative of the drafting committee of Human Rights, and acting representative of the Commission of Human Rights. "United Nations General Assembly, Official Records," Third Session, First Part, Plenary Meeting 98 (1948-49), p. 113.

plenipotentiary of the Philippines to the UN. Besides his master's degree from Columbia University, he had several honorary degrees from American universities. During the war Romulos was a high-ranking officer in the U.S. Army and served as aide-de-camp to General Douglas MacArthur on Bataan and Corregidor.

Moreover, as noted by delegates from the developing countries, certain Western delegates were particularly influential in drafting the Universal Declaration. For example, at the beginning of the Third Committee debate on the draft declaration, Chang of China "paid a particular tribute to the contribution to the work of preparing the draft declaration made by Professor Cassin, the representative of France, who had so ably exposed French doctrines of the eighteenth century."³⁹ Chang also found France to be a particularly appropriate place for discussion of rights because it was "the birth-place of modern ideas of freedom." At the General Assembly level, many delegates made favorable comparisons between the Universal Declaration they were about to adopt (in 1948) and the eighteenth-century declarations, especially the French Declaration of the Rights of Man and of the Citizen of 1789.⁴⁰

In its formulation of civil and political rights, however, the final version of the Universal Declaration departed in important ways from eighteenth-century Western conceptions of natural rights. For example, it included economic, social, and cultural rights unknown to eighteenth-century European conceptions.⁴¹ These aspects of the declaration were included because of the support of Latin American and socialist countries. As for the peoples of Africa and Asia, the format and process for adopting the declaration did not permit the effective participation of their indigenous cultures.

Although initially undertaken at the same time as the declaration, the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights had a much longer and more complex history. By the time they were finally adopted by the UN General Assembly in 1966, most African and Asian countries had gained independence and joined in the last stages of the drafting and adoption. From a formal point of view, African and Asian cultural perspectives had a bet-

39. "United Nations General Assembly Official Records," Third Session, First Part, Plenary Meeting 98, p. 114.

40. "United Nations General Assembly Official Records," Third Session, First Part, Plenary Meeting 181 (1948-49), pp. 875-934.

41. Johannes Morsink, "The Philosophy of the Universal Declaration," *Human Rights Quarterly*, vol. 6 (1984), pp. 309-34.

ter chance of being represented in the drafting and adoption of the covenants. At a more substantive level, I submit that the elites who represented African and Asian countries at that stage did not have a clear conception of their respective cultural positions on most of the principles covered by the covenants. This deficiency may be somewhat obscured by the fact that representatives of African and Asian countries took strong positions on certain draft provisions of the covenants and managed to change some of them. Given the lack of popular input and debate on these issues at the national domestic level in most African countries at the time, it is difficult to see how those elites could have genuinely represented their respective cultural traditions.

However, neither the integrity and caliber of the representatives of African and Asian countries nor agreement or disagreement with their orientation is at issue here. Rather, the issue is the degree to which those representatives could reasonably have identified with, and genuinely represented, their indigenous cultural traditions at the time of the drafting and adoption of the Universal Declaration and covenants. Western higher education does not necessarily preclude a person from a developing country from being committed to her or his own cultural tradition. In fact, such an education may enable one to act as a bridge between the two cultural traditions. But this does not seem to have been true for those representatives who participated in the drafting and adoption of the Universal Declaration.

Furthermore, to criticize the degree and quality of concern with cultural legitimacy during the formulation of the declaration and covenants does not mean that these instruments are untenable within non-Western cultural traditions. As I hope to show in the next section, there may be significant cultural support for the philosophical foundations and moral values underlying the current human rights standards. Moreover, insofar as there is inconsistency between the two, I believe further reconciliation and resolution of conflicts and tensions is possible. The point here is simply that there was little initial concern with cultural legitimacy, and this may have diminished the validity of international human rights standards as seen from non-Western cultural perspectives.

Finally, despite their differences, the essence of cultural traditions reflects the continuity and interdependence of the total human experience. Eighteenth-century Western formulations of rights are as much a reflection of pre-eighteenth-century non-Western experiences as they are a result of the experiences of Western peoples. Seen in this light, and presented as the outcome of shared insights rather than as the model

developed by a "superior" people, the diffusion of this conception of rights is more likely to be accepted as legitimate by non-Western cultures and less likely to be rejected as manifestations of cultural imperialism.

Subsequent Concern with Cultural Legitimacy

The initial deficiency in establishing universal cultural support for the declaration and covenants (the International Bill of Human Rights) has been partly addressed in subsequent educational and scholarly efforts. For example, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) has sponsored many international conferences, seminars, and publications on human rights in different cultural and religious traditions.⁴² Other institutions, such as the International Commission of Jurists, and individual scholars have also published volumes on human rights and cultural perspectives.⁴³ In my view, most of these efforts suffer from two main weaknesses: inadequacy of their treatment of cultural legitimacy within specific traditions and the lack of an integrated cross-cultural approach.

I find that most of the published works tend to treat cultural traditions from a static and ahistorical point of view, with little regard for the

42. See, for example, *Birthingright of Man: A Selection of Texts Prepared under the Direction of Jeanne Hersch* (New York: UNESCO, UNIPUB, 1969); Karel Vasak, ed., *The International Dimensions of Human Rights*, 2 vols. (Westport, Conn.: Greenwood Press, 1982); and *Philosophical Foundations of Human Rights* (Paris: UNESCO, 1986).

43. See, for example, International Commission of Jurists (ICJ), *Human Rights in a One-Party State*, International Seminar on Human Rights, Their Protection and the Rule of Law in a One-Party State (London: Search Press in conjunction with the ICJ, Geneva, 1978); *Development, Human Rights and the Rule of Law* (Elmsford, N.Y.: Pergamon Press, 1981); and *Human Rights in Islam*, Report of a seminar held in Kuwait, December 1980 (ICJ, University of Kuwait and Union of Arab Lawyers, 1982). See also Wm. Theodore de Bary and others, eds., *Sources of Indian Tradition* (Columbia University Press, 1958); Evan Luard, ed., *The International Protection of Human Rights* (London: Thames and Hudson, 1967); Asbjörn Eide and August Schou, eds., *International Protection of Human Rights*, Proceedings of the Seventh Nobel Symposium, Oslo, September 25-27, 1967 (John Wiley, 1968); Adamantia Pollis and Peter Schwab, eds., *Human Rights: Cultural and Ideological Perspectives* (Praeger, 1979); Kenneth W. Thompson, ed., *The Moral Imperatives of Human Rights: A World Survey* (Washington, D.C.: University Press of America, 1980); Jack L. Nelson and Vera M. Green, eds., *International Human Rights: Contemporary Issues* (Stanfordville, N.Y.: Human Rights Publishing Group, 1980); Ved P. Nanda, James R. Scarritt, and George W. Shepherd, Jr., and others, eds., *Global Human Rights: Public Policies, Comparative Measures and NGO Strategies* (Boulder, Colo.: Westview Press, 1981); and Alfred Hennessey, S.J., and John Langan, S.J., eds., *Human Rights in the Americas: The Struggle for Consensus* (Georgetown University Press, 1982).

constant evolution and change of cultural norms and institutions. If the point of the exercise is to support human rights standards within the given cultural tradition in order to encourage greater respect for and protection of these rights in *current* practice, cultural norms and institutions must be analyzed and discussed in terms of their manifestations and significance in the present life of the community. Even as historical accounts of the culture in question, some of the relevant works tend to be selective and misleading because they emphasize points of agreement between historical cultural norms and current human rights standards without identifying and addressing points of conflict and tension.

This criticism can be illustrated with reference to the available literature on human rights in the Islamic tradition.⁴⁴ Not only is this literature ahistorical in that it tends to deal with formal scriptural tenets of Islam in isolation from their current social reality, but it is also selective and misleading even in terms of those formal tenets. By quoting and citing selected general scriptural statements that are presented as supportive of human rights in Islam, while omitting others that cannot be so represented, and by failing to show the ways in which the allegedly supportive statements have been qualified in juridical interpretations, this literature presents a completely misleading view of its subject.

Fortunately, some authors have recently sought to expose the misleading effect of selective citation of scriptural sources out of juridical context, and others have tried to discuss those tenets in relation to current social reality.⁴⁵ However, much more needs to be done to clarify the internal situation within the Islamic and other cultural traditions and to relate it to current social reality. This work is a necessary prerequisite for addressing the second main criticism cited earlier—namely, the lack of a cross-cultural approach. Such an approach is necessary for developing universal cultural legitimacy for human rights beyond the least common denominator of cultural legitimacy within various traditions. The least common denominator will not suffice to protect the human rights of women, for example.

Efforts to identify existing cultural support for human rights, and to resolve conflicts and tensions between human rights standards and cul-

44. This criticism is particularly true of works such as Ali Abdel Wahid Wafi, "Human Rights in Islam," *Islamic Quarterly*, vol. 2 (1967), pp. 64–75; Khalid M. Ishaque, "Human Rights in Islamic Law," *International Commission of Jurists Review*, vol. 12 (1974), pp. 30–39; *Human Rights in Islam*, Report of a seminar; and Isma'il R. Al Faruqi, "Islam and Human Rights," *Islamic Quarterly*, vol. 27 (1983), pp. 12–30.

45. See the chapters by Ann Mayer and Bassam Tibi in this volume.

tural norms and values, assume some agreement on what universal human rights are. Initially, and for the sake of expediency, the current international standards must be accepted as identifying universal human rights. But since a genuinely universal approach was not used in the initial formulation of the current standards, which came primarily from the liberal and to some extent the Marxist perspectives, a truly universal substantive set of human rights standards is still needed.

Take, for example, the question of cruel, inhuman, or degrading treatment or punishment. Starting from the existing instruments, one finds that protection against such treatment or punishment is recognized as a human right. When looking into specific cultural traditions, one may well find that a culture supports this concept as a human right, in the sense of a right to which each person is entitled by virtue of being human. Nevertheless, this "consensus" on the right as a matter of principle does not extend to the precise content of the right or provide criteria for determining whether a particular form of treatment or punishment violates the right. Only through the development of a universal consensus on the content of this right, established, for example, by the systematic analysis of the underlying rationale of punishment in cross-cultural perspectives, can human rights discourse avoid being trapped in a situation of competing claims over what constitutes cruel, inhuman, or degrading treatment or punishment.

Toward a Model for Enhancing the Cultural Legitimacy of Human Rights

Despite the inadequate concern with cultural legitimacy in formulating the current international standards of human rights, it is advisable to work with these standards rather than to seek to repudiate and replace them. To discard the achievements of the last forty years by dismantling the International Bill of Human Rights (the declaration and two covenants) is to risk never being able to replace it with better instruments. I would therefore make the existing bill the foundation of future efforts to establish cultural legitimacy for human rights by interpreting the current provisions and developing an appropriate literature sensitive to the need for cultural legitimacy. For example, it would be useful to contrast the values and institutions of various cultural traditions with the values underlying the International Bill of Human Rights and the specific implications of those values. Processes of internal cultural dynamics and change may then be used to reconcile and resolve

any conflicts and tensions that exist between the values and institutions of a given cultural tradition and those envisaged by the current standards of human rights.

Fundamental Values of the International Bill of Human Rights

I am not concerned here with the historical source of these values, whether as perceived by the delegates who formulated the International Bill of Human Rights or discovered through some other analysis.⁴⁶ Instead, I propose to state the underlying values of the bill as discovered through an interpretative reading of the final text of the instruments. This seems possible regardless of whether the delegates who drafted and adopted the instruments shared a common view of the philosophy of the bill, and whether they succeeded in implementing their philosophy in the final texts of the instruments. In other words, for the following discussion, I take the texts of the International Bill of Human Rights as the source of the underlying values of the bill.

An interpretative reading of the provisions of the bill reveals several fundamental values that are accepted as valid and worthy of implementation through the specific principles of these documents. As expected, however, these values have their own internal tensions, which can be resolved only through detailed discussion and balancing between their specific implications in given situations. Although it is not possible to do that in the following brief survey of these values, the point should be borne in mind. In other words, the survey does not assume that these values were adopted by the International Bill of Human Rights in an unqualified form. It assumes that the flexibility of the interpretation of these values and the possibilities of their mutual limitation offer good prospects for reconciling them with values and institutions of a variety of cultural traditions.

The fundamental value underlying the Universal Declaration and covenants is the notion of the inherent dignity and integrity of every human being. All the civil and political rights as well as the economic, social, and cultural rights recognized by the Universal Declaration and elaborated on in the covenants are the necessary implications or practical manifestations of the inherent dignity and integrity of the human

46. For the view that analysis of the debates at the Third Committee of the UN in the Fall of 1948 reveal that the philosophy of the Universal Declaration was perceived by many delegates to be emanating from eighteenth-century philosophy of natural rights, with some significant modifications, see Morsink, "Philosophy of the Universal Declaration."

person. For example, human dignity and integrity require not only that individuals satisfy their needs for food, shelter, and health care but also that they be guaranteed freedom of belief, expression, and association and afforded opportunities for education and communication with others to develop fully their personalities and achieve their human potential.

Equality is another implication of the inherent dignity and integrity of the human being, which, in turn, requires nondiscrimination on grounds such as race, sex, religion, and national or social origin. Both notions are explicitly affirmed in the Universal Declaration and the two covenants. The essence of human rights is that they are the entitlement of every human being by virtue of being human. For example, this essence will be defeated if a woman is denied her human rights because of her sex, race, or beliefs.

It is sufficient here to focus on these values and their implications because they can be taken as the foundation of all human rights and because they are likely to encounter problems or difficulties of legitimacy in the context of traditional African cultures. Although I propose to focus on issues of cultural legitimacy in relation to Islamic African societies, this does not imply that other cultural traditions are fully consistent with all the underlying values and implications of the International Bill of Human Rights. On the contrary, the assumption is that every cultural tradition raises some problems in this regard. However, it is the thesis of this chapter that alternative sources and interpretations within any given tradition may prove useful in overcoming the problems raised by a particular tradition.

An often cited example of the inconsistency between some human rights and the liberal tradition is the latter's presumed rejection of the notion of imposing positive duties on the state to provide housing, health care, and so forth for those citizens who are unable to secure these essential needs for themselves. Jack Donnelly convincingly argues in this volume, however, that it may not be true of all lines of thinking within the liberal tradition. The limited success of social democracy in some Western European countries, for example, clearly shows that the liberal tradition can sustain social services based on a positive obligation of the state to provide for the physical needs of its population. Nevertheless, the dominant theme in both the theory and practice of Western liberalism remains that of restricting human rights to the negative duty of the state not to interfere with the liberty of the individual rather than linking human rights to a positive obligation to provide for basic needs.

From the point of view of the proposed approach, however, the question is how to enhance the view of human rights as requiring both positive and negative duties from the state within the liberal tradition through internally legitimate arguments.

Cultural Legitimacy of Human Rights in Islamic Societies

Traditional African cultural perspectives on human rights are too diverse and volatile to permit neat generalizations about their position on the underlying values of the International Bill. Even when focusing on a specific cultural tradition, one must allow for significant changes in norms and attitudes over time, while taking into account the inevitable discrepancy between the theory and practice of those norms and attitudes. Provided one keeps these limitations in mind, one can gain some understanding of the relationship between the values underlying the current standards of human rights and the corresponding values of specific African cultural traditions. In this section I discuss my own Islamic tradition in order to demonstrate both the difficulties it has with some aspects or implications of human rights values and the prospects of resolving those difficulties.

Religion, in general, is central to the cultures of many African societies, though not the sole formative force behind the prevailing values and attitudes. Other local factors and external influences also contribute to the continuing processes of social and political change. In Islamic African societies, however, the religion of Islam seems to be a particularly important source of cultural legitimacy because of the comprehensive and forceful nature of its precepts. In contrast to most traditional African religions, Islam has a highly specific ethical code and well-developed and articulated views on almost every aspect of private and public life.

Islam is an extremely complex and multifaceted phenomenon that has been the subject of numerous, often violent, disagreements among its adherents for the last fifteen centuries. Many sociological factors and philosophical considerations influence and inform the understanding and practice of Islam at any given time and place.⁴⁷ However, any meaningful discussion of an issue from an Islamic point of view must be based on the fundamental sources of Islam, namely, the Qur'an, which

47. There are many good books on Islam available in English; for example, Fazlur Rahman, *Islam* (University of Chicago Press, 1979); and Marshall G. S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*, 3 vols. (University of Chicago Press, 1974).

Muslims firmly believe to be the literal and final word of God, and the *sunna*, the traditions of the Prophet.

Although the text of the Qur'an, known in Arabic as *al-mushaf*, was recorded within a few decades after the Prophet's death in 632 and is accepted as accurate by the vast majority of Muslims, the texts of the *sunna* were, and continue to be, much more controversial because they remained an oral tradition until they were recorded about two centuries after the Prophet's death.⁴⁸ Besides the controversies about the accuracy of many reported *sunna* texts, both the Qur'an and *sunna* have been the subject of extensive scholarly and popular interpretation and counter-interpretation for many centuries. This process has led to the evolution of *shari'a*, the comprehensive and complex codes ranging in subject from religious dogma and ritual practices to ethical norms, principles and detailed rules of private and public law, and matters of etiquette and personal hygiene.

Internal controversy and differences within the corpus of *shari'a* were encouraged for two reasons. First, some verses of the Qur'an and texts of *sunna* appear to contradict each other. Whenever Islamic scholars and jurists encountered this contradiction, they deemed one set of texts to have abrogated or repealed, for the purposes of *shari'a*, any other inconsistent text. This process of reconciliation through abrogation is known in Islamic jurisprudence as *naskh*.⁴⁹ Second, since both sources used the Arabic language to communicate their teachings, the understanding of those teachings has been influenced by the many shades of meaning of Arabic expressions as comprehended by different Islamic jurists and scholars.

As a result, today the official and formal *shari'a* position on many issues is based on decisions made by Muslim scholars and jurists either to adopt one set of texts rather than another, or to adopt one possible interpretation of the applicable texts rather than another. In other words, though the Qur'an and *sunna* as sources of *shari'a* are believed by Muslims to be divine, the interpretation and implementation of those sources have been the product of human comprehension and action in a particular historical context. Once this basic fact about the evolution of *shari'a* is appreciated, the door should be open for developing alter-

48. See generally, John Burton, *The Collection of the Qur'an* (Cambridge University Press, 1977); and Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford University Press, 1950).

49. Abdullahi Ahmed An-Na'im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse University Press, 1990), pp. 57-60.

native concepts and principles from within the Islamic tradition itself. So long as such efforts are consistent with the fundamental precepts of Islam and sensitive to concerns for Islamic authenticity, there is no reason to prevent the adopting or adapting of norms and ideas from other cultural traditions. Early Muslim scholars and jurists did just that in developing their understanding of *shari'a*.

Looking at the totality of the Qur'an and *sunna* in relation to the values underlying current international standards of human rights produces a mixed picture. On the one hand, many general texts seem to emphasize the inherent dignity and integrity of the human person, and stress the equality of all human beings in the sight of God.⁵⁰ On the other hand, many other specific texts establish strict limitations on who is a human being entitled to full dignity and integrity and complete equality within the context of the Islamic society and state. In particular, certain texts of the Qur'an and *sunna* support a hierarchy of status according to sex and belief, with Muslim men being the only group entitled to the full implications of human dignity, integrity, and equality, followed by Muslim women, certain non-Muslim believers (mainly Christians and Jews), and finally other believers and unbelievers. Given the historical context within which *shari'a* was developed, it was probably unavoidable that the early Muslim scholars and jurists should adopt that view of the source texts. In other words, the historical context of the eighth- and ninth-century Middle East determined the choices and interpretations Muslim scholars and community leaders made among the range of texts. By the same token, the present historical context that upholds universal human rights regardless of sex and belief should determine the choices and interpretations modern Muslim scholars and community leaders have to make among the range of texts and interpretations.

I have elsewhere documented human rights problems with *shari'a*, and elaborated on the modernist approach to Islamic reform advocated by the late Muslim reformer, *Ustadh* Mahmoud Mohamed Taha.⁵¹ This

50. See, for example, Riffat Hassan, "On Human Rights and the Qur'anic Perspective," *Journal of Ecumenical Studies*, vol. 19, no. 3 (1982), pp. 51-65.

51. See generally, Mahmoud Mohamed Taha, *The Second Message of Islam*, translated with an introduction by Abdullahi A. An-Na'im (Syracuse University Press, 1987). See also, for example, the following works by Abdullahi Ahmed An-Na'im: "Religious Freedom in Egypt: Under the Shadow of the Islamic *Dhimma* System," in Leonard Swidler, ed., *Religious Liberty and Human Rights in Nations and in Religions* (Philadelphia: Ecumenical Press, 1986), p. 43; "The Islamic Law of Apostasy and Its Modern Applicability: A Case from the Sudan," *Religion*, vol. 16 (1986), pp. 197-224; "Islamic Law, International

approach not only is feasible in the Islamic context but may provide a useful model for working within other cultural traditions to identify tensions and conflicts with values underlying the current human rights standards. The approach may also help to develop ways of resolving authentic and legitimate conflicts within the particular cultural perspective. The essential premise of this model is the recognition that cultural norms evolve in response to specific historical circumstances. Therefore, norms may vary or be modified with the change of circumstances. The sources of norms and values, and the techniques by which they evolve and change, may be specific to the particular culture. Nevertheless, there are certain principles that regulate the processes of cultural dynamics and change in general, and that may therefore be used in conscious efforts to enhance the legitimacy of human rights within any given cultural tradition.

Cultural Dynamics and Change

As mentioned earlier, this chapter takes a very broad view of culture as the totality of the experience of a given society. It also assumes that every cultural tradition contains some norms and institutions that are supportive of some human rights as well as norms and institutions that are antithetical or problematic in relation to other human rights. The constructive approach suggested here would seek enhancing the supportive elements and redressing the antithetical or problematic elements in ways that are consistent with the integrity of the cultural tradition in question. It is self-defeating and counterproductive to try to enhance the legitimacy of human rights within any culture in ways that are unlikely to be accepted as legitimate by that culture.

Against this background, this section investigates present knowledge of the processes of cultural dynamics and change and how it may help the endeavor to promote the cultural legitimacy of human rights. Is it possible to develop some guidelines for human rights advocates who may wish to undertake this task? A cross-cultural approach provides the appropriate balance between the relativism and universalism of human rights, but what does this approach entail and how can it be used to enhance the cultural legitimacy of human rights?

Relations and Human Rights: Challenge and Response," *Cornell International Law Journal*, vol. 20, no. 2 (1987), p. 317-35; and "Mahmud Muhammad Taha and the Crisis in Islamic Law Reform: Implications for Interreligious Relations," *Journal of Ecumenical Studies*, vol. 25, no. 1 (1988), pp. 1-21.

It is helpful to begin by emphasizing the major assumptions underlying cross-cultural studies, such as the pioneering cross-cultural survey of the Institute of Human Relations of Yale University in 1937.⁵² According to the organizers and editors of the Yale survey, cross-cultural studies are founded on the conviction that despite their diversity, all human cultures have fundamentally a great deal in common, and that these common aspects are susceptible to scientific analysis. Furthermore, such studies are said to be based on seven assumptions shared by most social scientists in the field. These assumptions may be summarized as follows:⁵³

—Culture is not instinctive, or innate, or transmitted biologically, but is composed of habits, such as learned tendencies to react, acquired by each individual through life experience.

—Culture is repeatedly inculcated by transmission from parent to child over successive generations. Such inculcation involves not only the imparting of techniques and knowledge but also the disciplining of the child's animal impulses to adjust the child to social life.

—As such, the habits of the cultural order are social in that they are shared by human beings living in organized aggregates or societies and kept relatively uniform by social pressure. Since many cultures provide for the societal survival of their respective societies, they tend to reflect certain universals, such as sentiments of group cohesion, mechanisms of social control, organization for defense against hostile neighbors, and provision for the perpetuation of the population.

—To a considerable extent, the group habits of which culture consists are conceptualized (or verbalized) as ideal norms or patterns of behavior. Actual behavior, however, may not always conform with the cultural ideal because that ideal is only one of the determinants of behavior. Since individuals behave in response to the state of their organism and drives at the moment, and in response to their perception of the total situation in which they find themselves, such behavior may deviate from the ideal norms.

52. On the conception and organization of the Yale survey, see George Peter Murdock, "The Cross-Cultural Survey," in Frank W. Moore, ed., *Readings in Cross-Cultural Methodology* (New Haven: HRAF Press, 1961), pp. 45–54.

53. The seven assumptions I list closely follow Murdock, "Cross-Cultural Survey," pp. 48–52. The basic premise and some of its consequent assumptions are further explained and supported in other essays in Moore, ed., *Readings in Cross-Cultural Methodology*, such as Clyde Kluckhohn, "Universal Categories of Culture," pp. 89–105. The assumptions in the text are also eloquently explained and emphasized by Ruth Benedict in *Patterns of Culture*.

—Since habits persist only so long as they bring satisfaction, elements of culture can continue to exist only when they yield to the people in a society a margin of satisfaction, a favorable balance of pleasure over pain.

—Culture changes through an adaptive process that is comparable to but different from that of evolution in the organic realm. In this way cultures adjust and adapt to the surrounding physical and geographic as well as social environments. To subscribe to this assumption of cultural adaptability is not to maintain a rigidly deterministic view of the process—that any culture would necessarily have to adjust in any given way—since different cultural forms may represent adjustments to similar problems and similar cultural forms may represent adjustments to different problems. Some similarities in different cultures may represent independent adjustments to comparable conditions. Thus while cultures always adjust to physical events and historical contacts with peoples of differing cultures, both kinds of stimuli exert only a conditioning rather than a determining influence on the course of a given culture. In other words, there is always an element of selection and choice of reaction to the particular event or historical context.

—In this adaptive process, cultures *tend* to form a consistent and integrated whole, but total integration is never achieved because historical events are constantly exerting a disturbing influence. Integration takes time, and long before one process is completed, many others will have been initiated.

These assumptions are useful for my present purposes provided they are seen in the context of a broad definition of culture and are perceived as being applicable to *all* the cultural traditions of the world, including those of materially developed societies. When seen in this light, these assumptions offer prospects for influencing the direction of cultural change toward enhancing the legitimacy of human rights. Given the radical transformation of the technology of communication of information and ideas in an increasingly globalized world, it is possible to manipulate the assumptions in favor of specific goals. Such manipulation is already taking place somewhat haphazardly to serve the narrow ends of commercial interests. Powerful symbols and images are constantly used to promote consumerism in fashion, entertainment, and so forth. Can appropriate techniques be used to promote universal legitimacy for human rights? And what is the content of the human rights message to be conveyed through those techniques?

Although limited by its subjects—normally small individual soci-

eties—and by its retrospective approach to understanding past processes of societal change, the available anthropological literature on cultural dynamics and change may nevertheless provide some guidance to effecting change in a particular direction. This literature can inform us about the factors facilitating change and about those opposing or resisting it within any given society. For example, Edward Shils's discussion of endogenous and exogenous factors affecting the inevitable process of change within a wide variety of traditions, and of patterns of change and stability in traditions,⁵⁴ may be useful in undertaking the *prospective* process of change in favor of the specific goal of enhancing the cultural legitimacy of human rights. The work of other scholars may provide useful insights into the psychological and sociological processes of interaction and change within a given culture.⁵⁵ Studies of the receptivity and resistance of specific societies to change may also provide some guidance.⁵⁶

Examples of planned social engineering undertaken by totalitarian states may be particularly instructive on the negative side of this approach; for instance, the attempt by the Soviet Union to transform human relations in traditional Islamic societies of Central Asia in the 1920s.⁵⁷ While heeding the warning raised by such efforts, I view them as examples of what should not be done, not as reasons for abandoning my approach. The success of human rights-oriented cultural engineering depends as much on the sensitivity of its methods as on the validity of its goals. As to sensitivity of methods, I reemphasize the need to work from within the culture and to preserve its integrity. Since the Soviet experiment ignored both imperatives, it is not a strong argument against what I am proposing. But what about the goals of my proposal, the content of the human rights message I hope to realize through the manipulation of the processes of cultural dynamics and change?

As observed by Renteln, the work of anthropologists who have ar-

54. Edward Shils, *Tradition* (University of Chicago Press, 1981), chaps. 5–7.

55. See, for example, Melville J. Herskovits, *Cultural Dynamics* (Knopf, 1964); and Marvin K. Opler, "Cultural Evolution and the Psychology of Peoples," in Dole and Carneiro, eds., *Essays in the Science of Culture*, pp. 354–79.

56. See, for example, Simon Ottenberg, "Ibo Receptivity to Change," and Harold K. Schneider, "Pakot Resistance to Change," both in William R. Bascom and Melville J. Herskovits, eds., *Continuity and Change in African Cultures* (University of Chicago Press, 1959), pp. 130 and 144, respectively.

57. On that "experiment," see Gregory J. Massell, "Law as an Instrument of Revolutionary Change in a Traditional Milieu: The Case of Soviet Central Asia," *Law and Society Review*, 1968, pp. 179–228.

gued on behalf of universals may be criticized for basing them on concepts such as human needs, rationality, and human nature that may well be culturally determined. Nevertheless, Renteln seems to favor undertaking comparative analysis of cultural ideals ("oughts") to discover cross-cultural universals for which she adopts the definition of "those least common denominators to be extracted from the range of variation that all phenomena of the natural or cultural world manifest."⁵⁸ She then admits the possibility of the following problem of cross-cultural universals, in the sense of least common denominators:

The objection might be raised that some cross-cultural universals might be discovered that Westerners would call "inhumane." . . . I view this as an unlikely possibility. Since the values in question are cultural *ideals*, it would seem most improbable that any "inhumane" ideal would be universal. Even if a universal ideal is found which some would regard as "inhumane," this is a part of morality. It is better to be honest and to admit that it exists than to pretend that it does not. The possibility for change means that concerted effort might lead the international community to reject it [p. 66].

Although Renteln's use of the designation "Western" is understandable because she is addressing a primarily Western readership, this usage unfortunately gives the impression that it is the Western value judgment that counts. The use of a neutral or broader designation would be preferable to express the same optimistic view that it is improbable that universal cultural ideals are inhumane. Realistically speaking, however, one has to face the possibility of a broadly held ideal being inhumane. Moreover, as mentioned before, a strictly relativist position may insist on maintaining a cultural ideal that is regarded by outsiders as inhumane. I now elaborate on my earlier response to these situations.

A dual approach to this problem would allow a human rights advocate to work within the cultural tradition while drawing on an enlightened universal conception of human rights. Cross-cultural studies can develop a universal conception of the inherent dignity and integrity of the human being. Insofar as any cultural tradition fails to uphold and

58. Renteln, "Relativism and the Search for Human Rights," pp. 65, 66. She adopts this definition from the distinction made by Herskovits between universals and absolutes, which he defines as fixed and not admitted to have variation, to differ from culture to culture, from epoch to epoch.

implement the full implications of the inherent dignity and integrity of human beings within the particular community, human rights advocates within that community should use the resources of their cultural tradition to redress that fault internally in ways that are perceived to be legitimate by the members of that culture. In so doing, human rights advocates can be supported by colleagues from other cultural traditions and by the international community at large. Here the technology of communication can be used to good effect. The golden rule for outside help and support, however, is the same as that for internal action; namely, respect for the integrity of the cultural tradition and sensitivity to its criteria for legitimacy.

In this endeavor the universal principle of reciprocity is particularly useful: the principle that one should concede to the other person what-ever one claims for oneself. Otherwise, one would not be entitled to claim against the other person what one demands for oneself. According to this principle, *human rights are those that a person would claim for herself or himself and must therefore be conceded to all other human beings.* This principle can be used to inform and guide the cross-cultural search for the content and necessary implications of the inherent dignity and integrity of human beings. Whatever the members of a culture would demand for themselves in accordance with their inherent human dignity and integrity they would have to concede to members of other cultures. This is, in my view, the basis of universal cultural legitimacy for human rights.

Conclusion

The basic premise of this chapter views culture, broadly defined, as the context within which human rights have to be specified and realized. Despite the initial lack or inadequacy of concern with universal cultural legitimacy during the formulation and adoption of international standards of human rights, and despite the inadequacy of subsequent efforts to supplement that initial deficiency, those standards remain to be improved rather than abandoned.

It is not too late to correct the situation by undertaking cross-cultural work to provide the necessary internal legitimacy for human rights standards. The golden rule for both levels of action is the need for relativist sensitivity in developing universal standards. Each culture has its share of problems with human rights as well as the potential to resolve those problems. In working within the culture, and receiving guidance

and support from without, external standards should not be imposed to enhance cultural legitimacy. The inherent dignity and integrity of the human person, taken as the fundamental underlying value of all human rights, can be extended beyond barriers of sex, race, religion, and so on, through the principle of reciprocity—namely, that one should concede to others what one claims for oneself. Thus the full range of human rights can gain cultural legitimacy everywhere in the world.

One important set of questions that I deliberately avoided here concerns the nature and scope of human rights in the abstract philosophical sense. It is premature to embark on such an inquiry before establishing its proper cultural frame of reference. Despite the abundance of literature on the subject from within a specific cultural tradition, usually the Western liberal tradition, and of literature comparing competing perspectives on the issues, I have not been able to discover an integrated cross-cultural examination of this question. I would therefore rather wait until a satisfactory methodology for cross-cultural analysis is devised before embarking on an inquiry into the abstract philosophical nature and scope of "human rights." The definition proposed here is a useful working model for the development of universal cultural legitimacy for human rights.