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Magna Carta

1689

English Bill of Rights

1776

US Declaration of
Independence

1789

French Declaration
of the Rights of Man

1945–46

Nuremberg trials

1948

Universal Declaration
of Human Rights

11

Human rights: The individual in global politics

The human rights group Amnesty International tells how, in response to the eruption of mass protests following Iran's presidential election on June 12, 2009, Iranian officials resorted to widespread human rights abuses by limiting freedom of speech, association, and assembly. At least 4000 protesters were arrested, often by the Basij (pro-government vigilantes) and Revolutionary Guards (see Figure 11.1). Most were held incommunicado without charge or access to legal defense. Torture was common. One student "is said to have been beaten so badly by security forces that he needed treatment before being taken to Evin Prison," and he was beaten so badly "on his head" that he "had started to lose his sight." "Beatings on his ribs were thought to have initiated internal bleeding, including to his lungs. When moved from the Kahrizak detention facility to Evin prison, he was unable to breathe and began to convulse. His breathing then became shallower until it stopped."¹ As in Iran, **human rights** are routinely violated around the world, and torture remains a common way to terrorize dissenters.

This chapter focuses on normative theory, on what is right and wrong, and on how we "ought"

to behave in global politics. Are states required to treat citizens humanely? After all, states are sovereign and, therefore, enjoy unlimited legal power over those living on their territory. Also, being sovereign, they have no legal superiors. Under traditional international law, only sovereign states enjoyed rights, and only states were "juridical persons" with legal standing in one another's courts. The traditional view was that if a sovereign ruler or his representatives wished to exploit or abuse subjects, it was no one else's business, and no one had a right to intervene in the domestic affairs of another country.

When the American Revolution began in 1776, most governments still treated individuals as subjects from whom rulers had to extract resources and obedience. Except for a small number of enlightened philosophers in England and France, few thinkers thought that people had rights apart from those granted them by their sovereigns. Even the US Constitution regarded enslaved African-Americans as less than complete human beings, being counted as three-fifths of a person for purposes of apportionment of the members of the House of Representatives.

1948	1993	1995	1997	2002
Genocide Convention enacted	International Criminal Tribunal for the former Yugoslavia established	Fourth World Conference on Women meeting in Beijing	International Criminal Tribunal for Rwanda established	International Criminal Court established



Figure 11.1 Iran's Basij Militia

Source: AP Photo/Vahid Salemi

Historically, governments have limited or violated individual rights for many reasons – for example, to promote their ideology and induce fear. Dictators often force citizens to accept official ideological, religious, or political views and persecute those who refuse to do so. As in Iran, many rulers still jail opponents arbitrarily, use torture to extract information, deny justice and equality to racial and ethnic groups, treat women as chattel, and kill opponents to still dissent.

Although Americans and Britons do not like to think they violate human rights, abuses committed by US and British soldiers in Iraq have come to light. According to Amnesty International, the mistreatment of Iraqi prisoners at the Abu Ghraib prison near Baghdad in 2004 was part of an “iconography of torture, cruelty and degradation” that followed the September 11 terrorist attacks on New York and Washington and reflected a “well-trodden path of violating

basic rights in the name of national security or ‘military necessity.’”² And British soldiers were told that they were not bound by the Human Rights Act when detaining and interrogating Iraqi prisoners.³

As in the past, some regimes are led by pathological leaders who commit incomprehensible atrocities. China’s Mao Zedong and the Soviet Union’s Josef Stalin ordered millions of their citizens to be killed in order to achieve rapid economic growth, ensure ideological purity, and eliminate dissent. Adolf Hitler ordered the genocide⁴ of over six million Jews and the deaths of countless others – gypsies, gays, socialists, and Slavs – whom he regarded as inferior. Stalin oversaw the deaths of millions by starvation, slave labor, and execution. Idi Amin (1928–2003) ordered the murder of hundreds of thousands of Ugandans, especially those of the Acholi and Lango ethnic groups, during his brutal dictatorship from 1971 until 1979. According to an eyewitness: “By 1974 his regime was murdering hundreds of thousands of its own people and Amin fed the heads of opponents to crocodiles and boasted of eating human flesh, keeping human heads in the freezer as his nation starved.”⁴ And Pol Pot (1925–98), leader of the communist Khmer Rouge in Cambodia, ordered the genocidal deaths of as many as two million – more than one in five – in his effort to remake Cambodian society.

Nevertheless, as democracy spread during the eighteenth and nineteenth centuries, especially in the West, and with it the belief that law requires the consent of the governed, the ideas that governments should not treat subjects arbitrarily and that people had rights apart from those granted by rulers also spread. Among scholars, critical theorists most fully embrace the concept of “do not harm.” Liberals generally advocate greater reliance on international law to maintain peace and advance human rights. By contrast, realists declare that international law need only be obeyed when it serves states’ interests, and that human rights must take a back seat to the

demands of power and national interest. For their part, constructivists regard rights as social constructs that evolve when people regard them as legitimate and morally justified. They emphasize that, even though states may routinely violate international law and human rights, legal and normative precedents are being set and norms are evolving that, over time, may constrain the arbitrary behavior of states and limit their sovereign independence.

Human rights are a special category of “rights.” But what are “rights”? Most theorists agree that **rights** are moral entitlements possessed by people by virtue of who they are or what they have done.⁶ Rights are claims that others are duty bound to respect and entail corresponding duties.⁷ They establish a relationship between those who possess those rights and others such as governments against whom those rights are asserted. As such, rights can only exist in social groups.

Norms against human rights violations are growing, and global politics has witnessed a proliferation of legal protections for individuals since World War Two. Although international law has for much of the past three centuries jealously protected the prerogatives of rulers and the sovereignty of states, this is changing. The savagery of war, especially the Holocaust in World War Two, persuaded people that those responsible for atrocities should be held accountable. Beginning with the trials of German and Japanese individuals for **war crimes** in the postwar Nuremberg and Tokyo trials and continuing with the elaboration of human rights law by the UN and other international organizations, individuals – both perpetrators of abuses and their victims – are acquiring increasing status in international law. And the growing willingness of such organizations to authorize **humanitarian intervention** where there are gross abuses, and hold national leaders accountable for what they do to their own people, threatens to erode an essential core of state sovereignty. Today, the “responsibility to protect” (“RtoP” or “R2P”) is an emerging human rights norm that declares that the global com-

munity is obliged to prevent and stop genocides, war crimes, ethnic cleansing and crimes against humanity.

Despite the guarantee of state sovereignty in the UN Charter, former Secretary General Kofi Annan, declared that: “As long as I am Secretary General,” the UN “will always place human beings at the center of everything we do.” Although “fundamental sovereignty, territorial integrity, and political independence of states” continue to be a “cornerstone of the international system,” Annan continued, sovereignty cannot provide “excuses for the inexcusable.”⁸ Annan’s view places a higher value on the rights of individuals in global politics than on state sovereignty. As we shall see in the next section, this has not been the case during most of the history of global politics. International law evolved as the law of nations, not the law of individuals.

We begin our discussion of human rights by describing the Holocaust, an event so terrible that it provided an impetus to holding states and leaders responsible for what they did to their citizens, as well as citizens of other countries. We then examine the sources, scope, and codification of such rights since World War Two, and the protections they provide. Some of the controversy

over human rights involves the status of women. Are women’s rights also human rights? In what ways are women treated unequally? Among the most important concerns involving women are the various forms of violence practiced against them and the question of whether women should enjoy reproductive independence. Finally, should we respect the role of women as defined by different cultures, or should women everywhere enjoy equality with men?

The Holocaust and the genocide convention

During World War Two, civilians were victims of unprecedented atrocities and in recent decades new types of warfare have emerged in which innocent civilians have become the principal victims. Despite the growing effort to hold perpetrators accountable for war crimes and **crimes against humanity** in the Nuremberg and Tokyo war crimes trials, **genocide** and **politicide** have become increasingly common in global politics in recent decades. As Table 11.1 shows, since 1945 the mass killing of civilians has occurred on almost every continent.

Table 11.1 Genocides and politicides since 1945*

AFRICA				
<i>Nation</i>	<i>Years of episodes since 1945</i>	<i>Cumulative civilian death toll</i>	<i>Group affected</i>	<i>Major killers</i>
Sudan – South, Nuba Region	1956–72 1983–2005	2,000,000	Nuer, Dinka, Christians, Nuba, southerners	Khartoum government, NIF government, Militias, Rebels
Sudan – Darfur	2001 – present	250,000+	Zaghawa, Fur, Massaleit, and black Africans	Janjaweed Arab militias, Sudan government
Democratic Republic of the Congo	1945–60	1,000s	Africans	Colonial Forces
	1960–65	1,000s	Civil war	Rebels, army
	1977–79, 1984	1,000s	Civil war	Rebels, army
	1994–97	80,000 2 million	Hutus, Banyamulenge, (civil war)	Kabila/Rwandan army, Ugandan, Rwandan armies, rebels, DRCongo, allied armies
	1994 – present 1997 – present	40,000 1 million	Hema, Lendu (civil war)	Ethnic militias War-lord led militias, DRC army

Table 11.1 continued

AFRICA				
<i>Nation</i>	<i>Years of episodes since 1945</i>	<i>Cumulative civilian death toll</i>	<i>Group affected</i>	<i>Major killers</i>
	1994 – present	500,000+	Women (mass rape)	Rwandan <i>interhamwe</i> militias, Congolese militias, army
Somalia	1988 – present	100,000	Somalis, Isaaq clan	Warlord/clan militias
	2006 – present	40,000	Islamists, gov't supporters	Ethiopian army; Al-Shabaab Terrorists
Ethiopia	1945–74	150,000	Oromo, Eritreans, Somali	Selassie monarchy
	1974–85	750,000	Class enemies, Oromo	Derg communists
	1994–2000	125,000	Eritrea war	Army (Ethiopian Defence Forces)
	2001 – present	25,000+	Ethnic minorities	Army (EDF)
	2001 – present	1,000s	Oromo	Army (EDF)
		1,500	Anuak in Gambella	Army (EDF)
Guinea		20,000	Ogadeni (Somalis)	Army (EDF)
	1958–84	1,000s	Political enemies	Toure Marxist government
	1984–2008	1,000s	Political enemies	Conte military
	2000–03	1,000s	Guinean civilians	Charles Taylor forces
	2008 – present	100s	Political enemies	Military
	28 Sept 2009	160+	Democratic opposition	Military
Equatorial Guinea	1975–79	50,000	Bubi, Nguema foes	Macias Nguema regime, successor
	2001 – present			
Uganda	1972–79	300,000	Acholi, Lango, Karamoja	Amin gov't army, police
	1980–86	250,000	Baganda, Banyarwanda	Obote gov't army, police
	1994 – present	10,000s	LRA foes	Lord's Resistance Army
Chad	1965–96	10,000s	Southern Saras, civil war	Government army, Libyan army, rebels
	2005 – present	1,000s	Zaghawas, Fur	Sudan-backed militias
Kenya	1952–60	1,500	Kikuyu, 100s colonials	Colonila forces, MauMau Kikuyu
	1991–93	1,000s	Nilotics	Ethnic militias
	2007–08	1,300+	Kikuyu, Luo, Luhya, other ethnic groups	Ethnic youth gangs
Zimbabwe	1982–84	20,000	Matabele	Government army 5 th brigade, militias
	1998 – present	1,000+	MDC supporters, Matabele, urban poor, white farmers	government police, army, ZANU-PF militias
Côte d'Ivoire	2000–07	3,000+	Dioulas, immigrants from Burkina Faso, Mali	Government, bete & other militias, death squads
	2000–07	1,000+	Southerners	Northern rebels
Eritrea	1961–91	570,000	Eritreans (independence war with Ethiopia)	Ethiopian armies, police
	1998–2000	125,000	Border war with Ethiopia	
Burundi	1959–62	50,000	Hutus	Tutsi government

<i>Nation</i>	<i>Years of episodes since 1945</i>	<i>Cumulative civilian death toll</i>	<i>Group affected</i>	<i>Major killers</i>
	1972	150,000	Hutus	Tutsi army
	1988	25,000	Hutus	Tutsi army
	1993–95	50,000	Tutsis	Hutu rebels
		100,000	Hutus	Tutsi army
	1996–2006	100,000	Tutsi, Hutu	Rebels, army
Togo	2004 – present	1,000s	Eyadema opponents	Government police, army
Nigeria	1966–70	1,000,000	Ibos	Nigerian army
	1972–2000 sporadic	1,000s	Tiv, Hausa, Yoruba, Ogoni, Others	Ethnic mobs
	2001 – present	500+	Niger delta groups	Nigerian army
Algeria	1954–63	160,000	OAS, Harkis, settlers	French Legion, OAS, Rebels
	1991–2005	200,000	Gov't officials, Berber	Islamic Armed Group (GIA)
Sierra Leone	1991–2003	200,000	Sierra Leone civilians	Revolutionary united front, other militias
Rwanda	1959–63, 1993	10,000s	Tutsi	Hutu government
	1994	800,000	Tutsi	Hutu power government, Interhamwe
	1995 – present	1,000s	Hutus	Rwandan government
Congo-Brazzaville	1959–68	5,000	Gov't foes	Government army, police, rebels
	1997–2000	1,000s	Political militias	Gov't army, rebels, Angola
Angola	1961–62	40,000	Kongo	Colonial army
	1975–2003	500,000	Umbundu, Ovimbundu	Government, UNITA armies, allies
Central African Republic	1966–79	2,000	Bokassa foes	Government army, police
	2001			
Liberia	1990–2003	200,000	Krahn, Gio, Mano, etc.	Doe government army, Taylor rebels, government, rebels
Botswana	1990 – present	100s	Küing Bushmen, Caprivi Namibians	Government police
Senegal – Casamance	1990–2001	1,000	Diola (civil war)	Senegalese army, rebels
Guinea Bissau	1960s – present	1,000s	Opponents of gov't	Army
Morocco-Western Sahara	1976 – present	1,000s	Sahrawis	Moroccan army, Polisario rebels
Mali	1990–93	1,000	Touaregs	Malian army, Touareg rebels
Mozambique	1975–94	1,000,000	MPLA, Renamo	Renamo, MPLA
Madagascar	1947–48	50,000	Malagasy nationalists	French colonial forces
South Africa	1987–96	1,000s	Zulus, Xhosa, ANC	Government police, ethnic militias
	1994 – present	3,000	Boer farmers	Hate crimes
Egypt	Sporadic	100s	Copts	Muslim fundamentalists

Table 11.1 continued

AMERICAS				
<i>Nation</i>	<i>Years of episodes since 1945</i>	<i>Cumulative civilian death toll</i>	<i>Group affected</i>	<i>Major killers</i>
Colombia	1948–58	180,000	Liberals vs. Conservatives	Political parties
	1975 – present	10,000s	Gov't officials, leftists, police, drug wars	Marxists, rightist death squads, drug cartels
Venezuela	1945–70s	1,000s	Yanomami	Settlers, miners
	2004 – present	100s	Isolated Chavez opponents	Chavez neo-Marxists
Brazil	1945–64	300,000	Vargas foes, Indians	Gov't police, settler militias
	1964 – present sporadic massacres	1,000s	Kayapo, Yanomami, etc.	Settlers, miners
Guatemala	1950s–80s	200,000	Mayans	Gov't army, death squads
Cuba	1945–59	100s	Rebels	Rightist gov'ts
	1959 – present	1,000s	“Counter-revolutionaries”	Castro gov't
Argentina	1976–80	20,000	Leftists	Army, police
Chile	1973–76	10,000s	Leftists	Army, police
Nicaragua	1970–79	30,000	Sandinistas	Gov't army
	1980–89	30,000	Contras	Sandinista army
El Salvador	1980–92	75,000	Leftists	Army, militias
Peru	1980–92	69,000	State authorities	Shining Path Maoists
Paraguay	1945–62	1,000s	Indians	Army, settlers
	1962–74	1,000	Aché Indians	Settlers
Mexico	1945–2001	10,000s	Indians, gov't foes	Army, police
Chiapas	1945–2001	10,000s	Mayans	Army, police
ASIA				
North Korea	1949–53	2,000,000+	Korean civilians, Korean & UN troops	North Korean invasion of South, war to drive North back
Afghanistan	1995–97	1,000,000+	North Korean civilians	State created famine
	1978–93	700,000	Anti-communist forces	Soviet invaders
		50,000+	Pro-Soviet Afghans	Mujahadin
	1993–96	30,000	(civil war)	Warlords
	1996–2001	50,000+	Tajiks, Uzbeks, Hazara	Taliban, Al Qaeda
	1996–2001	10,000+	Pashtuns	Northern Alliance
	2001 – present	1,000s	Gov't supporters	Taliban, Al Qaeda
		1,000s	Taliban	NATO, gov't
Pakistan	1947 (partition)	61,000	Hindus	Muslim mobs
East Pakistan: (now Bangladesh)	1971	1,500,000	Bengalis & Hindus	West Pakistani army

<i>Nation</i>	<i>Years of episodes since 1945</i>	<i>Cumulative civilian death toll</i>	<i>Group affected</i>	<i>Major killers</i>
West Pakistan	1973–77	1,000s	Shiites, Christians	Sunnis
Baluchistan, Sind	1978 – present	1,000s	Baluchis, Sindis	Army
Frontier provinces	2003 – present	10,000s	Government supporters, non-Pashtuns	Islamists, Al-Qaeda
Burma (Myanmar)	1945–48	1,000s	Rebels	Burma Ind Move
	1948–62	15,000	Rebels, govt	U Nu govt, rebels
	1962–2007	100,000	Shan, Karen, NDU	SLORC, SPDC (Burmese gov't)
	2007 – present	1,000s	Monks, anti-gov't democrats	SPDC (Burmese gov't)
Uzbekistan	1991 – present	1,000s	Muslim fundamentalists, government opponents	Ex-Communist (Karimov) government
Fergana Valley	2005 – present	100s	Opposition	Gov't police
Peoples Republic of China	1949–77	35,000,000+	“Class enemies”, religious minorities, Uighurs Muslims, Christians	Maoist communist gov't, PRC army, Red Guards, police
	1977 – present	10,000s	Falun Gong, Uighurs, Tibetans	Chinese Communist Army, police
Nepal	1996 – present	20,000 10,000s	Anti-Maoists Rebels	Maoist rebels Nepal army
Indonesia	1965	500,000	Communists	Suharto gov't & successors
	1984 – present	100,000+	West Papua/ Irian Jayans	Indonesian army
	1966–2005	10,000s 1,000s 1,000s	Acehnese Moluccas Sulewesi	Indonesian army Laskar Jihad Laskar Jihad
India	1947 (partition)	100,000s	Hindus, Muslims, Sikhs	Hindu, Muslim, Sikh mobs
Gujarat	1949–2003	1,000s 100s	Muslims Hindus	Hindu mobs Muslim mobs
Other states	1992–2003	1,000s	Muslims, Hindus	Rebels, police
Kashmir	1989 – present	40,000+	Kashmiri Muslims	Indian police
Philippines	1972 – present	1,000s	Pro-gov't officials Separatists Communists	Marxists, gov't Army, Moros Abu Sayyef
Sri Lanka	1983–2009	60,000	Tamil Sinhalese civilians	Anti-Tamil mobs Tamil Tiger rebels
Tibet	1959–90s	1,200,000	Tibetan Buddhists	PRC communist Chinese gov't
Azerbaijan	1988–94	10,000s 1,000s	Armenians Azeris	Azeris Armenian armies
Tajikistan	1992–97	50,000+	Tajik & Uzbek opposition	Ex-Communists
Cambodia	1945–66	5,000	King's foes	Royal gov't
	1966–75	15,000	Vietnamese	Lon Nol gov't
	1968–75	360,000	Pro-gov't	Khmer Rouge
	1975–79	1,700,000	Class enemies, Cham	

Table 11.1 continued

ASIA				
<i>Nation</i>	<i>Years of episodes since 1945</i>	<i>Cumulative civilian death toll</i>	<i>Group affected</i>	<i>Major killers</i>
		2,200,000	Muslims, city people, Vietnamese, Eastern Zone	Khmer Rouge
	1979–93	230,000	(civil war)	Samrin gov't, KR
	1993–99	1,000s	Gov't foes	Hun Sen gov't
French Vietnam	1945–53	10,000s	Leftists	French colonials
South Vietnam	1954–75	90,000	Leftists	South Viet gov't
North Vietnam	1954–75	1 million	Class enemies, minorities	North Viet gov't
Peoples Democratic Republic Vietnam	1975 – present	10,000s	Boat people, reeducated	Vietnamese gov't
Laos	1945–60	10,000s	Leftists	Royalists, French
	1960–75	100,000	Anti-communists	Pathet Lao
	1975 – present	1,000s	Hmong	Peoples' Democratic Republic
East Timor	1965–2000	200,000	Timorese	Indonesian army, militias
	2007–2008	100s	Political leaders	Military rebels
EUROPE				
Russia	1994–96	50,000	Chechens	Russian army
Chechnya, Ingushetia	1999 – present	25,000	Chechens	Russian army
	1994 – present	1,000s	Ingushi	Russian army
Russia	1990s – present	100	Isolated deaths	Neo-fascists
Yugoslavia: Kosovo	1998–2001	10,000	Albanian Kosovars	Yugoslav army
		100s	Serbs	Kosovo lib army
Yugoslavia: Croatia, Serbia, Bosnia	1941–45	650,000	Serbs	Croatian fascists (Ustashi)
	1941–45	100,000	Croats, Muslims	Serb partisans (Chetniks)
	1945–87	1,000,000	Tito foes	Tito gov't
	1993–2001	1,000s	Dissidents	Milosevic gov't
Macedonia	1999–2001	100s	Albanians	Macedonia gov't
			Macedonians	Albanian rebels
Bosnia	1992–98	100,000	Muslims, Croats	Bosnian Serbs
			Serbs	Croats, Muslims
Georgia: Abkhazia, South Ossetia	1993 – present	100s	Abkhazians	Georgian army, separatist rebels
	2008	100s	Georgians	Russian army
Northern Ireland	1964–2001	3,000	Catholics, Protestants	Irish Republic Army, Protestant extremists

<i>Nation</i>	<i>Years of episodes since 1945</i>	<i>Cumulative civilian death toll</i>	<i>Group affected</i>	<i>Major killers</i>
Croatia	1991–95	50,000	Bosnian Muslims Serbs, Croats	Croat army, militias, Serbs, Bosnian Muslims
USSR (State no longer exists)	1945–53	15,000,000+	“Class enemies”	Soviet police, army, NKVD
USSR national minorities, esp. in Crimea, Dagestan, Ingushetia	1945–47	1,000,000	Repatriated Soviet Nationals, dissidents	NKVD, KGB secret police
	1945–91	6,000,000+	Karachai, Meshketians, Balkars, Crimean Tatars, Ingushi	Red Army, secret police
		400,000		
MIDDLE EAST				
Iraq	1961–2003	190,000	Kurds, Shiites, Kuwaitis	Iraqi army, presidential guard, Baathists
	2003 – present	100,000	Shiites, Sunni “collaborators”, Kurds, Insurgents	Fedayeen, Al Queda, insurgent terrorists, Mahdi army, Iraqi and coalition forces
Yemen	1962–70	150,000	North Yemen Saudi-backed royalists vs. Marxist republicans	Egyptian and Yemeni republican troops, backed by USSR
Israel – Palestine	1948–55, 1956, 1967, 1973	1,000s	Israelis	Irgun, Arab terrorists, Israeli army, police, Fatah
	1987–93	1,000s	Palestinians	Israeli army
		1,162	Palestinians	Hamas, Islamic Jihad, other terrorist groups
		100s	Israelis	Israeli army, police
	2000 – present	1000s	Palestinians	Hamas, Hizbollah
		100s	Israelis	
Lebanon	1974–91	55,000	Christians, Muslims, Druze	Religious militias, Hezbollah, Phalangists
	1991–2005	100s	Lebanese nationalists	Syrian secret police
	2006	100s	Hezbollah, civilians	Israeli army
Iran	1953–78	26,000	Shah foes	Secret police
	1978–92	60,000	Kurds, monarchists, Bahai	Iranian army, revolution guards
	1993 – present	100s	Gov’t opponents	Secret police
	2005 – present		(potentially: Israeli nation)	President, nuclear program
Turkey	1984–2000	10,000s	Kurds	Turkish army
	2001 – present	100s	Kurds	Turkish army
		100s	Turks	PKK
Syria	1981–82	21,000	Kurds, Sunni Muslims	Syrian army, police
Cyprus	1963–67	2,000	Turks Greek Cypriots	Greek Cypriots Turks

* Adapted from Genocide Watch, <http://genocidewatch.org/aboutgenocidespoliticides.htm>

DID YOU KNOW?

The term Holocaust, as used in the New Testament (Mark 12:33) meant “burnt offerings and sacrifices,” and it came to mean “complete destruction by fire.

The concept of genocide – the eradication of an entire people – dates back to World War Two and the Nazi effort to exterminate Europe’s Jewish people. Six million Jews died in the Holocaust. Before that, however, **anti-Semitism** had existed in Europe for centuries. Massacres and **pogroms** of Jews were common in medieval Europe, especially during the Crusades, and Jewish believers were frequently forced to live in ghettos and wear identifying marks. They were also widely forbidden to own land or enter into many professions and businesses. However, the term anti-Semitism was only coined in the late nineteenth century, an era characterized by the spread of racist theories and myths in Europe and the US. Even in democratic France, anti-Semitism was widespread in the army, as reflected in the trumped up charge of treason and 1894 conviction of Captain Alfred Dreyfuss (1859–1935) of spying for Germany.⁹ The French writer Joseph Arthur, Count of Gobineau (1816–82) was especially influential in spreading the ideas of Nordic supremacy and anti-Semitism with his treatise *On the Inequality of the Human Races*, and influential individuals such as the German opera composer Richard Wagner (1813–83) and US industrialist Henry Ford (1863–1947) were virulently anti-Semitic.

During the late nineteenth century, Austria, the country in which Hitler was born and raised, was a hotbed of racist thinking, and Hitler made anti-Semitism the core of his brutal ideology. Following World War One, Hitler became active in Germany’s right-wing anti-democratic movement. In *Mein Kampf* (*My Struggle*), he clearly revealed his hatred of the Jews as well as other

“non-Aryans,” whom he held responsible for all of Germany’s woes, especially the rise of communism and what he believed to be the “degeneracy” of modern society (see Key document, opposite).

No sooner did Hitler come to power in 1933 than the Nazis began to institute policies against the Jews that would culminate in the murder of millions of innocent people. Initially, Jews were dismissed from government and from schools. Then, by the 1935 Nuremberg Laws, German Jews were stripped of their citizenship, and Jews were forbidden to marry non-Jews.¹⁰ In 1938, additional laws were passed that made it illegal for Jews to become lawyers or for Jewish doctors to treat non-Jewish patients. The government also transferred Jewish businesses to non-Jewish Germans at prices well below their value. Some of Germany’s Jews emigrated, but most could not or did not, unable to comprehend what lay in store for them. Among the best known of Jewish émigrés were Albert Einstein (1879–1955), the greatest physicist of his time, who left Germany in 1933, and Sigmund Freud (1856–1939), the founder of modern psychology, who fled Vienna in 1938.

Nazi violence against the Jews began in earnest on the night of November 9, 1938, called *Kristallnacht* (Crystal Night), when the windows of Jewish-owned shops were shattered and many Jewish citizens were beaten or interned in concentration camps. With the onset of World War Two and Germany’s conquest of much of Europe, the Nazis began to contemplate a “final solution to the Jewish question.” Accompanying the Nazi invasion of the Soviet Union in June 1941 were mobile groups called “action squads” that were organized specifically to kill Jews.

On January 20, 1942, at a secret conference convened by Reinhard Heydrich (1904–42), second in command of the *Schutzstaffel* (SS) (an elite unit that ran the network of German concentration camps) in Wannsee, a Berlin suburb, it was decided that the extermination of the Jews would begin. Gas chambers were built at several concentration camps in Poland including

KEY DOCUMENT

EXCERPTS FROM CHAPTER 11, “NATION AND RACE,” OF HITLER’S *MEIN KAMPF*

No more than Nature desires the mating of weaker with stronger individuals, even less does she desire the blending of a higher with a lower race, since, if she did, her whole work of higher breeding, over perhaps hundreds of thousands of years, might be ruined with one blow . . .

If the Jews were alone in this world, they would stifle in filth and offal; they would try to get ahead of one another in hate-filled struggle and exterminate one another, in so far as the absolute absence of all sense of self-sacrifice, expressing itself in their cowardice, did not turn battle into comedy here too . . .

With satanic joy in his face, the black-haired Jewish youth lurks in wait for the unsuspecting girl whom he defiles with his blood, thus stealing her from her people. With every means he tries to destroy the racial foundations of the people he has set out to subjugate. Just as he himself systematically ruins women and girls, he does not shrink back from pulling down the blood barriers for others, even on a large scale. It was and it is Jews who bring the Negroes into the Rhineland, always with the same secret thought and clear aim of ruining the hated white race by the necessarily resulting bastardization, throwing it down from its cultural and political height, and himself rising to be its master . . .

The defeats on the battlefield in August, 1918, would have been child’s play to bear. They stood in no proportion to the victories of our people. It was not they that caused our downfall; no, it was brought about by that power which prepared these defeats by systematically over many decades robbing our people of the political and moral instincts and forces which alone make nations capable and hence worthy of existence . . .

KEY DOCUMENT

EXCERPTS FROM “BABI YAR”¹¹ BY YEVGENI YEVTUSHENKO

In only two days, 33,000 Ukrainian Jews were shot and buried in a ravine by the name of Babi Yar. That event is recalled in a moving poem by the Russian poet Yevgeni Yevtushenko:

No monument stands over Babi Yar.
A steep cliff only, like the rudest headstone.
I am afraid.
Today, I am as old
As the entire Jewish race itself.
I see myself an ancient Israelite.
I wander o’er the roads of ancient Egypt

And here, upon the cross, I perish, tortured
 And even now, I bear the marks of nails . . .
 I see myself a boy in Belostok . . .
 Blood spills, and runs upon the floors,
 The chiefs of bar and pub rage unimpeded
 And reek of vodka and of onion, half and half.
 I'm thrown back by a boot, I have no strength left,
 In vain I beg the rabble of pogrom,
 To jeers of "Kill the Jews, and save our Russia!"
 My mother's being beaten by a clerk . . .
 It seems to me that I am Anna Frank,
 Transparent, as the thinnest branch in April,
 And I'm in love, and have no need of phrases,
 But only that we gaze into each other's eyes.
 How little one can see, or even sense!
 Leaves are forbidden, so is sky,
 But much is still allowed – very gently
 In darkened rooms each other to embrace.
 – "They come!"
 – "No, fear not – those are sounds
 Of spring itself. She's coming soon.
 Quickly, your lips!"
 – "They break the door!" . . .
 Wild grasses rustle over Babi Yar,
 The trees look sternly, as if passing judgment.
 Here, silently, all screams, and, hat in hand,
 I feel my hair changing shade to gray.
 And I myself, like one long soundless scream
 Above the thousands of thousands interred,
 I'm every old man executed here,
 As I am every child murdered here . . .

Sobibór, near Lublin; Treblinka, northeast of Warsaw; and Auschwitz in Upper Silesia (see Figure 11.2). From all over Europe, Jews were shipped to these camps, where they were systematically murdered according to a program supervised by Adolf Eichmann (1906–62). In 1960, long after the war had ended, Israeli agents kidnapped Eichmann from Argentina and brought him to trial, where he was sentenced to death and executed for his crimes.

The Holocaust not only produced the term genocide but forced the world to confront the phenomenon. Although evidence had come to light of what the Nazis were doing, and tales of the death camps were widely circulated in the US, the USSR, and Britain during the war, the discovery of the death camps, as well as Japanese war crimes, produced shock and horror. Thus, in 1948 the UN General Assembly passed the Genocide Convention, which made genocide a



Figure 11.2 Dachau concentration camp

Source: Roger Viollet/Getty Images

crime. Article 2 of the convention defined genocide as “acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group” by the following means:

- killing members of the group
- causing serious bodily or mental harm to members of the group
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- imposing measures intended to prevent births within the group
- forcibly transferring children of the group to another group.¹²

President Truman submitted the Genocide Convention for ratification, but the Senate delayed approval until February 1986 owing to concern about its implications for US sovereignty.

The allies were determined to bring those responsible before the bar of justice. Although some have called the trials of German and Japanese war criminals “victors’ justice” – punishment imposed by the war’s winners on its losers – the trials marked a major step in holding individuals responsible for their acts and not permitting them to hide behind the protection of state sovereignty.

The Nuremberg precedent and the evolution of international criminal tribunals

The idea for bringing individuals to trial for war crimes dates to the end of World War One. A provision of the Versailles Treaty called for the trial of Germany's Kaiser, but Wilhelm fled to Holland at the war's end, where he received political asylum and lived long enough to witness the German conquest of that country in World War Two. The trials of other Germans for alleged crimes were prosecuted with little energy or success in German courts. Indeed, until 1945, only national courts could deal with alleged war criminals.

The Nuremberg and Japanese trials

The trials of the Germans at Nuremberg after World War Two were unprecedented because they were conducted by international tribunals. A special war crimes court was established with jurists from the US, the USSR, Britain, and France. The accused were not permitted to use the traditional defense of "superior orders"; that is, they could not claim that they had been given orders by superiors to act as they did. Neither could they use a defense based on "reason of state" – that is, that their actions, however regrettable, were in their country's national interests. The defendants were accused of three categories of crime as defined by the Charter of the International Military Tribunal at Nuremberg: war crimes, crimes against humanity, and **crimes against peace** (see Key document).

These charges include two especially controversial aspects. First, the fact that the accused could be held accountable for crimes against humanity "whether or not in violation of the law of the country where perpetrated" meant that

KEY DOCUMENT ARTICLE 6 OF THE INTERNATIONAL MILITARY TRIBUNAL AT NUREMBERG¹³

The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

- (a) **CRIMES AGAINST PEACE:** namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- (b) **WAR CRIMES:** namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) **CRIMES AGAINST HUMANITY:** namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

they could be prosecuted even where the Nazis had passed laws that permitted their acts. To some, this provision seemed to violate domestic sovereignty. The accused could also be tried for crimes against humanity that had been committed *before* the war began.

Even more controversial was the category of crimes against peace. Because going to war was regarded as a legitimate right of sovereign states, no such crime had existed before World War Two. Although Germany had signed the Kellogg–Briand Pact (Pact of Paris) whose signatories renounced war “as an instrument of national policy in their relations with one another,”¹⁴ most countries did not take it seriously, and it had not been enforced against countries that had waged war after it had been signed. Therefore, the law prohibiting crimes against peace and conspiracy to wage an aggressive war has an *ex post facto* (after the fact) flavor to it. In fact, no one was charged with crimes against peace without being charged with other crimes as well. The Nuremberg trials lasted almost a year. Of the 21 defendants, 11 were sentenced to death by hanging, three were acquitted, and seven went to prison. Of those sentenced to death, one, Hermann Göring (1893–1946), committed suicide just hours before he was to be executed.

Accused Japanese war criminals were also made to stand trial between 1946 and 1948. Twenty-seven Japanese leaders were brought before the International Military Tribunal for the Far East in Tokyo. The court included justices from 11 allied nations that had fought Japan. According to the indictment, the defendants had promoted a scheme of conquest that “contemplated and carried out . . . murdering, maiming and ill-treating prisoners of war (and) civilian internees . . . forcing them to labor under inhumane conditions . . . plundering public and private property, wantonly destroying cities, towns and villages beyond any justification of military necessity; (perpetrating) mass murder, rape, pillage, brigandage, torture and other barbaric cruelties upon the helpless civilian population of the over-run countries.”¹⁵

DID YOU KNOW?

Scientists in Unit 731 of the Imperial Japanese Army used human subjects, including allied prisoners of war, to test the value of diseases such as anthrax, cholera, typhoid, and plague for biological warfare, killing thousands in the process. When the war ended, the unit’s commanders burned their records and destroyed their facilities. Later, at the recommendation of General Douglas MacArthur, a deal was reached with American authorities under which the scientists provided the results of their research in return for immunity from war crimes prosecution. Some of the scientists involved in Unit 731 went on to successful careers in politics, academia, and business after the war.

Seven of the accused were sentenced to death, including former Prime Minister Hideki Tojo and General Tomoyuki Yamashita (1885–1946), who was in charge of Japan’s occupation of British Malaya and Singapore. The Yamashita case was controversial because Yamashita was convicted of crimes committed by troops in the Philippines over whom he had little control. Japan’s Emperor Hirohito (1901–89) was never brought to trial because the US believed that his cooperation was critical to America’s postwar occupation of Japan and efforts to democratize and reform Japanese society.

The postwar trials established the principle that individuals are responsible for their acts in time of war. In this, the trials departed from the tradition of treating states as responsible for the actions of leaders. Recent decades have witnessed additional efforts to reassert this principle.

DID YOU KNOW?

Iva Toguri D'Aquino (1916–2006), better known as “Tokyo Rose,” was tried and convicted for her acts in World War Two. A first-generation Japanese-American who was raised in Los Angeles, she was visiting Japan when war broke out and was unable to return to the US. Under Japanese pressure, she renounced her American citizenship and broadcast radio propaganda to American troops in the Pacific. Convicted of treason, Mrs. D'Aquino was sentenced to 10 years in prison. In 1977, she was pardoned by President Gerald Ford.

Cold War politics precluded the use of international criminal tribunals for several decades because the superpowers repeatedly clashed over the meaning of human rights. Yet, the precedent was revived, albeit employing national courts, during the Vietnam War, a brutal guerrilla conflict in which atrocities were committed by both sides. In 1969, US Lt. William Calley was tried for the murder of Vietnamese civilians in the hamlet of My Lai. According to witnesses, Calley had ordered his company of soldiers to shoot everyone in the village. Calley was convicted and sentenced to life in prison in 1971, but President Richard Nixon ordered him to be placed under house arrest, where he served fewer than four years until his 1974 release. The Calley case created an uproar. Some observers argued that Calley was being used to cover up the acts of more senior officers and that, although US forces had committed atrocities, he was being unfairly selected as a scapegoat.

Ethnic cleansing in Yugoslavia

An additional step toward anchoring the principle of individual responsibility for war crimes was

taken with establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, the Netherlands, by a May 1993 resolution of the UN Security Council. The ICTY was intended to deal with atrocities that had been committed in the former Yugoslavia after 1991 and was the *first genuinely international tribunal* of its kind, the first to hold such trials since Nuremberg and Tokyo, and the first to invoke the Genocide Convention. The court was mandated to prosecute crimes against humanity, violations of the laws of war, and genocide committed in the several Yugoslav wars (Chapter 13, pp. 428–9). The court, which is still operating, consists of 16 permanent judges selected by the UN General Assembly and an independent prosecutor.

Among those indicted by the ICTY, the most prominent was Slobodan Milošević (1941–2006), former head of state of the Federal Republic of Yugoslavia (FRY). Milošević was charged with crimes committed in Kosovo, Croatia, and Bosnia that included **ethnic cleansing** and genocide. Regarding Kosovo, it is alleged that “forces of the FRY and Serbia acting at the direction, with the encouragement or with the support of the Accused, executed a campaign of terror and violence directed at Kosovo Albanian citizens.” As regards Croatia, Milošević was said to have “participated in a ‘joint criminal enterprise’ between at least August 1 1991 and June 1992. The purpose of this enterprise was the forcible removal of the majority of the Croat and other non-Serb population from about one-third of the territory of the Republic of Croatia, an area he planned to become part of a new Serb-dominated state.” Finally, in the case of Bosnia, Milošević was charged with:

- Two counts of genocide and complicity in genocide.
- Ten counts of crimes against humanity involving persecution, extermination, murder, imprisonment, torture, deportation and inhumane acts (forcible transfers).
- Eight counts of grave breaches of the Geneva

Conventions of 1949 involving wilful killing, unlawful confinement, torture, wilfully causing great suffering, unlawful deportation or transfer, and extensive destruction and appropriation of property.

- Nine counts of violations of the laws or customs of war involving attacks on civilians, unlawful destruction, plunder of property and cruel treatment under Article 3 of the Statute.¹⁶

Milošević's trial began on February 12, 2002, with the prosecution completing its presentation two years later and the defense beginning to present its case at the end of August 2004. The court had made the point, clearly and forcefully, that individuals, including heads of state, must assume responsibility for acts committed by them and their subordinates that violate international law. The proceedings were cut short by Milošević's death in 2006.

Also on trial is former Bosnian Serb leader Radovan Karadžić who was captured after a lengthy search,¹⁷ as well as others including Croatian Bosnians and Bosnian Muslims. Bosnian Serb General Ratko Mladić, who is accused of directing the killing of more than 8000 Bosnian Muslim men and boys in a UN "safe area" in Srebrenica in July 1995 – the largest massacre in Europe since World War Two – was captured in 2011 and extradited to The Hague.¹⁸

The Rwandan genocide and civil war in Sierra Leone

The UN authorized a second international tribunal following the 1994 genocide in Rwanda which had led to the murder of hundreds of thousands of Rwandan Tutsis. In the early 1990s, Hutu militants in Rwanda accused the Tutsi minority of intensifying the country's economic and social woes and of aiding a Tutsi rebel group, the Rwandan Patriotic Front (RPF), and Hutu extremists put into effect a plan to annihilate

the country's Tutsis. As many as one million Tutsi men, women, and children were murdered between April and July 1994, as were many Hutu who refused to participate in the genocide.

In response to the Rwandan genocide, a new tribunal, the International Criminal Tribunal for Rwanda (ICTR), was established in Arusha, Tanzania, and held its first trial in January 1997. Although the Arusha tribunal confronted a host of difficulties in getting underway, it managed to indict a number of the Hutu leaders of the genocide and by 2010 had completed 51 cases, with another 23 in progress, and three awaiting trial.¹⁹

In 2002, under agreement between the UN and Sierra Leone, a Special Court for Sierra Leone was established. In that country's 10-year civil war, rebel forces of the Revolutionary United Front supported by Liberia's President Charles Taylor used amputations and rape to gain control of Sierra Leone's diamond mines. Taylor, who fled Liberia to Nigeria, was turned over to the Special Court in 2006 where he was charged with 11 counts of war crimes, crimes against humanity, and other violations of international law committed in Sierra Leone between 1996 and 2002. These include acts of terrorism, murder, rape, use of child soldiers, forced labor, and looting.²⁰ The court, which began hearing cases in 2004, is an unusual hybrid of domestic and international law.

Cambodia's "killing fields" ²¹

After winning power in Cambodia (then renamed Kampuchea), the communist Khmer Rouge led by Pol Pot (1928–98) in 1975 emptied the country's cities, trying to create a peasant utopia. The result was the death of some 1.7 million people by execution, starvation and forced labor until the brutal regime was overthrown by invading Vietnamese troops in 1978. Thus ended what one scholar describes as "the purest genocide of the Cold War era."²² In 2003, three decades after the Cambodian genocide, agreement was reached

between the UN and Cambodia to bring to trial Cambodia's surviving leaders of the Khmer Rouge. The hybrid national–international Extraordinary Chambers in the Courts of Cambodia (ECCC) began its work in August 2006. By this time, many of the Khmer Rouge's leaders were elderly or dead, but the senior living leader, Nuon Chea, was indicted for war crimes and crimes against humanity.²³ The first judgment was handed down on July 26, 2010, against Kaing Guek Eav, alias “Duch,” who ran a Khmer Rouge prison in Phnom Penh, the country's capital city.²⁴

The International Criminal Court

UN-backed tribunals have been controversial, particularly in regards to their efficiency, funding, and limitation to crimes committed in a specific timeframe and specific conflict. It took over two years to begin trying cases in the ICTY and ICTR, and many trials last for months, even years. Furthermore, these ad hoc tribunals have operated at great expense, accounting for over 10 percent of the UN's regular budget in 2000.

In response to such concerns about the ad hoc tribunals, representatives of 160 countries and 250 NGOs met in Rome, Italy, in 1998 to take a first step toward establishing a *permanent* international court not affiliated with the UN to try individuals for war crimes, genocide, crimes of aggression,²⁵ and crimes against humanity. The meeting overwhelmingly approved establishing an International Criminal Court (ICC), consisting of 18 judges elected by secret ballot and located in The Hague. The ICC began functioning in 2002 after ratification by 60 states, and the Court's jurisdiction is currently recognized by 111 countries. The Court's first trial began in 2009 against Thomas Lubanga, a Congolese warlord, for atrocities committed in 2002–2003 in the Democratic Republic of the Congo. Another Congolese warlord, former Vice President Jean-Pierre Bemba was arrested in 2008 in Belgium for crimes allegedly committed in the Central African Republic in

2002–03 and was brought to trial in November 2010.²⁶

Unlike the ad hoc tribunals, the ICC is a permanent institution with global jurisdiction. Its establishment was a giant step in making individuals, including heads of state and other government officials, subject to international law. In fact, one difference between the ICC and the International Court of Justice is the former's focus on individuals. The ICC is not designed to replace national courts, but to exercise jurisdiction where states are unwilling or unable to prosecute individuals accused of “the most serious crimes of concern to the international community.”²⁷ The ICC prosecutor can undertake independent investigations as well as accept cases put forward by member states or by the UN Security Council. Each case is tried by three judges, of whom two must agree for the accused to be convicted.

The United States has opposed the ICC. Although President Bill Clinton signed the treaty establishing the ICC shortly before leaving office, he did not submit it to the Senate for ratification, and in May 2002 President George W. Bush announced that the US would not ratify the agreement. US opposition to the ICC was based on fear that politically motivated charges might be brought against American soldiers serving overseas, including those on UN peacekeeping missions. American opponents of the ICC demanded that the US, as a permanent member of the UN Security Council, be able to veto ICC prosecutions of its citizens. With China, the US also opposed the court's authority to try citizens of countries that did not sign the agreement. With some success, the US has pressured governments to sign bilateral agreements under which they agree to exempt American soldiers from such prosecution. Supporters of the ICC fear that US position will ultimately produce a tiered system of international law, in which only some countries can be held accountable for engaging in the activities defined as crimes by the ICC.

In April 2005, the ICC was handed its first major case by the UN Security Council when

it was asked to investigate the massacre of black African Muslim Sudanese by Muslim Arab Sudanese militias allied with the government in Khartoum called the *janjaweed* in the Darfur region of western Sudan. The Court was sent the names of 51 suspects by a UN commission of inquiry, along with voluminous evidence of atrocities.²⁸ The US abstained from voting on the resolution asking the ICC to investigate the Darfur case. Acting US Ambassador to the UN, Anne W. Patterson, explained that the US remained opposed to the ICC but did not block the resolution because the resolution had explicitly granted Americans immunity from prosecution. Shortly thereafter, the ICC issued arrest warrants, its first, against five leaders of the Lord's Resistance Army, a group that has terrorized northern Uganda for two decades and kidnapped more than 20,000 children.²⁹ In 2010, the ICC's chief prosecutor, Argentina's Luis Moreno-Ocampo, initiated an investigation of the involvement of unnamed Kenyan politicians following the 2007 elections in Kenya that led to the deaths of 1100 Kenyan in ethnic violence.³⁰ In 2011, Moreno-Ocampo requested an arrest warrant for Libyan dictator Muammar Gaddafi for crimes against his citizens.

The prospect that heads of state could be brought before a court for their role in human rights abuses was pioneered by Spain's effort in 1998 to bring General Augusto Pinochet to justice for human rights abuses committed when he was Chile's dictator (1973–90). When Pinochet surrendered power, he received assurance that he would not be prosecuted in Chile for alleged crimes. However, in 1998, a Spanish judge sought Pinochet's extradition from Britain, where he was visiting for medical treatment. In 2000, the British government decided that Pinochet could legally be extradited to Spain but released him, claiming that his health was too poor to stand trial. The Pinochet precedent bodes ill for leaders who violate international law, suggesting that in the future they could be arrested and indicted for their actions when visiting other countries.

The Pinochet precedent was reinforced, as we have seen, with the arrest of Milošević in Belgrade, Serbia in 2001. Then, in 2009, the ICC issued a warrant for the arrest of Sudan's President Omar Hassan al-Bashir for crimes against humanity, specifically "directing attacks against the civilian population" of Darfur³¹ where an estimated 300,000 people had died and millions more had been forced to migrate. The charge of genocide against the Fur, Masalit, and Zakhawa peoples of Darfur was added in a second warrant issued for al-Bashir the following year.³²

One problem evident in cases such as those of Darfur and the Lord's Resistance Army is that once the ICC or any other international court initiates efforts to bring the perpetrators of crimes to justice, there is no longer an incentive for perpetrators and their followers to cease their violence. For this reason, diplomats from the UN, the African Union, and the Arab League opposed the effort to arrest Sudan's al-Bashir because they believed it would complicate efforts to achieve a settlement in Darfur.³³ In effect, peace becomes a hostage to justice. Should peace be sacrificed for

CONTROVERSY

In 1993, Belgium adopted a universal jurisdiction law that allowed victims of human rights abuses anywhere in the world to file complaints in that country. Under the law an unsuccessful effort was made to prosecute Israeli Prime Minister Ariel Sharon in 2002 for alleged crimes against humanity arising from the 1982 massacre of Palestinians by Lebanese Christian militias in the Sabra and Shatila refugee camps. The US, in particular, objected to the law for the same reason that it opposed the ICC, concern that its citizens might be prosecuted for frivolous reasons. Under intense US pressure, Belgium rescinded the law in 2003.

justice, or should perpetrators be forgiven in order to facilitate a negotiated compromise that would bring peace?

The doctrine of universal jurisdiction

Spain's effort to arrest General Pinochet was based on the *doctrine of universal jurisdiction*, by which any court may exercise jurisdiction over crimes against humanity. Just as national courts like Spain's are available for holding leaders responsible for criminal acts, so US courts are used by those seeking justice from leaders who have abused human rights. Using an obscure eighteenth-century statute, individuals have found that they can seek civil damages against visiting leaders who have violated their civil rights. The 1789 Alien Tort Claims Act allows federal courts to try "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States,"³⁴ and in 1980 a Paraguayan citizen invoked the law successfully against a Paraguayan official who had killed his son (*Filartiga v. Pena-Irala*). Since then, several cases have been brought against visiting foreign officials. Among those who have been sued under this law are former Philippine President Ferdinand Marcos (1917–89), Bosnian Serb leader Radovan Karadžić, and two Salvadoran generals, as well as officials from Haiti, Ethiopia, Rwanda, and Indonesia. In 2000, five Chinese democracy advocates even tried to sue former Chinese Prime Minister Li Peng for his role in the 1989 Tiananmen Square massacre of student demonstrators in Beijing. And a suit was brought against Zimbabwe's President Robert Mugabe during his visit to the UN in 2000. In recent years, US firms doing business in such countries as Colombia, Ecuador, Egypt, Guatemala, India, Indonesia, Myanmar, Nigeria, Peru, Saudi Arabia, South Africa, and Sudan have been sued for actions in those countries.³⁵ In 2004, the US Supreme Court upheld the Alien Torts Act (*José*

Francisco Sosa v. Humberto Alvaréz-Machain, et al.) but warned courts not to use the law to impede the ability of Congress and the president to conduct foreign policy.

In sum, the agreement of national courts to adjudicate cases of human rights violations committed against foreigners in other countries is a development that reflects the shift in international law from a law of nations to a law of people. We now turn our attention to the growing emphasis in international law on individuals and the evolution of human rights in global politics, an issue that challenges the prerogatives of sovereign states. In what follows, we examine the sources, content, and impact of human rights on global politics in recent decades. Few topics more vividly portray the speed and degree of change in global politics that is a theme of this book.

Individual rights under international law

Interest in human rights reflects growing recognition that individuals, as well as states, are subjects of international law. But what rights do individuals have, and what are the sources of these rights? Do states determine citizens' rights? Do individuals have intrinsic rights, even if states do not recognize them? When states and international organizations try to end other states' human rights abuses, does this violate sovereignty? In this section, we will examine each of these questions.

Sources of human rights

The idea of human rights is derived from the belief that God and nature confer dignity on all human beings. This tradition of **natural law** dates back to Greek Stoicism and Roman law, as well as to efforts during Europe's Middle Ages and Renaissance to limit rulers' arbitrary behavior. Natural law theorists like St. Thomas Aquinas

argue that actual law should reflect law as it *ought* to be. Their approach was, therefore, normative rather than empirical.

In practice, states, as we have seen, do not always subscribe to human rights. Thus, the belief that such rights are universal cannot be based in **legal positivism**, which provides that states are only subject to rules they freely accept by signing a treaty or habitually acting in conformity with them. However, those who favor universal human rights claim that there are higher rules of international morality known as *jus cogens* (“compelling law”). According to what is called *normative hierarchy theory*, states must observe human rights that are international norms derived from *jus cogens*. Thus, by Article 53 of the 1969 Vienna Convention on the Law of Treaties, drawn up by the UN’s International Law Commission: “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.”³⁶ This convention, which has been ratified by most of the global community, would seem to accept the existence of those higher norms that constitute *jus cogens*.

There is an historical basis in custom for universal human rights. One of the most important was the Magna Carta (Great Charter), issued by England’s King John on June 15, 1215, under pressure from England’s barons. The barons were in rebellion against the growing tax burden imposed by the king without their consent to support his wars in France and against the harsh methods he employed to collect those taxes.³⁷ In the Magna Carta, the king agreed to limit his arbitrary powers and follow existing customs. In this, he admitted that no one in England, including himself, was above the law that he, too, had to follow.³⁸

Although the Magna Carta was issued in response to specific grievances of England’s barons, several of its liberties have evolved into general principles of British and US law and justice that today are regarded as fundamental rights in most liberal democracies. For example, clause 20 of the Magna Carta that guaranteed that “a free

man shall be fined only in proportion to the degree of his offense” is the basis of the Bill of Rights’ guarantee that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” Clauses 28, 30, and 31 of the Magna Carta are the bases of the US Fourth Amendment guarantee against “unreasonable searches and seizures.” And the provision that “no official shall place a man on trial upon his own unsupported statement,” is the basis of the Fifth Amendment right “to not commit self-incrimination.”

Magna Carta’s clause 39 stipulates that no one would be imprisoned “except by the lawful judgment of his equals or by the law of the land” and so is the basis for trial by jury as guaranteed by the Sixth Amendment of the Bill of Rights, as is the right of prisoners to know what offenses they are charged with, what evidence exists, and the right to confront and cross-examine the accuser. The same clause is the basis for the concept of **due process** by which the law must be enforced according to established legal procedures, including safeguards for the protection of individual rights. Accused criminals are thus guaranteed procedural fairness. Integral to due process is the right of habeas corpus – the right of a prisoner to be brought to court to determine whether imprisonment is legal as determined by the facts and the law. Thus, the Fifth Amendment of the Constitution states that no one “shall be . . . deprived of life, liberty, or property, without due process of law” by the federal government, and the Fourteenth Amendment requires that US states apply the same principle. In addition, by clause 40, King John promised not to “sell” or “deny or delay right or justice,” thereby allowing his subjects equal access to courts of law, another basic right enjoyed in democratic societies.

Other precedents for universal human rights include the English Bill of Rights (1689), the American Declaration of Independence (1776), and the French Declaration of the Rights of Man (1789), all of which list basic rights. Some political philosophers such as David Hume (1711–76) and

Jeremy Bentham (1748–1832) opposed basing individual rights on natural law and natural rights (calling them “nonsense on stilts”),³⁹ because such law lacked a factual basis. In addition, since ideas such as natural law and *jus cogens* have Western roots, they lack appeal in non-Western societies in Africa and Asia, and, as increasing numbers of non-Western states entered global society with the end of Europe’s colonial empires, some were unwilling to accept rules to which they had not consented.

Some non-Western leaders adopt a position called **cultural relativism**, the claim that ethical beliefs are different in different cultures and that there are few, if any, universal principles of human rights. Cultures, they argue, are unique and fundamentally different from one another. Behavior, therefore, can *only* be evaluated as “good” or “bad” in the context of the society in which it occurs and such evaluation must reflect the approval or disapproval of that society (see

Figure 11.3). Those who hold this position conclude that values are not objective and that each society should be tolerant of the values of other societies.

Although the concept of universal human rights is of Western origin, other cultures have highly developed traditions requiring respect for the dignity of human beings. Sometimes, rulers are obligated to give such respect in return for the obedience of those they rule. In this case, individuals do not have a fundamental entitlement to human rights. Traditions of such reciprocity exist in civilizations such as Islam, Confucian China, Africa, and Hindu India. Confucian rulers are obliged to serve the general interest of the people, but the Chinese language did not have a word for “rights” until the nineteenth century. If China’s emperors did not abuse subjects, it was *not* because people had inherent rights but because that was how an enlightened Confucian ruler was expected to behave.

Does the absence of a “rights” tradition undermine the claim for universal human rights, or is cultural relativism merely an excuse for repression? These are controversial issues. Some non-Western leaders argue that human rights should be interpreted differently in non-Western settings. They contend that the need for economic development in their countries may require limiting individual liberties.

Despite the claim of cultural relativists that human rights vary depending on cultural norms, most countries have accepted as legal obligations the growing body of human rights law enacted since World War Two.



" / won't advise it, but you do have the right to remain silent"

Figure 11.3 Humane interrogation

Source: original artist @ cartoonstock

The elaboration of human rights

Human rights have been developed and expanded by international organizations and legal instruments. The UN Office of the High Commissioner for Human Rights (OHCHR) employs the principal UN human rights official – the High Commissioner. The OHCHR describes human

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Global terrorism poses knotty problems for human rights analysts. In Afghanistan, in 2001, some US citizens were captured while fighting for the Taliban *against* the United States. Such captives are not legitimate soldiers of sovereign states and therefore are not automatically protected by the laws of war. However, do Americans who have fought against the US and who were captured in a foreign country merit the constitutional protections of citizens in the United States?

During the Afghanistan war, an American citizen, Yaser Esam Hamdi, was captured while fighting for the Taliban. Hamdi was labeled an “enemy combatant” by his captors and, they argued, he could be held until the war was over. Hamdi was imprisoned initially at Guantánamo Bay, Cuba until he was transferred to a naval brig at Charleston, South Carolina. Held incommunicado, at no time did he have access to an attorney. Hamdi sued, claiming that as a US citizen he was entitled to habeas corpus and was being held in violation of the Fifth and Fourteenth Amendments. The government argued that Hamdi was not entitled to habeas corpus because he was captured in a combat zone on foreign soil and posed a grave threat to national security. On June 28, 2004, the US Supreme Court ruled in favor of Hamdi.

Writing for the plurality (two justices wrote a separate opinion), Justice Sandra Day O’Connor admitted that there were “weighty and sensitive governmental interests in ensuring that those who have in fact fought with the enemy during a war do not return to battle against the United States.” However, she continued, “it is equally vital that our calculus not give short shrift to the values that this country holds dear” and that it is “during our most challenging and uncertain moments that our Nation’s commitment to due process is most severely tested.” “A state of war,” she concluded, “is not a blank check for the President.” In a dissenting opinion, Justice Clarence Thomas declared that Hamdi’s “detention falls squarely within the Federal Government’s war powers” and that the “plurality utterly fails to account for the Government’s compelling interests.”⁴⁰ Hamdi was released in October 2004, renounced his US citizenship, and was sent to Saudi Arabia, where he had agreed to remain for at least five years

rights in its mission statement as “universal, indivisible, interdependent and interrelated.” Lacking enforcement powers, the OHCHR depends on persuasion and observation to improve governments’ human rights policies. In addition to the OHCHR, the UN has several committees to monitor compliance with human rights treaties.

There is also a UN Human Rights Council that is empowered to examine, monitor, and publicly report on human rights situations in specific countries or territories. The Council replaced the cumbersome 53-member UN Human Rights Commission in 2006. The Commission had become an embarrassment because countries like

Cuba and Sudan that regularly violated human rights were members. The reformed Council was, however, a half-hearted compromise that fell short of the US aim of replacing the Commission with a much smaller body, and it has many of the same defects as its predecessor. Thus, Russia and China were able to get a resolution passed that declared that free speech could be limited out of “respect for religions and beliefs.”⁴¹

The most important human rights document is the 1948 Universal Declaration of Human Rights, a comprehensive listing of civil, political, social, and economic rights.⁴² The document is not a binding treaty, but a declaration of aspi-

rations adopted by the General Assembly that asserts “the inherent dignity” and the equal and inalienable rights of all members of the human family” as “the foundation of freedom, justice and peace in the world.” In 1966, the Universal Declaration of Human Rights was reinforced by two multilateral treaties: the international covenants on civil and political rights and on economic, social and cultural rights. Collectively, the three documents are known as the International Bill of Human Rights.

One way to think about individual entitlements is to conceive of human rights as negative or positive in relation to state behavior.

Negative rights, which are listed in the International Covenant on Civil and Political Rights, are rights that preclude a government from interfering with individual liberty and usually involve political and civil rights and liberties. Such rights as freedom from government regulation of speech, the press, or religion, so familiar in the US Bill of Rights, are negative rights. In the West, negative rights are part of a tradition that dates back to Magna Carta.

Positive rights, which are listed in the International Covenant on Economic, Social and Cultural Rights, refer to a state’s obligations to provide for citizens’ economic and social welfare – for example, education, employment, and healthcare. Socialists emphasize positive rights as prerequisites for negative rights and, in general, argue that individual liberty is meaningless without economic and social equality and security. They claim that the absence of such equality and security in the developing world constitutes a form of structural violence (Chapter 5, p. 157).

Positive rights are a more recent development in the West than negative rights, dating back to efforts to ameliorate the negative effects of industrialization in the late nineteenth and early twentieth centuries and to President Roosevelt’s New Deal of the 1930s. Thus, negative and positive rights are often referred to as first- and second-generation rights, respectively. American society still gives relatively less weight to positive than

negative rights than do European societies, but global norms, as reflected in the UN’s Millennium Goals, are evolving toward giving both equal weight.

Other agreements supplement those we have described. In addition to the 1948 Genocide Convention, the four Geneva Conventions governing treatment of civilians and prisoners of war in wartime became law in 1949 (with additional protocols in 1977 and 2005).⁴³ In 1950, the European Convention on Human Rights was signed, and the Convention Relating to the Status of Refugees and the Convention on the Political Rights of Women followed shortly afterwards. Thereafter, other conventions were adopted to deal with a variety of human rights issues: the status of stateless persons (1954), abolition of slavery (1956), abolition of forced labor (1957), consent to marriage (1962), elimination of racial discrimination (1965), suppression of apartheid (1973), discrimination against women (1979), torture (1984), the rights of the child (1989), the rights of indigenous peoples (2007), and discrimination based on sexual orientation and gender identity (2008).

Since reliable enforcement mechanisms are lacking, human rights observance relies on voluntary compliance by states or on emergence of a genuine global policy consensus, as happened in eliminating apartheid in South Africa. There exist several efforts to chart progress in human rights. For example, Freedom House, a US-based non-profit organization, publishes an annual country-by-country evaluation of political and civil rights. As of 2009, 89 countries (46 percent) with a population of 1.61 billion people were described as “free” (as based on a checklist of questions on political rights and civil liberties largely taken from the Universal Declaration of Human Rights), 62 (32 percent) as “partly free,” and 42 (22 percent) countries with 1.91 billion people as “not free.”⁴⁴ Since 1973, the percentage of free countries has grown from 29 to 46 percent. However, Freedom House noted that 2009 witnessed declining liberty in 40 countries and improvements in only 16.⁴⁵ According to Freedom House, the

highest percentage of free countries was in Western Europe (96 percent) and the lowest in North Africa and the Middle East (6 percent). Between 1987 and 2007, the number of electoral democracies rose from 66 to 123 countries, but declined to 116 by 2010. Not surprisingly, freedom is related to wealth in global politics, and the absence of freedom and democracy is more common in poor countries. Moreover, democracy requires the existence of social and cultural conditions like the rule of law and cannot be achieved simply by adopting the right institutions. This is one reason why building democracy in Afghanistan or Iraq has proved so difficult.

Since 9/11, a debate has raged over whether Islam and freedom are compatible. Although the question remains unanswered, Freedom House found that only two Muslim-majority countries were free, and most remained not free. Few Muslim-majority countries had democratic electoral systems although Indonesia, which is the largest Muslim society in the world, is a democracy, and democratic aspirations are spreading across the Arab world.

Explanations of human rights abuses

What accounts for violations of human rights around the world? There is no simple answer, and several factors – economic, political, and social – probably explain why some states do not respect citizens' rights.

Among economic factors associated with human rights abuses is a declining standard of living. Human rights abuses occur when economic conditions deteriorate and people search for scapegoats. Political factors also play a role in explaining human rights abuses. As a rule, democratic governments show greater respect for human rights than do authoritarian regimes, though even democracies may violate citizens' rights, especially during wartime. Thus, the US violated the rights of Japanese-Americans during World War Two

and some Arab-Americans, as well as Iraqi and Afghan prisoners, during the War on Terrorism and the invasion of Iraq. Early in the American Civil War, President Abraham Lincoln (1809–65) authorized the suspension of habeas corpus out of concern for “public safety.” The Constitution does not give this power to a president, and since only Congress is authorized to declare martial law, Lincoln's action was unconstitutional. Social factors, too, are related to human rights abuses. For example, abuses tend to occur in societies that are cleaved along ethnic, racial, religious, or ideological lines, where social cohesion is fragile. By contrast, human rights violations are less frequent in homogeneous societies.

Recent decades have seen the proliferation of NGOs seeking to protect human rights globally.⁴⁶ Perhaps the best known is Amnesty International.

Amnesty International

Amnesty International (AI) is among the most prominent of the NGOs concerned about human rights, especially the rights of political prisoners. Others include Human Rights Watch, the World Council of Churches, and the World Organization Against Torture. AI was the brainchild of Peter Benenson (1922–2005), a British lawyer, who was deeply disturbed by the 1961 imprisonment of two Portuguese students who, in a Lisbon restaurant, had publicly drunk a toast to liberty in their country. In a letter to a British newspaper, *The Observer*, Benenson called for an international campaign to help “the forgotten prisoners.” Forty years later, Benenson recalled what had inspired his idealistic action: “Open your newspaper – any day of the week – and you will find a report from somewhere in the world of someone being imprisoned, tortured or executed because his opinions or religion are unacceptable to his government. The newspaper reader feels a sickening sense of impotence. Yet if these feelings of disgust all over the world could be united into common action, something effective could be done.”⁴⁷

The Observer publicized Benenson's "Appeal for Amnesty 1961," in which he asked private citizens around the world to protest against imprisoning individuals for political or religious beliefs. AI's first mission was undertaken in 1962 to Ghana, followed by a mission to Czechoslovakia on behalf of imprisoned Catholic Archbishop Josef Beran (1888–1969). From 1969, the organization became increasingly involved in drafting human rights legislation such as the UN's 1975 Declaration against Torture, and it began to receive widespread recognition for its work. In 1974, Sean McBride (1904–88), chair of AI's International Executive Committee, was awarded a Nobel Peace Prize, and AI was awarded a Nobel Peace Prize in 1977 for "having contributed to securing the ground for freedom, for justice, and thereby also for peace in the world."

Today, AI has three million members in more than 150 countries⁴⁸ headed by an International Executive Committee, with its own research council, and an International Secretariat in London, all funded by voluntary contributions. For more than four decades, AI has sought to free political and religious prisoners, assure fair trials for those arrested, eliminate torture, execution, and other harsh punishment of political prisoners, and bring those who abuse human rights to justice.

AI's principal weapons are publicity, education, and political pressure. AI staff interview victims, "adopt" prisoners whose cases AI publicizes, investigate the facts surrounding individual cases, and publish detailed reports. The group presses governments to approve human rights treaties and live up to them. AI accomplishes many of these activities by making sophisticated use of the internet with its website at <http://web.amnesty.org/>. In addition, AI organizes public demonstrations, sponsors letter-writing campaigns, or uses email to inform others about human rights violations. The group also sponsors special entertainment events to publicize its activities and raise funds. Thus, it observed the 50th anniversary of the Universal Declaration of Human Rights in 1998 by collecting 13 million pledges to support

the declaration and sponsoring a concert in Paris on Human Rights Day with performances by entertainers such as Bruce Springsteen.

The power of publicity was illustrated by the case of Luis Basilio Rossi, a history professor at São Paulo University, Brazil, who was arrested by Brazil's military regime in February 1973. Rossi's wife managed to sneak a note to their neighbor's daughter describing what had happened, and her message was forwarded to London by one of AI's researchers in Brazil. AI quickly organized a letter-writing campaign to Brazilian officials. "I knew that my case had become public," declared Rossi, "I knew they could no longer kill me. Then the pressure on me decreased and conditions improved."⁴⁹ In October, Rossi was released from prison.

AI has campaigned for: the prosecution of Augusto Pinochet (1915–2006) for human rights abuses committed while he was Chile's military dictator (1973–90), establishment of the International Criminal Court, and abolition of the death penalty in the US, which, according to AI, reflects racial discrimination. In past years, AI has lobbied to end the illegal diamond trade in failed states like Sierra Leone (2001), the global arms trade (2002), police abuse in southern Africa (2002), and political killings by Guatemala's armed forces (2002). It has also pressed Colombia to observe citizens' human rights in the midst of civil war (2002) and sought to prevent human rights abuses against Muslims after the September 11 terrorist attacks in the US (2002). More recently, AI campaigned to outlaw the use of child soldiers, end the use of torture, obtain justice for the victims of genocide and ethnic cleansing, and protect the rights of refugees and asylum seekers. In 2009, AI singled out Iran for its 346 executions in 2008, accused China of using the Olympic Games to intensify domestic repression, and scolded Britain for deporting people to places in which they might be tortured.⁵⁰ At present, AI is running global campaigns to end violence against women, eliminate the death penalty globally, counter terrorism with justice, and control the world arms trade.⁵¹

In recent decades human rights law has been extended to issues of gender. The status of women has become a central human rights concern, with movement toward equal rights for men and women in much of the West clashing with opposition in some Islamic and Catholic societies.

Women's rights as human rights

Historically, women have systematically been treated as inferior to men in most societies. Indeed, the Fourteenth Amendment to the US Constitution, which afforded equal rights to newly freed African-American slaves explicitly limited the right to vote to "male inhabitants," thereby excluding women – black and white – from that right. Shocked by the insertion of "male" into the Constitution, the suffragette, Susan B. Anthony (1820–1906) exclaimed: "The only tenable ground of representation is universal suffrage, as it is only through universal suffrage that the principle of 'Equal Rights to All' can be realized."⁵²

But does such treatment violate women's human rights? In an eloquent presentation to the Fourth World Conference on Women meeting in Beijing, China in 1995, then First Lady Hillary Clinton declared that the time had come for the world to hear "that it is no longer acceptable to discuss women's rights as separate from human rights." "It is a violation of human rights," she continued "when babies are denied food, or drowned, or suffocated, or their spines broken, simply because they are born girls . . . It is a violation of human rights when women are doused with gasoline, set on fire and burned to death because their marriage dowries are deemed too small."⁵³ In 2010, having become US Secretary of State, Mrs. Clinton in a speech to the UN Commission on the Status of Women recalled her earlier comments and declared that:

[T]here is still so much more to be done. We have to write the next chapter to fully realize

the dreams and potential that we set forth in Beijing. Because for too many millions and millions of girls and women, opportunity remains out of reach. Women are still the majority of the world's poor, the uneducated, the unhealthy, the unfed. In too many places, women are treated not as full and equal human beings with their own rights and aspirations, but as lesser creatures undeserving of the treatment and respect accorded to their husbands, their fathers, and their sons.⁵⁴

International law now provides explicit protection for women. In 1946, the UN established a Commission on the Status of Women. In 1952 the Convention on the Political Rights of Women was adopted, and in 1957 a Convention on the Nationality of Married Women was added. The most important of such conventions was the 1979 Convention on the Elimination of All Forms of Discrimination against Women, which defined discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."⁵⁵ The Convention dealt with the legal status of women, guaranteeing them the right to vote, hold public office, and represent their countries internationally. It also outlawed discrimination against women in education, employment, and economic and social activities and addressed several sensitive issues, asserting that women should have rights equal to men in holding property, choice of spouse, and parenthood. Even more controversial was the attention paid by the Convention to women's reproductive rights.

In 1983, UNESCO asked the Commission on the Status of Women to set up a procedure to review complaints of sex discrimination, and the Commission did so. A decade later the World

Conference on Human Rights brought women's status into the mainstream of human rights concerns, and the Vienna Declaration and Program of Action endorsed the appointment of a new Special Rapporteur on violence against women. Finally, after years of negotiation the UN General Assembly in 2010 established a UN Entity for Gender Equality and the Empowerment of Women or "UN Women" to consolidate the four separate UN divisions that deal with gender issues.⁵⁶ Nevertheless, despite such advances, women are still not treated equally in much of the world. Violence toward women remains a major problem, and women's efforts to achieve equality are deeply enmeshed in questions of reproductive autonomy.

Gender (in)equality

Nowhere do women enjoy the same opportunities as do men. The UN has developed two measures of gender inequality. One, the gender empowerment measure (GEM), is based on economic participation and decision making, political participation and decision making, and power over economic resources. The other, the gender-related development index (GDI), combines lifespan, knowledge, and standard of living. As shown in Table 11.2, women fared best in the West, especially in Scandinavia. The United States ranks 12th worldwide on both and Britain 16th.

Of the 177 countries examined, inequality was most pronounced in sub-Saharan Africa, also the world's poorest region. Examining individual measures, we find that the education gap is especially pronounced in Africa and the Middle East. Women in Islamic countries like Saudi Arabia and Oman earn only about one-sixth of what men earn. Even in the US and the Britain, the wage gap between men and women in the same job did not significantly narrow until the 1990s and currently remains about five-eighths that of men.

The data suggest that women suffer the greatest inequality in traditional societies where men

control public life and women are relegated to the home and family. Women in such societies exercise little control over their own bodies, and the large numbers of women who remain pregnant throughout their fertile years become economically and politically dependent on men. In wealthier societies, by contrast, women have acquired greater autonomy and have assumed new roles as birth control became available.

Societies that remain largely rural and agricultural value male children more than females because males work the fields, serve in the military, and provide financial security for their elders. Such thinking led to customs such as leaving newborn female infants outside to die and *suttee*, in which a widow immolates herself on her husband's funeral pyre (a former Hindu practice in India). In such societies females are still considered burdensome dependants who must be fed and clothed until they are married. Thus, Indian

Table 11.2 Ranking of the ten best and worst countries in gender equality

Rank	Gender-related development index (GDI) country and Gender empowerment measure (GEM) country
1	Iceland
2	Norway
3	Australia
4	Canada
5	Ireland
6	Sweden
7	Switzerland
8	Japan
9	Netherlands
10	France
168	Democratic Republic of the Congo
169	Ethiopia
170	Chad
171	Central African Republic
172	Mozambique
173	Mali
174	Niger
175	Guinea-Bissau
176	Burkina Faso
177	Sierra Leone

UNDP, Human Development Report 2007/2008 (New York: UN Development Programme, 2008), Tables 28 and 29, 326–33, http://hdr.undp.org/en/media/HDR_20072008_GEM.pdf and http://hdr.undp.org/en/media/HDR_20072008_GDI.pdf.

doctors advertised ultrasound scans with the motto: “Pay 5000 rupees (\$110) today and save 50,000 rupees tomorrow,”⁵⁷ a reference to the cost of providing a dowry.

Violence against women – termed by one group “hidden gendercide”⁵⁸ – perpetuates gender inequality and reflects unequal power relations. Let us examine some of the forms that such violence takes, including domestic violence, female genital mutilation, honor killings, and rape.

Violence against women

Like inequality, violence against women exists in all societies, traditional and modern,⁵⁹ and is a major contributing factor to women’s ill health:⁶⁰

- In Egypt, 35 percent of women reported being beaten by their husband at some point in their marriage (UNICEF, 2000).
- Up to 47 percent of women report that their first sexual intercourse was forced (WHO, 2002).
- In Canada, the costs of violence against the family amount to \$1.6 billion per year, including medical care and lost productivity (UNICEF, 2000).
- In the US, a woman is battered, usually by her husband/partner, every 15 seconds (UN Study on the World’s Women, 2000).

Vigorous efforts have been made to reduce violence against women. The statute of the International Criminal Court stipulates that rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization are war crimes, but this does not address the issue of domestic violence described in these statistics.

Neither does it address the “gendercide” that occurs because of the widespread preference for male children. Although banned in India (1994) and China (1995), families in those countries use prenatal amniocentesis and ultrasound scanning to learn the gender of fetuses, thereafter aborting

females.⁶¹ Indian Prime minister Manmohan Singh decried the practice: “No nation, no society, no community can hold its head high and claim to be part of the civilized world if it condones the practice of discriminating against one half of humanity represented by women.”⁶² “Of course,” declared an Indian physician, “the women want only a boy. If we tell them it is a girl, they will feel very sorry; there will be a sadness in their face . . . And the husband will be saying right away, ‘OK, you are going for an abortion.’”⁶³ Indeed, it is estimated that that 10 million female fetuses had been aborted in India in the two decades before 2006⁶⁴ and that as many as 86.5 million females were “missing” from Asia’s populations as a result of these practices. According to one study, when “one child is allowed to live while another is actively or passively killed,” the result may endanger domestic and international peace and security. In fact, the “young surplus males” are becoming a source of violence both at home and abroad.⁶⁵ In China, where “gendercide” is made worse by the country’s one-child birth control policy, the country has 32 million more boys than girls under the age of 20,⁶⁶ and it is expected that by 2015 one Chinese male in five – referred to as “bare branches” – will be unable to find a bride because of a shortage in women,⁶⁷ leading to rape, kidnapping, and trafficking of women. The desire for sons has led to the kidnapping of boys as well.⁶⁸

One custom that stubbornly resists elimination is genital mutilation, which is still practiced in Africa, the Middle East, and elsewhere, where men demand that the women they marry be virgins who will not fall prey to sexual temptation afterwards. In its more extreme form, genital mutilation involves the partial or total removal of the external female genitalia. As many as 130 million women have undergone one or another version of genital mutilation, and some two million women become victims of the practice every year (see Map 11.1 (later in this chapter) and Key document, below).

Another source of violence against women are **honor killings**, in which women are murdered

KEY DOCUMENT

AN INSULT ON THE DIGNITY OF WOMEN, BY OKUMEPHUNA CHINWE CELESTINE, A NIGERIAN JOURNALIST⁶⁹

I got the first experience of this when I was as young as eight years. Just behind my father's house in the village I heard a voice of a young girl shouting desperately for help inside a closed door. Out of curiosity and desire to render help I dashed out of my father's house and stole into the building where the save-my-soul cry was coming from.

I peeped through the keyhole. To the greatest surprise and shock of my life I saw for the first time in my life one of the evils women inflict upon themselves. This is also the greatest and most barbarous of my people's culture . . .

It was later that I learnt that in my culture, Igbo culture of the South-Eastern Nigeria of West Africa, women are not supposed to enjoy sex as men. Sex is a prerogative that is supposed to be monopolized by men only . . . Reasons for that include custom and tradition, religious demand, protection of virginity, prevention of promiscuity, increasing sexual pleasure for the husband, family honor, aesthetic reasons, purification, enhancing fertility, giving a sense of belonging to a group and increasing matrimonial opportunities.

by members of their own family for an alleged offense that "dishonors" the family, such as sexual relationships outside marriage – even if they are victims of rape. In one case a 15-year-old Syrian girl was kidnapped and raped and later married to a cousin. Then a year later, she was murdered by her brother: "Zahra was most likely sleeping when her old brother, Fayyez, entered the apartment . . . using a stolen key and carrying a dagger. His sister lay on the carpeted floor . . . so Fayyez must have had to kneel next to Zahra as he raised the dagger and stabbed her five times in the head and back: brutal tearing thrusts that shattered the base of her skull and nearly severed her spinal column."⁷⁰ Honor killings still occur in Pakistan, Afghanistan, Syria, Yemen, Lebanon, Egypt, Jordan, the West Bank, and Gaza, with over 2700 female victims in Pakistan alone between 2001 and 2007.⁷¹ With the emigration of Muslims to the West, the practice of honor killings, as well as that of forced marriage, has emigrated Westward as well.

Islamic attitudes toward women's sexual rights are controversial. Under Muslim law, accusations of improper sexual behavior against women require four witnesses, but if found guilty penalties are severe. In recent years, for instance, several of Nigeria's largely Muslim northern states adopted strict Islamic law, or *sharia*, under which extramarital sex by women is punishable by death. However, international protest led Nigeria's courts to pardon or reverse the charges against those condemned to death under *sharia* because of the potential harm to Nigeria's reputation.

The following are among the decisions that have been handed down under *sharia*:

- **March 2002:** Amina Lawal Kurami was sentenced to death by stoning in Nigeria for bearing a child out of wedlock.⁷²
- **November 2007:** A Saudi court more than doubled the number of lashes to 200 that a rape victim was sentenced to after her lawyer appealed the original sentence.⁷³

- *October 2008*: A woman who had been raped was stoned to death in Somalia after being buried up to her neck.⁷⁴

Rape is among the most brutal manifestations of male hostility toward women in wartime. From the Roman conquest of the Sabines in 290 BC to the Japanese enslavement of Korean, Chinese, Filipino, and Dutch “comfort women” in military brothels during World War Two, rape has been used to affirm male domination of women. In recent decades, systematic rape was used to terrorize populations and produce ethnic cleansing in Bosnia, Kosovo, and Rwanda. More recently, tens of thousands of women have been raped by rebels, government troops, and even UN peacekeepers during the civil war in the Democratic Republic of Congo,⁷⁵ and rape has been used as a weapon against black African Muslims in the Darfur region of Sudan.⁷⁶ Even UN peacekeepers have been accused of having raped women in Africa:⁷⁷

- In Rwanda, between 250,000 and 500,000 women were raped during the 1994 genocide (International Red Cross report, 2002).⁷⁸
- In Sierra Leone, 94 percent of displaced households surveyed had experienced sexual assaults, including rape, torture, and sexual slavery (Physicians for Human Rights, 2002).
- In Iraq, at least 400 women and girls as young as 8 were reported to have been raped in Baghdad during or after the war, since April 2003 (Human Rights Watch Survey, 2003).
- In Bosnia and Herzegovina, 20,000–50,000 women were raped during five months of conflict in 1992 (IWTC, Women’s GlobalNet #212, October 23, 2002).
- In some villages in Kosovo, 30–50 percent of women of child-bearing age were raped by Serbian forces (Amnesty International, 27 May 1999).
- One in six US women has been a victim of rape or attempted rape.⁷⁹

With the establishment of the ICC, the practice of rape in wartime was outlawed, and since then

individuals have been brought to trial for rape in several international criminal tribunals. Still, judging from the data, the crime of rape has clearly not been eliminated in either war or non-war settings.

Children, too, despite international guarantees, are frequently victims of human rights abuses. Not only, as we have seen, are they forcibly used as soldiers in some countries, they are exploited, like women, as cheap labor or for prostitution and are the victims of human trafficking, especially in Asia and in Europe.

Ultimately, women cannot achieve equality with men until they take control of when and how they become pregnant. Reproductive issues, the topic we turn to next, are central to women’s health and wellbeing and their possibility for economic advancement.

Reproductive independence

Women’s status, especially their autonomy, health, and economic potential, is tied to contentious issues of reproduction. In the West, many women believe that questions of reproductive rights and birth control, including abortion, are equivalent to the issue of women’s control over their own bodies and, therefore, their freedom. In the developing world, where maternal complications are among the leading causes of death among women aged between 15 and 44, the issue of reproductive rights is closely connected to health issues.⁸⁰

The 1994 UN Conference on Population and Development in Cairo, Egypt, took a major step toward recognizing women’s reproductive rights as a serious issue. Birth control and abortion rights featured prominently at the conference. Norway’s Prime Minister Gro Harlem Brundtland declared: “Morality becomes hypocrisy if it means accepting mothers’ suffering or dying in connection with unwanted pregnancies and illegal abortions and unwanted children.”⁸¹ The conference’s final “Program of Action” proclaimed the right of

women to make their own decisions about their families and recommended controlling population growth by improving the status of women's rights worldwide, especially by providing access to education and birth control.

The conference's decisions were vigorously challenged by Catholic and Islamic religious leaders. Shortly before the conference opened, a majority of the world's Catholic cardinals decried "cultural imperialism" in which "abortion on demand, sexual promiscuity and distorted notions of the family are proclaimed as human rights."⁸² Muslim spokesmen also objected to some of the conference positions, even though many Muslims have long approved of birth spacing and contraceptive use.

Women's rights received even stronger backing the next year at the UN-sponsored Fourth World Conference on Women, in Beijing, China. Some 50,000 people from over 180 countries attended the official meeting of the enormous nongovernmental organization forum trying to influence the official delegates. The resulting Beijing Declaration affirmed the rights of women to be universal human rights, stating that the "explicit recognition and reaffirmation of the right of all women to control all aspects of their health, in particular their own fertility, is basic to their empowerment."⁸³ Nevertheless, this right is still ignored in many parts of the world.

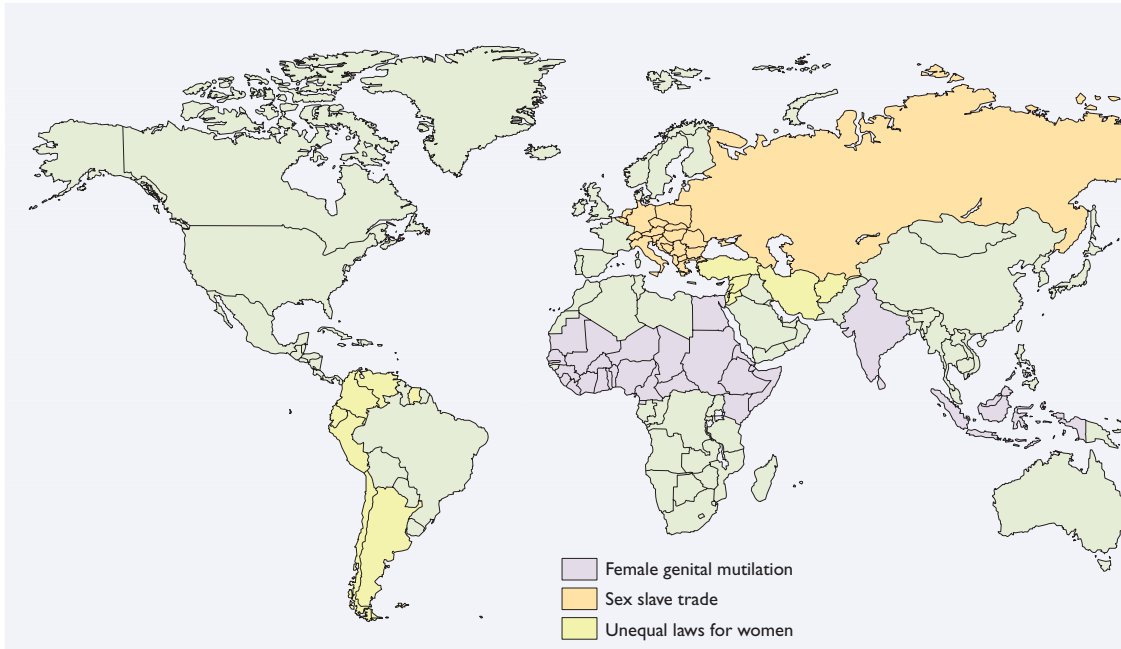
In the United States, domestic politics greatly affects women's reproductive rights. The abortion issue, in particular, has been highly controversial for years, with social liberals supporting a woman's rights to control her reproductive system and social conservatives opposed to abortion. In 1984, President Ronald Reagan ended funding to international organizations that were alleged to promote abortion for birth control. The Clinton administration reversed this policy, which was again restored under President George W. Bush in 2001. Under this policy, foreign NGOs that receive funding for family planning services from the US Agency for International Development must withhold information from women about

the possibility of legal abortion. Called the "Global Gag Rule" by opponents, the policy is contrary to the rights enjoyed by American women under US law. In 2003, President Bush extended the policy to foreign NGOs that receive funding from the State Department. In addition, the president refused to release funds appropriated by Congress for the UN Population Fund, the world's largest provider of family planning. The US also froze funding to the World Health Organization Human Reproduction Program. In January 2009, the Obama administration again reversed the restrictive policy of its predecessor, overturning a ban on federal funds to foreign family planning organizations that offer abortions or provide counselling about abortion.

Respect for the rights of women varies globally as indicated in Map 11.1. Despite controversy surrounding reproductive rights, great strides have been made toward gender equality in Europe and the US in recent decades. Progress has been slower elsewhere, especially in Africa and the Middle East. Much of the reason for this difference is cultural and, as we shall see, opponents of gender equality argue that there should be greater respect for cultural differences.

Should women have equal rights . . . everywhere?

The relativist claim that human rights are culture-bound appears frequently in the context of women's equality. Thus, Muslims, whose practices toward women are criticized in the West, contend that they are victims of cultural bias. They argue that instead of perpetuating inequality and repression, traditional Muslim customs toward women encourage modesty and family stability. In addition, such practices, they contend, provide women with protection. Furthermore, they note, women are treated differently in different Muslim societies, and Westerners tend to focus on extreme cases like Afghanistan's Taliban rather than moderate Islamic regimes. Indeed, many



Map 11.1 Countries with significant gender inequality

Muslim women do not regard themselves as oppressed. A 2005 poll revealed that, although a majority of Muslim women want to be able to vote and serve in government, most regarded gender equality as an issue of Western women, while they saw other issues as more important.⁸⁴

Arguments based on cultural relativism fall on deaf ears among Western feminists. The Convention on the Elimination of All Forms of Discrimination against Women recognizes that cultural norms have an impact on human rights and are partly responsible for the inequalities that women face. Thus, in its preamble the convention declares the need for “a change in the traditional role of men as well as the role of women in society and in the family.” Furthermore, Article 5 of the convention stresses the importance of modifying “the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” The

1995 Beijing Declaration also dismissed cultural relativism as a justification for gender inequality: “The full realization of all human rights and fundamental freedoms of all women is essential for the empowerment of women. *While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.*”⁸⁵

Of course, it is one thing to legislate human rights protections and another to enforce them. For the most part, publicity (“name and shame”) has been effective against governments accused of human rights abuses. More robust approaches have had varying success and entail trade-offs. For example, President Jimmy Carter came to office in 1976 intent on raising the profile of human rights as a global issue. Although the Carter administration argued vigorously for human rights, its behavior reflected the practical necessity of compromising with unsavory reality. Thus, the

THEORY IN THE REAL WORLD

What do human rights mean in practice? What is their function in the modern world? UN declarations proclaiming the rights of women have had little real effect on their status in many countries. According to Michael Ignatieff, “rights are meaningful only if they confer entitlements and immunities on individuals; they are worth having only if they can be enforced against institutions such as the family, the state, and the church. . . This remains true even when the rights in question are collective or group rights.”⁸⁶ The authors of the Universal Declaration of Human Rights debated this very issue of the status of individuals versus collective groups like the state. In the first big argument over the content of the declaration, Charles Malik, a Lebanese diploma and advocate of individual rights, asked: “When we speak of human rights. . . we are raising the fundamental question, what is man? . . . Is man merely a social being? Is he merely an animal?” Yugoslavia’s delegate answered that “human liberty consists in ‘perfect harmony between the individual and the community’ and that the common interest, as embodied in the state, takes priority over individual claims.”⁸⁷

Afghan women are asking similar questions today. Sixty-eight women were elected to Afghanistan’s lower house of the National Assembly in 2005, yet one of those elected, 27-year-old Malalai Joya, declared: “Every day as I am leaving the Parliament building in Kabul, I wonder if someone is waiting outside to kill me.”⁸⁸ Should the Afghan constitution protect women’s rights, or should it protect traditional community values, like Islamic law and the family? Should the Afghan parliament adopt a law advocated by religious traditionalists that allows a husband to starve his wife if she refuses to have sex?⁸⁹

Carter White House was more willing to impose its human rights policy on small countries like Guatemala than on large ones like Argentina, and on enemies like the Soviet Union than friends like Indonesia. Subsequent administrations played down human rights, while using the issue to embarrass the USSR and China in public forums like the UN until the end of the Cold War. When, in June 1989, the administration of President George H. W. Bush faced a dilemma following China’s massacre of students demonstrating for democracy in Beijing’s Tiananmen Square, it condemned China’s brutality while trying not to alienate China’s leaders or harm Sino-America’s trade relations.

Western efforts to influence China’s authoritarian government to improve its human rights performance have had only modest success. Why? The West must temper such efforts with its desire

to maintain strong economic ties with China and work with China’s leaders to persuade North Korea and Iran to end their nuclear weapons programs. During the 1990s, US efforts to threaten China by restricting trade grew less credible as America’s own exporters became more dependent on China’s market. The dilemma sharpened during the 1990s as widespread reports circulated in the US about China’s repression of ethnic Tibetans, export of goods made by prisoners, and organ transplants of executed prisoners. During the 1992 presidential campaign, candidate Bill Clinton charged President H. W. Bush with “coddling” China. However, following his election, President Clinton also tried to avoid any action that would endanger America’s burgeoning trade with China, and in May 1994 he announced that trade and human rights issues would no longer be linked. “China,” Clinton declared, “has an atomic

arsenal and a vote and a veto in the UN Security Council. It is a major factor in Asian and global security . . . China is also the world's fastest growing economy."⁹⁰ The outcome was one that realists approved and liberals deplored: in the case of China, economic and military power had trumped human rights idealism.

Conclusion

This chapter has examined how international law is undergoing a transformation from being the "law of nations" to becoming the "law of people." The transformation in law was sparked by the Holocaust in World War Two, and the Nuremberg and Tokyo trials confirmed individual responsibility for human rights violations in wartime. These precedents have been followed by the establishment of a series of international courts, climaxing with the International Criminal Court. The chapter has also traced the sources of human rights from natural to positivist law and how international institutions and nongovernmental organizations have emerged to advocate human rights, sponsor human rights legislation and end human rights abuses.

Among the most important issues in human rights today is the status of women. We have seen how violence plagues women in most societies and how cultures differ in the treatment of women. This took us to the knotty problem of whether human rights are universal or culture bound. Should all cultures apply the same norms and rules, or should we respect differences in the way different societies regard human rights and treat their citizens?

The next chapter examines the changing definition of security in global politics. Human rights abuses, as we have seen, are among the threats to individuals, and other threats to survival and well-being other than military attack include poverty, crimes, and disease.

Student activities

Map exercise

Using Table 11.1, locate on a world map the major genocides and politicides that have taken place in global politics. What inferences can you draw from the locations of such conflicts?

Cultural materials

Among the many books written about the Holocaust, perhaps the most touching remains the diary of a 13-year-old German Jewish girl in Holland named Anne Frank. Anne and her family fled Germany in 1933 and settled in Holland. In 1942, two years after the German invasion of that country, Anne began to write her diary. Between July and August 1944, the Franks remained in hiding until they were betrayed and sent to the death camp at Auschwitz in Poland. Anne and her older sister, Margot, were then sent to the Bergen-Belsen concentration camp, where Anne died in March 1945. *The Diary of Anne Frank*, first published in 1947 and translated into English in 1952, is still widely read around the world. "In spite of everything," wrote Anne, "I still believe that people are really good at heart."

Another moving artistic memorial to the Holocaust was the 1993 film *Schindler's List* directed by Steven Spielberg. This Academy Award winning film tells the true story of a German businessman named Oskar Schindler who saved Jewish refugees by disguising them as workers in a Polish factory.

Read *The Diary of Anne Frank* or view *Schindler's List* and reconsider the analysis questions. Has your answer to any of these questions changed?

Other films that deal with genocide include *The Killing Fields* (1984) and *Hotel Rwanda* (2004).

Further reading

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