The Undermining of International Human Rights Law: The Clash of Western and Non-Western Human Rights Ideologies

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ABSTRACT

The notion of human rights is an undeniable, undisputable concept that has received universal validity. However, the history of human rights has shown the difficulty that exists in protecting and guaranteeing these rights, which in turn illustrates the difficulty in enforcing international human rights laws. In recent years, the legitimacy of international human rights law has become a highly debated topic. Events in the West and the East have cast a spotlight on its authority. The question of its universality has also surfaced as more human rights violations are taking place worldwide. Several human rights issues, in both Western and Non-Western areas of the world, have forced the international community to revisit this discussion and reconsider the validity of international human-rights law and what its role ought to be.

Declarations of human rights, such as those that followed the American and French Revolutions, as well as the Universal Declaration of Human Rights, make clear, universalistic claims.¹ These declarations are made with unparallel confidence. After all, human rights come from human nature and should thus be eternal and universal. But, not everyone believes them to be eternal and universal, especially when looking at its history. Some argue that the entrance of human rights into political discourse came only at certain times and specific places. “What is imagined to be universal and above history turns out to be contingent and grounded in a particular history.”² This paradox really questions its validity.

² Ibid., 3.
Emerging contradictory viewpoints by Western and Middle Eastern cultures towards human rights have questioned the legitimacy of international human rights law. How can opposing views on what human rights – or what they ought to be – be reconciled to have an *universal* international human rights law? Can the idea of *universal* international human rights law even truly exist without a true consensus on what human rights are? Conflicting cultural, social, political and religious ideologies between popular Western values and publicly dominant Middle Eastern ideologies clearly undermine the legitimacy of international human rights law, hence raising valid concerns about its universality.

This thesis is divided into four chapters, with each chapter divided into sub-sections covering much human rights history and various themes. Chapter one provides the historical background of human rights, focusing on its origins and development. Chapter two takes a closer look at human rights in the West, examining the ideologies of the United States and its stance on human rights. Chapter three analyzes the role of human rights in Middle Eastern and Islamic cultures, while concentrating on Iran and its discourse and record on human rights. Finally, chapter four brings the previous chapters together by focusing on the current universal issues of human rights and how the clash of ideologies have undermine its legitimacy, making it even more difficult to enforce. The conclusion will illustrate the commonality between Western and non-Western societies with regard to defining and interpreting human rights, what the degree of protection should be given to human rights by the state, and how contradictory Western and Non-Western viewpoints have clashed to weaken the authority of international human rights law as a legitimate body of law.
MONTCLAIR STATE UNIVERSITY

THE UNDERMINING OF INTERNATIONAL HUMAN RIGHTS LAW:
THE CLASH OF WESTERN AND NON-WESTERN HUMAN RIGHTS IDEOLOGIES

by

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To my parents.
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Chapter 1

The Human Rights Movement
Human rights are recognition of reciprocity of obligation and duty that flow from the human condition, which all humans should acknowledge by virtue of being from the same human species. These are rights theoretically shared by all individuals regardless of race, sex, nationality, or economic background. Its modern definition emerged out of Western revolutions that rocked their respective nations and eventually, the international community. International law, through the United Nations, has established human rights standards for the global community. These human rights standards stem from the natural law theory that mankind is endowed with a set of undeniable natural rights. The natural law theory can be seen as the backdrop to international human rights standards and international human rights law.

International human rights law is the body of international law that protects "the human dignity of the individual."\textsuperscript{1} Developed following the atrocities of World War II, it seeks to guarantee certain fundamental rights to persons vis-à-vis their own government, but also looks to protect them from other international actors that may violate these fundamental rights.\textsuperscript{2} However, the establishment of these standards has proven not to be enough to ensure compliance by all nation-states to abstain from committing human rights violations and to protect its citizens from human rights violators. These notions of human rights are not a modern invention as the concept emerged as far back as ancient Greece.

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\item International Law Commission, est. 1948 in accordance with Charter of the United Nations, Article 13(1)(a).
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While the modern notion of human rights emerged out of revolutions, historical origins of human rights can be traced back to ancient Greece and Rome. To understand how Enlightenment philosophers even began to think about human rights, it is necessary to evaluate their historical roots. The concept of human rights is often closely tied to the pre-modern natural law doctrines that emerged from ancient Greek philosophy. The legal doctrines of Greek Stoicism, a school of philosophy founded by Zeno of Citum, held that "a universal working force pervades all creation and that human conduct therefore should be judged according to the law of nature." Roman law also allowed for an existence of natural law and jus gentium ("law of nations"). These laws of nations were regarded as universal rights – which emerged from laws of morality – that went beyond the state of nations and were assured by natural law.

Natural law can be traced back to the Greek philosopher, Aristotle (384-322 BCE). Having been a student of Plato, Aristotle examined the law of nature as well as the nature of rights. From his interpretation on such topics evolved the notion of natural law that would be made clearer by St. Thomas Aquinas on his interpretation of Aristotle’s Nicomachean Ethics. It is perhaps because of his interpretation of Aristotle’s work that Aquinas (1225-1276 CE) is often considered the first philosopher to have given natural law its first major classical definition. Aquinas attempted to give law some moral

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4 Burns, 258.
5 Ibid.
6 Ibid.
authorities. In doing so, he established the notion that a moral connection existed within the law. In essence, Aquinas based his theory of law on the theory of morality.\(^8\)

Borrowing from St. Augustine’s views on law, Aquinas hinted that without a moral connection, law would be unjust and therefore would not be law at all. In his argument for this connection, Aquinas introduced four categories of law. First, Lex Aeterna, or eternal law, refers to laws implemented by God and is a matter of knowledge that only God has. The second category is what is referred to as natural law, or Lex Naturatis, which is the principle of the eternal law applicable to human beings. The third category, Lex Divina, or divine law, comes from the holy books; these laws are based on the revelations in the scriptures. This divine law exists above natural law and it is what guides humans to the ultimate human good. And finally, Lex Humana, or human law – also known as positive law – is human-based law that is created by the authority of a community for the common good.\(^9\) Based on these four categories, it is quite evident that Aquinas placed religion right in the middle of the natural law theory, and that without the existence of morality laws were simply no laws at all.

During the middle Ages, the theories that evolved out of ancient Greek and Roman philosophies became more associated with liberal political theories dealing with natural rights.\(^10\) However, the theories of Aristotle and Aquinas were somewhat flawed. For example, the natural law doctrines, which Aristotle and Aquinas had supported, recognized the legitimacy of slavery and serfdom. The legitimization of treating human beings as property is problematic, for it went against “the centralmost ideas of human

\(^8\) The theory of morality suggests that law ought to be obeyed not just because the law is right but also because it is right to obey the law. The theory of morality also explores the ideas of moral obligations that exist in following the law.
\(^9\) Schauer and Sinnot-Armstrong, 12-14.
\(^10\) Burns, 258.
rights as they are understood today" – that is, those of liberty and equality.

It would not be until the seventeenth century that the concept of natural law and natural rights would once again be revamped and inch closer to what the modern concept of human rights is today.

THE WESTERN ROOTS OF HUMAN RIGHTS

The first appearance of any sort of “rights” that would resemble modern human rights as enshrined in law can be traced back to the 1215 Magna Carta. This is where the notion of rights as a “set of popular propositions limiting the sovereign” first appeared. Furthermore, the Magna Carta contained some provisions that resembled those that would be found in later constitutions such as putting a limit on the power of the state and promising no delay in justice or right.

The period from the thirteenth century to the Peace of Westphalia in 1648 saw a transition in thinking on the topic of human rights. The Renaissance and the fall of feudalism led to resistance of religious intolerance and “political-economic bondage.” Liberal notions of freedom and equality that emerged during that period laid the foundation for what human rights have become. Philosophers of the time believed that human beings are endowed with certain inalienable rights that should not be renounced by the state and are guaranteed to them as a natural right. This marked the shift of “natural law as duties to natural law as rights.”

Natural rights had been regarded as God-given rights but the eventual father of international law changed this divine definition of natural rights. Hugo Grotius (1583-
1645 CE) was a jurist and philosopher who came to be known as the father of international law. Grotius believed that a natural law concept existed in international law. Furthermore, Grotius took back natural law and secularized it again. He believed that even if God did not exist, natural law would still have the same content. By secularizing natural law, Grotius introduced the concept of modern natural law. Rather than basing his views on theological theories, Grotius stood outside the box and introduced a more modern way of thinking based on rationalist theories. Historically, Western Europe was about to enter the Enlightenment era and religion would become misplaced in this new wave of rational thinking that evolved throughout the Enlightenment period.

The conception of human rights evolved tremendously between the English Revolution in 1689 to the French Revolution in 1789. Human rights went from being the rights of a particular people in a particular nation-state such as "free-born Englishmen" to being the rights of all people. During this period of Enlightenment, the existence of natural rights as self-evident emerged. Human rights, or natural rights as they were referred to during the Enlightenment, began to be more fully conceptualized following Denis Diderot's article on droit naturel in the 1755 Encyclopedia. Diderot's article articulated the self-evidence of natural rights. He argued that "belief in them rests on their self-evidence." While Diderot provided a modern definition of droit naturel, it was Jean-Jacques Rousseau who first used the notion of natural rights in his 1762 Social Contract. Rousseau introduced the rights of man into ordinary language, which would

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17 Ibid., 8.
18 Ibid.
19 Ibid., 9.
then be further defined by the brewing revolutions in Northern America and Western Europe.

REVOLUTIONARY BEGINNINGS

Human rights seem to have three interlocking qualities: they must be natural (inherent in humans); they must be equal (that is, they must be the same for everyone); and they must be universal (applicable everywhere). Without universality, how can rights be human rights? Without universality, they would simply be rights of a citizen living in a particular sovereign state. Human rights have to be possessed by everyone, everywhere, equally and only because of their status as humans. Accepting its natural quality has proven to be easier than accepting its equality or universality. The declarations of 1776, 1789, and 1948 have provided “a touchstone for those rights of humanity, drawing on the sense of what ‘is no longer acceptable’.”

The Universal Declaration of 1948 has crystallized a hundred and fifty years of struggle for human rights. The 1948 Universal Declaration of Human Rights was based on two major declarations: the American Declaration of Independence and the French Declaration of the Rights of Man and Citizen. It was in those declarations that the notion of human rights really began to take shape. As the Americans were struggling to free themselves from the English and the French from their King, new revolutionary ideas on individual and fundamental rights emerged. These two revolutions played an important role in the development of human rights as they brought the issue of human rights to the

21 Ibid.
22 Ibid., 214.
forefront of their societies at the time. Out of these revolutions emerged two declarations that would fuel the human rights movement for years to come.

The American Revolution

The thinking of seventeenth century ‘Philosophes’ had a great impact on the Western world. This new thinking during the Age of Enlightenment led to revolutionary agitation that first began in North America with the American Revolution. Thomas Jefferson led the way with the teachings of John Locke, exclaiming that his fellow countrymen “were a free people claiming their rights as derived from the laws of nature and not as the gift of their Chief Magistrate.” However, at first, Jefferson and his followers were unsure as to how to separate themselves from the British. Locke had suggested a definition of rights that very much appealed to the Americans, the idea of “Life, Liberty, and Property.” His thinking greatly influenced the forefathers in the construction of the American Constitution. Locke had opened the doors to a universalistic strand of rights that slowly began to intertwine in a unique way with the American colonies seeking freedom from Great Britain.

The Revolutionary War stood for more than just independence from the British. The American Declaration of Independence represented the new philosophies that emerged out of the Enlightenment period and as well as a newfound importance of natural rights. The declaration of natural rights seemed unusual at a time of divine rights and autocratic kings. The Virginia Declaration of Rights of 1776 – which served as the template for the Declaration of Independence – proclaimed, “all men by nature are

23 Burns, 261.
24 Hunt, 116.
25 Ibid., 119.
26 Since he believed that property was a natural right, Locke did not challenge slavery. Perhaps his views on property may be why slavery went unopposed – at least by the government – for years in America.
equally free and independent and have certain inherent rights.\textsuperscript{27} These new rights were defined as “the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.”\textsuperscript{28} The Virginia Declaration went on to list specific rights, such as freedom of press and freedom of religion.\textsuperscript{29} These rights would eventually become part of the Bill of Rights. However, concerns regarding the establishment of a new national institutional framework put rights in America aside in the 1780s.\textsuperscript{30} But in Europe, something greater was brewing in places like Paris and in one moment with \textit{la prise de la Bastille}\textsuperscript{31} and with one great Declaration, all eyes were now on the French.

\textit{The French Revolution}

The history of the French Revolution is well known. What many may not realize, however, is what the significance the 1789 Declaration of the Rights of Man and Citizen has meant to human rights, and more specifically, to its universality. The notion of human rights received a great boost by the Americans in the 1780s with their declaration, albeit a reservation from making them a universalistic notion.\textsuperscript{32} In fact, when the French entered a “state of constitutional emergency,” the American precedent in declaring rights became very compelling to them.\textsuperscript{33} The French were torn as to whether or not a declaration was even necessary. After the attack on the Bastille, the monarchy agreed that

\textsuperscript{27} American Declaration of Independence; see Appendix A, pp. 72-73.
\textsuperscript{28} Hunt, 121.
\textsuperscript{29} Appendix A, pp. 72-73.
\textsuperscript{30} Hunt, 126.
\textsuperscript{31} The Bastille was a fortress in Paris built in the fourteenth century and was used as a state prison in the seventeenth and eighteenth centuries. As tensions grew between the citizens of France and its ruling monarchy, the Bastille – which served as a symbol of the monarchy – was stormed by an angry mob. The storming of the Bastille marked the beginning of the French Revolution.
\textsuperscript{32} Hunt, 126.
\textsuperscript{33} Ibid.
while changes were needed, a declaration was not necessary. But many individuals of the Estates General believed that since the government needed to be rebuilt from scratch, a declaration of rights was essential. And so began the drafting of *La Declaration des Droits de l’Homme et Citoyen*.

Breaking down the various articles of the declaration will illustrate why this document had such an impact on the Universal Declaration of Human rights. While “[the Americans] have set a great example in the new hemisphere, let us give one to the universe.” Unlike its American counterpart, the forefathers of the French declaration, declared that all men, and not just French men, were “born and remain free and equal in rights” as stated in Article 1. Article 2 stated that men had “natural, inalienable, and sacred rights,” ranging from liberty, property, security and resistance to oppression. Article 2 was reinforced with Article 4, which proclaimed that any limits on rights had to be established by law. Article 3 stated that sovereignty rested exclusively with the nation, while Article 15 gave “society” the right to “hold every public agent accountable.” The declaration also forbade unnecessary punishments, as stated in Article 7, and “any legal presumption of guilt,” articulated in Article 9. Freedom of religion and freedom of the press were also declared in Article 10 and Article 11,

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34 The *Etats Généraux* were comprised of equal members from each estate. The First Estate included members of the Clergy. The nobility encompassed the Second Estate. And the Third Estate represented the bourgeoisie – or the commoners. The great tax burden placed on the Third Estate was one of the direct causes leading up the French Revolution.
35 Hunt, 130.
36 *French Declaration of the Rights of Man and Citizen; see Appendix B, 74.*
37 *Wasserstrom, 6.*
38 Appendix B, 74.
39 Ibid.
40 Hunt, 131.
41 Appendix B, 74.
42 Ibid.
respectively. What the French began to do with their declaration was not only to construct new grounds for government legitimacy, but to also encapsulate legal protections of individual rights. Overnight, the French changed the language of everyone when it came to human rights and this change would be felt for years to come.

WORLD WARS AND THE LEGACY OF NUREMBERG

The Great War and the League of Nations

It would take two world wars to solidify the concept – and the importance – of human rights. Following the French Revolution, the international human rights movement became dormant, only to be awakened by the human atrocities of the First World War. The outbreak of World War I catapulted the human rights movement to the forefront of international politics. While some observers believed that the war would become “the struggle that will decide the course of history for the next one hundred years,” others believed that the war would be nothing more than a short and mobile conflict, confined to military combatants with a relatively small loss of lives.

Unfortunately, these blind ‘optimists’ would be proven quite wrong.

World War I resulted in unprecedented carnage. Technology and “rigid alliance systems” brought death and devastation that had been unseen before. The magnitude of bloodshed forced people to take a closer look at the value of human lives and undeniable human rights. While crimes against humanity were by far not a new concept, it was following World War I that the first modern attempt was made “to impute individual

43 Hunt, 131.
45 Ibid., 82-83.
criminal responsibility for crimes against humanity” that occurred during the War.⁴⁶ A report, by a fifteen-member allied commission, presented at the 1919 Preliminary Peace Conference, found the Central Powers to have committed “numerous acts in violation of the established laws and customs of war and the elementary laws of humanity.”⁴⁷ Catching the eye of the commission were the actions of the Turkish and the massacre of the Armenians. Interestingly enough, two American members of the commission dissented on the finding, “dismissing the concept of laws of humanity as ‘not the object of punishment by a court of justice’, but rather a question of ‘moral law’ lacking any ‘fixed and universal standard’.”⁴⁸

As a result of the two Americans’ dissent, the Treaty of Versailles, a peace treaty signed by the Allies following World War I, did not specifically call for trials for crimes against humanity. Still, the issue of human rights reigned strong at the Treaty of Versailles. Ironically enough, American President Woodrow Wilson argued to “enforce peace based on an equality of rights.”⁴⁹ Wilson hoped that following the war liberal democracy would spread and thus enforce the peace he envisioned. In the spirit of Wilson’s vision, the Versailles Treaty created the League of Nations, with its role being to prevent war, settles disputes among nations peacefully, diplomacy and maintaining peace. While its intentions were admirable and not extreme, the League of Nations ultimately failed, partly due to the United States’ failure to join the League due to the Senate’s opposition and the League’s inaction – and inability – to enforce “collective

⁴⁶ Ratner, 45.
⁴⁷ Ibid.
⁴⁸ Ibid., 46.
security” in the open aggression by Italy and Japan.\textsuperscript{50} While the League may have been doomed from the beginning, a realization emerged that an era of presumed peace was to begin and the problem of international human rights would take center stage.\textsuperscript{51} However, World War II posed a serious threat to this new era of peace.

\textit{World War II}

The modern human rights movement is a legacy of the crimes against humanity committed during World War II.\textsuperscript{52} The crimes committed by the Axis states of Germany, Japan and Italy, greatly changed the international discourse of human rights. Gone were the days of states unwillingly allowing “outsiders to critique the treatment of their citizens.”\textsuperscript{53} Rather, with the change of attitudes towards human rights following World War II, international public scrutiny grew intense. This intense scrutiny brought human rights violations out of the shadows and into the international spotlight. Publicity about human rights violations “ignited the interest of ordinary citizens,” who began to coalesce in efforts to stop human rights violations.\textsuperscript{54} The modern human rights movement had thus been given life.

A new benchmark of barbarism was set by World War II, causing the deaths of sixty million people, many of them innocent citizens.\textsuperscript{55} However, World War II also brought about the unexpected opportunity to address and further develop international human rights. The trauma of the war that “shook the world to its very foundation,” forced people to look at themselves and their values and to redefine “the full meaning of ‘peace’

\textsuperscript{50} Ishay, 178.
\textsuperscript{51} Lauren, 104.
\textsuperscript{53} Ibid.
\textsuperscript{54} Ibid.
\textsuperscript{55} Hunt, 201.
and ‘security’.

As a result, the Allies, even before the war was officially over, began to consider how to improve on the failed League of Nations. In the spring of 1945, at a conference held in San Francisco, the basic structure began to take shape of what would eventually become the United Nations. The formula was simple: the great powers would dominate a Security Council; all member countries would have delegates in the General Assembly; and a Secretariat would be named who would act as an executive. An International Court of Justice that mirrored its predecessor from the League of Nations was also established. On June 26, 1945, the United Nations Charter was signed by fifty-one countries, which became its founding members. The preamble of the UN Charter states its establishment as a means of saving future generations from the plague of war and to affirm a belief in fundamental human rights. The scourge of war had taken its toll on the global community, especially with the human rights atrocities of the Holocaust.

The Nuremberg Legacy

The death of six million Jews by the Nazi regime highlighted the extreme consequences of racism and racial superiority. The persecution of Jews by Adolf Hitler marked a new milestone in crimes against humanity. When the War ended, “revelations about the scale of the horrors deliberately perpetrated by the Nazis shocked the public.” The Nazi death camps illustrated the consequences of anti-Semitism and of Aryan racial supremacy. The horrifying loss of innocent Jewish civilians during the Holocaust

56 Lauren, 139.
57 Hunt, 202.
58 Ibid.
60 Ibid.
61 Hunt, 201.
prompted the Allies to prosecute the Nazis for the acts beyond war crimes.\textsuperscript{62} The Nuremberg Trials, as they came to be known, convicted sixteen Nazi leaders for crimes against humanity. More importantly, the Trials established the precedent that no one was immune from punishment for their actions, not even rules, officials and military personnel.\textsuperscript{63} Furthermore, the 1945-1946 trials in Nuremberg brought the atrocities to the international stage and further fueled the human rights movement and the need for international human rights law.

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Following the utter disregard for human life witnessed during the Holocaust, the international community in the newly formed United Nations, emphasized the need for “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”\textsuperscript{64} The United Nations Charter of 1945 set up a Human Rights Commission. Their first task was to draft a bill of human rights. It would take eighty-three meetings and almost a hundred and seventy amendments before a draft was finally submitted for a vote.\textsuperscript{65} The General Assembly finally approved the Universal Declaration of Human Rights (UDHR) on December 10, 1948 with forty-eight countries for the declaration and none opposed.\textsuperscript{66}

Similar to the American and French declarations, the UDHR revolves around the rights of the individual. “Rights are what individuals are entitled to, by virtue of being human beings.”\textsuperscript{67} When drafting the Declaration, its drafters tried to come up with the

\textsuperscript{62} Ratner, 46.
\textsuperscript{63} Hunt, 201.
\textsuperscript{64} UN Charter, 1945.
\textsuperscript{65} Hunt, 203.
\textsuperscript{66} Universal Declaration of Human Rights; see Appendix C, pp. 75-78.
\textsuperscript{67} Devine, Hansen and Wilde, 66.
essential needs and rights, that they felt all individuals are entitled to, regardless of race, sex, language or religion. These needs and rights are split into two categories, sometimes called “first and second generation rights”: civil and political rights, and economic, social and cultural rights, respectively. Rights that concern the enjoyment of individuals to control their own lives are civil and political rights. Some of these include the right to equal treatment and the right to free expression. Civil and political rights force the states to refrain from interfering with the individual’s personal being. On the other hand, economic, social and cultural rights require the state “to do or give something to improve the individual’s life.” These are the rights that concern the welfare of the individual on how they can support themselves, such as the right to work and the right to education.

The preamble of the 1948 declaration states why such a formal statement on rights had now become necessary: “Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.” The declaration went back to the original roots of human rights, bringing morality into play by outlining “a set of moral obligations for the world community.” The declaration has had an effect on the world community similar to the effects the American and French declarations had on their respected governments and countries. But imposing moral obligations on the world proved to be a daunting task, particularly when questions of enforcement and universality entered the picture.

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68 Devine, Hansen and Wilde, 66.
71 Ibid.
72 Appendix C, pp. 75-78.
73 Hunt, 204.
“UNIVERSAL” HUMAN RIGHTS?

The Universal Declaration of Human Rights (UDHR) evolved from a process that was far from being “globally inclusive.” Its drafters – a handful of individuals from mostly Western nations – based its tone and substance upon the Western ideologies of human rights. It is because of its Western-dominated influence that the UDHR and the human rights movement in general have been highly criticized. Opponents have gone so far as suggesting that the Declaration was a “neo-imperialist attempt by the West to ‘civilize’ the majority of the world’s peoples who do not share their cultural heritage.” Such criticism is rather harsh, as the Declaration was able to transcend “a circumstance in which it was drafted” because of its emphasis on the “indivisibility of all rights and its simple enunciation of them.” Still, although, the Declaration is meant to be “an international magna carta for all men everywhere,” its universality is greatly debated, especially by non-Western cultures, specifically Middle Eastern and Islamic nations such as Iran. A closer look at each culture and their views on human rights will show the current splits that exist on the question of the universality of human rights. It is this divide between the West and the Middle East that has seriously damaged the enforcement and legitimacy of international human rights law.

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74 Devine, Hansen and Wilde, 70.
75 Ibid.
76 Ibid.
77 Ibid.
Chapter 2

The West and Human Rights
THE WESTERN LEGACY OF HUMAN RIGHTS

The history of human rights has deep undeniable roots nestled in Western culture. Clear inevitable connections can be traced from the human rights movement to the revolutionary histories of prominent Western nations, such as Great Britain, France and the United States. It is because of these roots that the philosophy of human rights and the human rights movement have blossomed so prominently in the West. Some philosophers argue that "only in Western democratic societies, with their shared philosophies and historical and economic development, does the support for human rights run as deeply in philosophy, society and law."78

As seen in Western constitutions, the Western emphasis upon law revolves around the liberty of individuals.79 For example, the American and French Constitutions are the epitome of the guarantee of individual liberties. The "super power" status of the United States has made the United States the "Western standard" when it comes to human rights. The ideologies of the West towards human rights and international human rights law can be observed in American culture and values.80 A closer look at human rights in the United States highlights the West’s stance on human rights but will also demonstrate how that stance has been tarnished by the use of torture in America in recent years.

HUMAN RIGHTS IN THE UNITED STATES

Dating back to its revolutionary history, the United States has consistently stressed human rights in its ideology.81 Two versions of rights had emerged in the eighteenth century around the time that the British North American colonies began to

78 Devine, Hansen and Wilde, 125.
79 Ibid.
80 Ibid., 124.
explore their rights: a particularistic version which revolved around the “rights specific to a people or national tradition” and a more universalistic version which emphasized the “rights of man in general.”

Philosophers from Thomas Hobbes to John Locke had clearly emphasized the idea of human rights but had done so using the particularistic version, focusing on the “particular historically based rights of the freeborn English man,” essentially opposing the notion of universally applicable rights.

However, as the gap widened between the British and its North American colonies, the universalistic trend of rights began to thicken and eventually became the core on which the colonies relied on to free themselves from the hands of the British.

The universalistic approach to human rights is noticeably present in the American Declaration of Independence and is evident throughout the history of American political development. Crucial documents and elements of American culture “reveal a repeated and heartfelt stress on such concepts as liberty, justice, and equality.” It is, therefore, no surprise that the United States also played a crucial role in the drafting of the Universal Declaration of Human Rights with Eleanor Roosevelt serving as the chair of the drafting committee. However, the United States’ role in drafting such a significant international document does not necessarily mean that the United States has been a paradigm of virtue when it comes to human rights. In a speech, President Jimmy Carter once declared, “Human rights is [sic] the soul of our foreign policy, because human rights is [sic] the
very soul of our sense of nationhood." But the actions of US foreign policy have proven otherwise, specifically with regard to ratifying several human rights treaties and U.S. reticence in ratifying the establishment of the International Criminal Court (ICC).

After many years of resistance, in the early 1990s, the United States finally began to adhere to human rights conventions. However, that adherence did not come without certain conditions. These conditions came in the form of a "package of reservations, understandings, and declarations" (RUDs) that the U.S. has attached to its ratifications of human rights treaties. These RUDs have drawn great criticism from the international community, which has characterized the American government’s ratification process on human rights treaties as "specious, meretricious, and hypocritical." A closer look at the package of reservations reveals several principles apparent in the RUDs. They appear to be the following:

1. The United States will not undertake any treaty obligation that it will not be able to carry out because it is inconsistent with the United States Constitution.
2. United States adherence to an international human rights treaty should not effect—or promise—change in existing U.S. law or practice.
3. The United States will not submit to the jurisdiction of the International Court of Justice to decide disputes as to the interpretation or application of human rights conventions.

The main obstacle that has greatly restricted a full, unconditional commitment by the United States to the human rights movement has been the International Court of Justice ("ICJ"), which overlooked human rights violations before the establishment of the International Criminal Court ("ICC"). The reservation of the ICJ clause was justified by the United States government as a "prudent" move to avoid "frivolous or mala fide

86 Donnelly and Howard, 429.
88 Ibid.
89 Ibid., 2.
charges against the United States. But again, critics saw this “prudent” move as nothing more than an attempt by the United States to deny that it may not be compliant with some provisions of several human rights conventions.

The ratification of treaties in the United States has clearly undermined “a half-century of effort to establish international human rights standards in international law.” This ratification issue was once again explored in 2002 as the International Criminal Court treaty created an international venue where people charged with genocide, war crimes, or crimes against humanity are tried. Such a forum for the prosecution of serious human rights was a triumphant step forward for the human rights movement. However, the United States – the once supposed leader of the human rights movement – declared that it would not sign the treaty, as it had done before with the ICJ, citing that compliance with ICC requirements violates the United States Constitution, that it might somehow affect its “ability to participate in peacekeeping missions” and that it might open its military staff and civilian personnel to frivolous criminal charges.

The U.S. government has opposed ratification of the ICC, arguing that the ICC is unconstitutional. The United States maintains that the ICC’s failure to provide a jury trial

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90 Henkin, 3.
91 Louis Henkin comment on Bricker Amendment and its role on the human rights movement: “Between 1950 and 1955 Senator Bricker of Ohio led a movement to amend the Constitution in ways designed to make it impossible for the United States to adhere to human rights treaties. The campaign for the Bricker Amendment apparently represented a move by anti-civil rights...forces to prevent – in particular – bringing an end to racial discrimination and segregation by international treaties.” When Brown v. Board of Education ended racial segregation in 1954, the civil rights campaign intensified, thus becoming “entirely domestic...The Bricker Amendment campaign became ancient history.” However the damage had been done and the ghost of the Bricker Amendment has lived on. The RUDs “virtually achieve what the...Amendment sought, and more. In pressing his amendment, Senator Bricker declared: “My purpose in offering this resolution is to bury the so-called Covenant on RUDs so deep that no one holding high public office will ever dare to attempt its resurrection”.” (Henkin, pp. 6-7)
92 Henkin, 7.
94 Ibid.
violates the U.S. Constitution. However such a claim seems a bit harsh, as the Department of Justice ruled that there are no Constitutional barriers preventing the U.S. from joining the ICC. The U.S. also contends that the ICC may somehow affect the United States’ peacekeeping and humanitarian efforts. However, the ICC does not dampen the United States’ international action as “U.S strategy already conforms to international and domestic field operations.” Finally, the American government is concerned that the Court might open military and civilian personnel to frivolous or politically motivated charges brought by the ICC. However, mechanisms exist in the ICC Statute that explicitly state that charges under the ICC cannot be brought against an individual unless he or she committed a crime that constitute a core crime, punishable by the ICC such as genocide, crimes against humanity and war crimes. As long as the United States does not engage in such crimes, it should not be concerned with prosecution. But reports of torture use under the George W. Bush tenure have recently surfaced and the United States’ fear of being prosecuted by the International Criminal Court may not be unwarranted in light of these recent reports. Furthermore, the issue of torture in America has greatly damaged the image of the United States and its “leadership” role in the human rights movement.

TORTURE IN AMERICA: WHEN HYPOCRISY PREVAILS

The United States has touted itself as being the defender of the human rights movement in the Western world. From its universalistic approach on the rights of man to its support of non-governmental human rights organizations, the United States was once

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95 Egendorf, 160.
96 Ibid., 161.
97 Ibid., 159.
seen as setting the human rights bar. However, the failure of the United States to sign the
International Criminal Court Statute has raised some eyebrows. How may a nation so
proud of its passion in defending human rights, deny the establishment of such a critical
forum in the human rights movement? That answer may lie in the action of the American
government following September 11, 2001. Following the attacks, the United States
government sent troops to Afghanistan in efforts to battle the ruling Taliban and the
terrorist network of al-Qaeda, responsible for the attacks. Under the policy of
extraordinary rendition,\footnote{Extraordinary rendition refers to the apprehension and extrajudicial transfer of an individual from one nation to another for detention and interrogation. This CIA method of extraditing suspects is done so without the benefit of formal legal proceedings. Extraordinary rendition is inconsistent with international law, ignoring extradition laws and laws of jurisdiction. Furthermore, extraordinary rendition also ignores international human rights laws in that it disregards the rights of the individuals being held as prisoners of war.} captured members of the Taliban and the terrorist group were transported to the U.S. military outpost at Guantanamo Bay in Cuba. However, the
treatment of detainees has been widely criticized, bringing serious allegations of
violations of international human rights agreements to bear against the United States.\footnote{Egendorf, 67.}
The inhumane, torturous treatment of detainees has cast the United States in somewhat of
a hypocritical light with regard to the United States position on other nations’ use of
torture around the world.

Since the terrorists’ attacks on September 11\textsuperscript{th}, 2001, the concept of torture and
the attempts by the U.S. in justifying its use have become the subject of political
criticism, both nationally and internationally. In the U.S. the popular attitude towards
torture seems to have shifted from: “Torture is incompatible with American values,”\footnote{David Luban, “Liberalism, Torture, and the Ticking Bomb,” \textit{Virginia Law Review} 91, no. 6 (Oct. 2005): 1425.} emphasizing individual human rights to, maybe sometimes, it’s \textit{necessary}. This shift in
attitude can be attributed to the terrorists' attack on the Twin Towers and the Pentagon. The frustrations of the American public as well as those in charge of protecting the country have become obvious in this attitude change. But questions have arisen as to whether torture is the answer to better protect the American public and safeguard American values. Regardless of the justifications proposed, the use of torture – especially by such a great leader in the human rights movement – has greatly undermined the legitimacy of the human rights movement.

To understand the use of torture, it is important to define torture and to explore its history. For the purposes of this research, torture is "any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person." The practice of torture has become a widespread tactic utilized around the world and can be traced in historical records over 2000 years ago. "Torture is as old as human history." Ancient Greek and Roman laws specified how torture was used against slaves. But it soon was also used on free individuals found guilty of treason. Torture was also very ubiquitous in England during Elizabethan times.

Torture also existed in the United States during its formative years. Slaves were controlled through the use of authorized violence, which many considered to be torture. From the mid-19th to mid-20th centuries, torture existed in the form of lynching against African Americans. In the 1950s, as the Cold War was beginning to take shape,

102 Ibid.
103 Luban, 1428.
104 McCuen, 18.
105 Ibid.
106 The torture of slaves in pre-Civil War America was dictated in slave codes. These codes authorized and sometimes required the use of violence to regulate their service. Patrollers regulated the movements of slaves by using punishment that included maiming and killing escapees.
CIA torture took center stage.\textsuperscript{107} Significant criticism erupted because of CIA techniques of interrogation. But even greater criticism – both in the U.S. and abroad – emerged after 9/11 when torture reappeared in America as a tool supposedly needed to preserve national security.

Toleration of torture clashes with many acts and treaties passed by the United Nations and independent states, such as the United States, as well. “While many countries have condemned torture, the reemergence of this issue in public debate reflects the extent to which terrorism currently threatens national security.”\textsuperscript{108} But is torture really the lesser evil? Even if it is, does that validate its use while disregarding of laws that prohibit its practice? Torture is universally condemned and its use should be regarded as an illegal act.

“Numerous, widely accepted international instruments prohibit the practice, including the International Covenant on Civil and Political Rights, the American Convention on Human Rights and Fundamental Freedoms, the Geneva Conventions of 1949, and many others.”\textsuperscript{109}

Moreover, several mechanisms exist to combat the practice of torture, which are advocated by governmental and nongovernmental agencies. The United Nations Committee Against Torture was created in 1984 to investigate potential torture case. Amnesty International exists to bring worldwide attention and to make people aware of violations as well as helping victims of torture.\textsuperscript{110} Unfortunately, these mechanisms are not sufficient to prevent torture. Clearly torturous means to an end is unlawful. But many

\textsuperscript{107} Alfred W. McCoy, \textit{A Question of Torture: CIA Interrogation, From the Cold War to the War on Terror} (New York: Henry Holt and Company, 2006), 15.
\textsuperscript{108} Ibid, 16.
\textsuperscript{109} Devine, Hansen and Wilde, 272.
\textsuperscript{110} Ibid.
nation-states continue to employ it. It seems that torture has become tolerated as an exception of international law.

At the international level, legal prohibitions for torture revolve around human dignity. Human rights, under both documentary law and customary international law, play a vital role in establishing crucial international treaties and covenants. Such covenants are the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment. These covenants, among many others, strictly prohibit torture. Furthermore, Article 2 of the UN Convention Against Torture expressly states that there are no justification for the use of torture, stating that “[n]o exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” However, since international law is not easily regulated and enforced, many nation-states get away with using torture as long as their justifications are full of good intentions.

The American government, following the 2001 terrorists attacks on the World Trade Center and the Pentagon, has been criticized for employing techniques that many jurists in the international community define as torture upon detainees in prisons in both Guantanamo Bay and Abu Ghraib. Intense debate has emerged over the interrogations tactics used on terror suspects. The administration of George W. Bush has strenuously argued that such aggressive interrogations measure were not only permissible but necessary in the war on terror. But human rights advocates contend that as a signatory to

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112 Gitmo Interrogation Techniques; see Appendix D, 79.
the Geneva Convention and other international law instruments, the Bush Administration has clearly violated the rights of prisoners of war. However, in February of 2002, President Bush suggested that members of al-Qaeda, the Taliban, and associated forces are deemed ‘unlawful enemy combatants’\(^{113}\) and as such, they do not and should not be entitled to the provisions of the Third Geneva Convention,\(^{114}\) entitling them to certain rights and protections as prisoners of war.\(^{115}\) Through several, carefully constructed memos, the Bush administration expanded the authority of its CIA and military forces to “capture, detain and use deadly force on al-Qaeda operatives” around the world. These memos eventually led to the scandals of Guantanamo Bay and Abu Ghraib.\(^{116}\)

While violations of human dignity and international law are problematic, perhaps the most challenging argument revolves around the clash of torture and American constitutional law.\(^{117}\) The Eighth Amendment prohibits cruel and unusual punishment. Using torture as such clearly violates one of the most important amendments in the Constitution. Furthermore, torture also impedes on the Due Process Clause of the Fifth and Fourteenth Amendments. These constitutional rights are fundamental in U.S. law and

\(^{113}\) Under the Bush Administration, an unlawful enemy combatant is “an individual who was part of or supporting the Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.” (Presidential Military Order “Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism,” November 13\(^{th}\), 2001)


\(^{115}\) Humane Treatment of al Qaeda and Taliban Detainees; see Appendix E, pp. 80-81.

\(^{116}\) Major Detention Events Following 9/11; see Appendix F, 82.

\(^{117}\) While violations of human dignity clearly clashes with American constitutional law, the Bush Administration and the Supreme Court argue that the Constitution does not apply extraterritorially and to non-citizens. Thus, the inhumane treatment of detainees is not subject to American constitutional law. However, in *Hamdan v. Rumsfeld*, while ignoring to rule on the subject of unlawful combatant status, the Supreme Court did reaffirm that as a signatory of the Geneva Convention (and ratifying it thus making it part of American municipal law), the US is bound by the Convention, specifically Article 3 of the Convention, regarding the treatment of detainees. The Court thus held that Article 3 applies to all prisoners in the War on Terror. See *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006).
are essential to the definition of American democracy. Out of fear, and especially since the attacks of September 11th, 2001, the majority of the population might approve “trumping the civil liberties of terrorist suspects” for the majority’s interest. But doing so creates not only a legal and ethical dilemma, it also poses a constitutional one as well that puts a strain on the notion of democracy. How can a country that prides itself in its Constitution and civil liberties allow such injustice? This strain breeds a divide over the use of torture and its plausible justifications. “For one side, what matters fundamentally is that democracies prevail. For the other, what matters more is that democracies prevail without betraying what they stand for.” If anything, hypocrisy prevails.

TAKING RIGHTS SERIOUSLY AT HOME: SETTING THE EXAMPLE

The use of torture in post-9/11 America has left a stain on America’s self-proclaimed crusade on behalf of the human rights movement. The United States has lost some of its international credibility as a defender of human rights, following the incidents at Guantanamo Bay and Abu Ghraib. If a nation is to be serious about human rights, that seriousness “must start from the proposition that human rights begin at home, that is, where infractions are most sensitive and hurtful.” An effective regime of human rights cannot exist without a strong human rights culture. And such a culture cannot exist unless “the political culture is supportive of human rights.” A defender of human rights must also be careful as to not violate the sovereignty of other nations, especially weaker ones that see intervention in the name of human rights as a pretext to interfere in weaker

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119 Ibid.
121 Ibid.
When the enthusiasm for human rights is entwined with geopolitics, the rationale promoting human rights becomes blurred. Indeed, human rights infractions are viewed as nothing more than a way of conveniently undermining weaker nations and carrying out intervention for geopolitical purposes.122

The human rights movement claims many of its roots in the history and culture of the United States. However, actions by the U.S. government and the Bush administration in the past decade have greatly undermined the role of the United States as the Western advocate of human rights. Although with a new administration in office, the importance of the human rights movement and the role of the United States in the promotion of human rights may once again become central to U.S. international policy. In a recent report on human rights practices given by the State Department, Secretary of State Hillary Clintons stated that the United States “will ... seek to live up to our [human rights] ideals on American soil.”123 Furthermore, Clinton reiterates the United States’ commitment to human rights, which is “driven by our faith and our moral values, and by our belief that America must first be an exemplar of our own ideals.”124 Nevertheless, despite the United States’ ‘re-commitment’ to the human rights campaign, the West still faces a challenge in its promotion – and essentially its enforcement – of human rights due to its clash with non-Western ideologies about human rights.

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122 Falk, 61.
124 Ibid.
Chapter 3

Non-Western Cultures and Human Rights
NON-WESTERN ATTITUDES TOWARDS HUMAN RIGHTS

The modern international human rights movement emerged out of the ashes of World War II.125 The victory by the Allies in World War II served to “defend life, liberty, independence and religious freedom, and to preserve human rights and justice.”126 Although the issue of human rights entered international dialogue in the years following World War II, the institutionalization of rights and freedoms is anything but guaranteed. This is especially true in regard to the clash between Western and non-Western cultures and their inabilities of reconciling their individual ideologies in effort to recognize and validate international human rights law.

Many observers of the human rights movement argue that no single conception of human rights exist, further asserting that instead there exists many interpretations of what human rights are in “Western, Communist, Muslim, Latin American, and African countries.”127 While many nations from different cultures around the world are signatories to international human rights conventions, this fact does not necessarily guarantee a universalized conception of what human rights are or what they ought to be. Great differences still remain in the perception of human rights.128 These differences can be seen in the various opinions that exist about the origins of human rights and those who led the human rights movement. Recent arguments have claimed that the Universal

127 Shelley, 47.
128 Ibid.
Declaration of Human rights was sponsored and promoted solely by the Western powers, hence fostering the dispute “that human rights is a Western concept.”

As argued in previous chapters, a connection exists between the philosophy of the West and the modern notions of human rights. Some philosophers argue that while it is fair to say that notions of human rights emerged out of Western philosophy, it is another to equate the two. For one, Western philosophy is not necessarily uniform when it comes to defining human rights. That is, there are many prominent Western philosophers whose “ideas are less compatible with contemporary notion of human rights.” For example, while Aristotle introduced the notions of natural law and thus the idea of natural rights, he also argued for the priority of the state. Meanwhile Jean-Jacques Rousseau, the French philosopher who introduced the rights of man into the everyday vernacular, also believed that the rights of individuals were secondary to those of general will.

The belief that human rights are a Western political project has damaged the universality of human rights and has served as the argument against its universality by non-Western cultures. In recent years, several dominant non-Western cultures have criticized the universality of human rights. They have done so by arguing that since human rights are a concept Western in origin, its applicability must be limited to the West. This argument is propelled forward especially by middle-Eastern nations, where the religion of Islam plays a crucial role in its day-to-day operations.

130 Ibid.
131 Ibid.
132 Ibid.
133 Ibid.
134 Donnelly and Howard, 23.
Before understanding human rights in Islamic traditions, it is necessary to understand how an Islamic state operates. Under Islam, the role of the state, the government, religions and individual rights fundamentally differ from those that exist in the West. Muslims believe that a god exists, and that god plays a vital role in Islamic states. The Shariah are laws that stem from the Koran, the Sunnah, the Ijma, and the Ijtihad, and to that end, the Islamic government works to ensure that the Shariah is enforced. Because of the emphasis put on the Shariah by Islamic governments, God is essentially viewed as the ultimate legislator. Thus human rights legislation is far less important than it is in the West, which is why the rights of individuals often fall on the back burner. Islamic legal theory essentially offers little to no “adequate machinery to safeguard individual rights against the state.”

As previously stated, the West has defined human rights as being “literally the rights one has simply by virtue of being human.” While the conception of rights first emerged from natural law and was thus theological, it eventually became a secular notion during the Enlightenment. Regardless of religious beliefs, an individual has undeniable, unalienable rights that ought to be safeguarded by the state.

However, the Islamic tradition of human rights varies greatly from the secular approach taken in the Western tradition. By contrast, human rights in Islam are not

135 Devine, Hansen and Wilde, 130.
136 These are the Hadith and the decisions of Muhammad.
137 These are the consensus of opinion of the judges.
138 These are the counsel of judges on a specific case.
139 Devine, Hansen and Wilde, 130.
140 Ibid.
entitled to individuals just by the virtue of being human. Rather, "human rights are entirely owned by God and individuals can enjoy them in their relationship with God." While rights in the West are secularized, human rights in Islamic nations are strictly theological and can only be observed if one has fulfilled its obligations to God. By fulfilling one's obligations to God and being obedient, only then can individual rights be enjoyed.

In the Western tradition of human rights, an emphasis is placed on individual human rights. Since human rights in Islam are believed to come from one's relationship with God, Muslims eschew legislation to ensure the protection of their rights. Rather, they turn to God as the guarantor of their rights.

The distinction between eastern and western conceptions of human rights may lie in traditional eastern philosophy. Muslims are free individuals unless their freedom somehow hinders the community. Traditional Islamic thinkers have emphasized the importance of social justice instead. Islamists put a greater emphasis on the rights of groups rather than the rights of individuals. However, modern Islamic philosophers argue that while an emphasis on social justice is important, Islam should still guarantee some fundamental rights to all its citizens, regardless of their relationship with God. These include: "the right to life, health, and protection from illness; the right to liberty; the right to knowledge, both material and spiritual; the right to dignity; and the right to own property."

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142 Monshipouri, 72.
143 Ibid.
144 Devine, Hansen and Wilde, 131.
145 Monshipouri, 72.
146 Ibid., 73.
The Universal Declaration of Human Rights (UDHR) has frequently been criticized by Islamic states as being “too Western.” These states have argued that since the origin of the Declaration has deep roots in Western history and philosophy, it cannot be truly universal. The failure of the West to take non-Western cultures and ideologies and integrate them into the declaration has led to the development of an Islamic counterpart: the Universal Islamic Declaration of Human Rights. The 1981 declaration, adopted by member-states of the Organization of the Islamic Conference, looked to address matters of human rights without trespassing Islamic law. While the UDHR is clearly a secular document, the Islamic declaration is the polar opposite of a secular document, declaring the preservation of human life to be a duty prescribed by the Shariah. Furthermore, as specified in Articles 24 and 25, all rights and freedoms are guaranteed as long as they do not infringe on Islamic laws and values. To say that Islamic rights are still human rights – even though they appear to be secondary to religious rights – is incorrect. Obviously, the religious ‘pre-conditions’ on the guarantee of rights illustrated in the Universal Islamic Declaration of Human Rights are not only problematic but clearly fall short of evoking international human rights articulated in the Universal Declaration of Human Rights.

The debate over human rights and its universality has created a divide not only between the West and Islam but within Islam as well. One branch of Islamic theology does not view human freedom as legitimate. However, the majority of Muslim

147 Monshipouri, 74.
148 Ibid., 78.
149 Ibid.
150 Ibid.
151 Ibid.
152 Devine, Hansen and Wilde, 131.
philosophers believe that while human freedom does exist, their conception of human freedom differs from that of the West. This group of philosophers is more concerned with the community rather than the individual. The emphasis put on group-based rights proposed by some Islamic philosophers interferes with essential Western concepts of certain individual rights and freedoms. Furthermore, from this Islamic ideology flows the belief that political freedom is far less significant than spiritual freedom. This belief has made it nearly impossible for Islamic states to reconcile the struggle for secular, political, and religious power within Islamic nation-states. The failure to reconcile these three powers has made it impossible for Islamic states to meet prevailing international norms of human rights. The prevalence of religion in the politics and cultures of some middle-Eastern nations has furthered the rift between the Western and Eastern standards of human rights. Such is the case for the Islamic Republic of Iran.

THE CASE OF IRAN AND HUMAN RIGHTS

To fully understand human rights in modern Iran, one must first understand the theocracy of Iran. For Americans, the separation of church and state is one of the nation’s most important political values. Though not directly stated in the Constitution, this “wall of separation of church and state,” as addressed by Thomas Jefferson, is implied in the First Amendment. The Framers believed that the establishment of prohibiting the state from recognizing or funding any religion was core to the establishment of a functioning, successful democracy unlike the ones who had failed terribly in Europe. At the

153 Devine, Hansen and Wilde, 131.
154 Ibid.
155 Ibid.
156 The monarchy of France, claiming to have a divine right directly from God, blurred the line between religion and government, creating societal and political issues that eventually led to the French Revolution. The “separation of church and state” articulated by Thomas Jefferson and James Madison, was a combined
opposite end of this democratic, free-of-religion spectrum lies theocracy, where religion controls government and the letter of the law is closely related to religious laws and beliefs.

One of the most famous, or perhaps infamous, theocracies in the world is the Islamic Republic of Iran. In such a nation-state, the boundaries between religion and government are non-existent and such lack of boundaries has been the cause of great political and cultural clashes between the West and the Islamic Republic of Iran. The history of Iran, or Persia as it was known until 1935, is one filled with conquests, successes and great downfalls.\textsuperscript{157} Once a major empire, its great territory has been altered many times in past centuries. Leadership of Persia vacillated between various rulers and dynasties, before eventually settling with the Ayatollahs of today’s modern Iran.\textsuperscript{158} The politics of modern Iran began to evolve around the time of the revolution of 1906.\textsuperscript{159}

The Qajar dynasty and foreign intervention in the early years of the twentieth century resulted in discontent and protest by the people of Iran, many of who saw Muzaffar al-Din Shah as a weak and ineffective ruler. He abused his royal authority and under his reign, no rule of law existed. Furthermore, the poor economic state of the Qajar dynasty made al-Din dependent on European financial support.\textsuperscript{160} The public grew weary of his actions and spending, and demanded a constitution that would provide restrictions

\textsuperscript{157} Monshipouri, pp. 171-173.  
\textsuperscript{158} Ibid., 172.  
\textsuperscript{159} Shireen T. Hunter, \textit{The Future of Islam and the West: Clash of Civilizations or Peaceful Coexistence?} (Wesport, CT: Praeger, 1998), 122.  
\textsuperscript{160} Ibid.
on royal power and establish a government that would work for the good of the people.\textsuperscript{161} The shah, facing revolution, had no choice but to pass a decree that would grant the people of Persia a constitution. In December of 1906, he signed the constitution, which granted, with certain constraints: freedom of press, speech, and association while providing security of life and property.\textsuperscript{162} The Constitution was the first Persian document that touched upon individual rights and other modern human rights ideologies. The Constitutional Revolution of 1906, however, failed to leave a lasting imprint on Iran as the hopes for constitutional rule were quickly dashed with the arrival of al-Din’s successor.\textsuperscript{163}

 Mohammad Ali Shah, al-Din’s successor, determined to abolish the newly evoked constitution closed down the legislative assembly. But the shah quickly felt the backlash of the constitutional forces that marched to Tehran where they exiled the ex-shah and re-established the constitution. Although the constitution had been re-established, the constitutional forces faced great difficulties because of the nation’s political and religious instability. World War I was quickly approaching and because of this volatility, Iran chose to be neutral though it quickly became a battleground for other countries such as Russia and Turkey.\textsuperscript{164} When the War ended, the Persian parliament rejected British protection, forcing the British to withdraw their troops from Iran.\textsuperscript{165} Reza Khan, a predominant Persian army officer, took advantage of these turbulent times facing Iran

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  \item \textsuperscript{161} Monshipouri, 172.
  \item \textsuperscript{162} Hunter, 122.
  \item \textsuperscript{163} Monshipouri, 171.
  \item \textsuperscript{164} Ibid.
  \item \textsuperscript{165} Ibid., 172.
\end{itemize}
and its people by marching into Tehran and disposing of the Qajar dynasty, proclaiming himself heir to the throne. This marked the beginning of the Pahlavi dynasty.

The new shah of Iran faced great challenges. Among his accomplishments was the creation of a central government that extended government control throughout all of Iran. He also established secular primary and secondary schools that would help extent this newfound government control. These schools became the centers for bureaucracy. The shah’s initiatives were often interpreted as ways to westernize Iran. The shah had innovative ideas and perhaps, benevolent intentions; however, his actions still outraged the public. His regime of police officers was often criticized for their violent ways of enforcing the laws and values. His strong stance against the religious community angered many. He banned women from wearing of the traditional veils in public. Outraged by his actions, the religious cleric contemplated his fall, realizing their goal during World War II when the Reza Shah’s reign ended because of Allied occupation. For Westerners and liberal Iranians, Pahlavi accomplished many great things for Iran; however, his totalitarian attitude, his “pro-Western” way of life and his methods of accomplishment became his greatest liability.

Post-occupied Iran promised enhanced and broader rights. Under the rule of Muhammad Reza Pahlavi, Iran’s relationship with the West continued to grow, even receiving economic aid from the United States. Although the shah continued the modernizing efforts of his father, he had little say in the government, granting the
parliament most of his power. This proved to be less than a sanguine decision when his Prime Minister, Muhammad Mussadegh, forced himself into power, forcing the shah to flee Iran. While in power, Mussadegh nationalized the oil industry, currently under partial British control and their Anglo-Persian Oil Company. Europe and the United States immediately impose a boycott while secretly plotting to remove Mussadegh from power. With the support of the United States and its CIA and European players, Mussadegh is removed from power. Western support came with a price however. With the support came conditions dealing with Iran’s oil supplies. After regaining power, the shah negotiated new agreements with European oil firms. While the intent of the United States and Europe in putting the shah back in power was less than admirable and selfish perhaps, the coup led to a stabilized Iran from the late 1950s and into the 1960s.

The shah and his government continued to introduce and carry out reforms to modernize the country. The White Revolution in 1963 brought about many social reforms such as improving literacy and improving the rights of industrial workers and women, consistent with modern human rights ideologies. But this stability was short-lived and once again, the government found itself in conflict with religious and political groups who felt alienated by the liberal, pro-Western policies the shah was trying to introduce. This instability and constant conflict resulted in constant unrest and many popular protests that eventually forced the shah to flee Iran once more. With his departure, internal contests began over who would be in power. This power struggle in finding a new leader ushered in the Islamic Revolution in 1979.

171 Hunter, 124.
172 Ibid.
173 Ibid., 125.
174 Ibid., 124.
175 Ibid., 126.
The Islamic Revolution grew out of a variety of forces, made up of quite different socioeconomic and political ideologies. Setting their political ideologies and divergent views aside, these conflicting forces were able to come together in the name of Islam. The aim of the Islamic Revolution was to defeat the Pahlavi dynasty, whose interests were too intimately enmeshed with those of the West. In doing so, the revolutionary forces intended to restore power to the common person and reinstating the "social solidarity of early Islamic communities" while terminating foreign economic and cultural control. Ayatollah Khomeini ushered in the Islamic Republic of Iran in April 1979 and became Iran's Supreme Leader. His alliance supported making the state of Iran a theocracy, where the rule of law is closely related to the Koran. Islam believed that their God should guide and direct the state. Khomeini and its followers looked to reestablish Iran back to an Islamic community ruled by Allah similar to the original "umma," or community, of Islam back in the seventh century. But doing so greatly clashed with the international political system and the dynamics of interstate relations.

Foreign relations between Iran and the rest of the world suffered tremendously following the revolution. Khomeini's beliefs and values for the state of Iran were very old fashioned and this greatly tarnished Iran's foreign relations. Furthermore, the hardliners of the Khomeini regime grew more hostile of the West and its cultural and

176 Diverse political ideologies included the Communist Tudeh Party, the Islamo-socialist Mujaheddin-e-Khalq, the Marxist Fidaeian-e-Khalq, the Islamo-nationalists and liberal nationalists in the tradition of Mussadeq. (Hunter, 127)
177 Ibid., 129.
178 Monshipouri, 174.
179 Ibid., 175.
180 Hunter, 129.
181 Ibid., 130.
political ideologies.\textsuperscript{182} The West had been a dominant power in Iran and that dominance was associated with the Pahlavi regime. The policies of the Pahlavi regime had been greatly criticized by the followers of the revolution, who saw these policies as having been “detrimental to both the role and the place of Islam in Iranian society and damaging to the parochial interests of the clerical establishment.”\textsuperscript{183} This view of the West and its association with such a hated shah regime can be seen as a critical factor in the current vision that Iranian intellectuals have when it comes to the international political system. This attitude for the West has also resulted in the belief by Khomeini’s disciples that international law and international organizations are nothing more than instruments controlled by the great powers for their benefits.\textsuperscript{184}

The attitude of theocratic toward the West is also visible in its stance on human rights. Human rights abuses were very much present in the early revolutionary period of Iran.\textsuperscript{185} Internal opposition against the revolutionary movement was quickly silenced and constrained, thanks to a constant stream of human rights violations.\textsuperscript{186} Paramilitary groups, such as the Revolutionary Guards, were created by the Ayatollahs. These groups created a continuous sense of fear by hunting down literature and media that promoted Western culture.\textsuperscript{187} The establishment of “Islamization” programs helped pave the way to an Islamic constitution, which sought to legitimize the clergy’s perception of the protection of human rights.

\textsuperscript{182} Hunter, 130.
\textsuperscript{183} Ibid.
\textsuperscript{184} Ibid., 131.
\textsuperscript{185} Monshipouri, 183.
\textsuperscript{186} Ibid.
\textsuperscript{187} Ibid.
The protection of rights in the Iranian Constitution is structurally similar to that in most constitutions. But unlike most Western constitutions that articulate fundamental, undeniable rights regardless of one’s religious beliefs, the rights expressed in the Iranian Constitution are only guaranteed within Islamic standards and can be restricted in the name of Islamization. Article 21 of the Iranian Constitution states, “The Government shall guarantee the rights of women in all areas according to Islamic standards.” This article also highlights the lower status that women must face in Iran, which clashes with the internationally recognized norm of gender equality. A similar clash in human rights ideologies is evident in Article 24 of the constitution, which states that, “Publications and the press may express ideas freely, except when they are contrary to Islamic principles, or are detrimental to public rights.” The government quickly quashed any publicity that criticized the clerics, further reinforcing the state’s “omnipresent and omnipotent power” quickly quashed any media or press that expressed opinions in contrary with the clerics’ ideologies the clerics. The Iranian Constitution exemplifies the Iranian emphasis that is placed on the state’s rights and power rather than on the rights of individuals. This emphasis on clerical power and interest greatly differs with international beliefs of the significance individual rights and power.

Iranian hardliners believe that it is impossible to reconcile religion with current ideologies of human rights. But Iranian philosopher and social critic, Abdol-Karim Soroush, has noted the importance of reconciling Islamic ideals with the human rights

188 Monshipouri, 184.
190 Monshipouri, 184.
191 Mayer, 81.
192 Monshipouri, 196.
ideologies. He argued that notions of secularism and Islamism could in fact be reconciled "through both national inquiry and ethical necessity." He stated this may be accomplished because human rights are more a philosophical concept rather than a theological issue. For Soroush, the human rights debate does not lie within the domain of religion. Social justice and liberty are compatible with both democracy and religion. Arguing that human rights are solely the product of liberalism shows not only an existing ignorance of what liberalism truly is, but also shows an ignorance of religion, "for such an argument gives liberalism a higher moral ground than it deserves and grants religion a lower place than it merits."\[196\]

The development of the Islamic clergy and the Iranian constitution following the Revolution of 1979 has failed to provide the Iranian public with the justice it had been promised at the dawn of the revolution. Early executions of opponents to the revolution as well as "the swift elimination of secular opposition" represented a strong government willing to exercise coercion at whatever costs to achieve "state domination of socioeconomic and political affairs." The theocracy had used religious terms to define civility and citizenship, which resulted in "...[A] strong communitarian view with clear notions of inclusion and exclusion of subjects in the polity. It also led to justifications and rationalizations for intermittent abuses of individual rights." The human rights record of Iran under the rule of the Ayatollahs is quite bleak. Its poor record includes the

\[193\] Monshipouri, 196.  
\[194\] Ibid.  
\[196\] Monshipouri, 196.  
\[197\] Ibid., 184.  
\[198\] Ibid.  
countless deaths of young people (those longing for a more democratic way of life),
women, opposing political figures, and minority religious groups.\textsuperscript{200}

The root cause illuminating the differences in human rights ideologies lies in the
fashion in which these two cultures view the role of religion and the role of the individual
in their respective societies. The Islamic Republic of Iran is but one example in which
extreme Islamic thought has made it impossible to reconcile Islam, democracy and
human rights. However, as much as Iran is an example of such thinking, it is just that –
an example. Trying to interpret Islamic views on human rights requires greater scrutiny
of various Islamic perspectives. Indeed, "inaccurate pictures of tangled realpolitik cause
misperceptions of Islamic thought."\textsuperscript{201} The international community considers Iran to
hold the most dominant view of Islam. It is most evident that a cultural, political,
religious clash exists between Iran and the West. That collision of culture is especially
illuminating when dealing with the universality of international human rights.
Reconciling these two major international cultures to truly universalize human rights has
been a difficult task. A clear consensus needs to be reached by the West and the East on
what human rights, what they ought to be and how they should be protected. Without
such a consensus, the enforceability of international human rights law and the legitimacy
of universal human rights will continue to be challenged down to its very existence.

\textsuperscript{201} Monshipouri, 63.
Chapter 4

The Legitimacy of International Human Rights Law
It has been generally accepted that the modern human rights movement emerged from the conflict of World War II. The atrocities of the war introduced new human rights ideas that symbolized the values of the Allies in their struggles against Germany and Japan. Declarations of “essential liberties and freedoms” introduced a new era in the human rights movement as the cornerstone of the developments of a new world order following the War.

In order to defend these declarations of liberties and freedoms, the construction of an international framework in the safeguarding of human rights was necessary. The United Nations’ Universal Declaration of Human Rights (UDHR) solidified thirty human rights. While these rights were not universally recognized by every state, that fact does not make them any less universal.

“When international law speaks of ‘human rights,’ it does not refer to, establish, or recognize them as international legal rights in the international legal system. By establishing interstate rights and duties in regard to ‘human rights,’ international law indicates its adherence to the morality and moral values that underlie them and strengthen the consensus in regard to that morality.”

Human rights were not simply legal rights as prescribed by the UDHR; rather, they were universal moral rights that should be respected for their morality rather than their legality. Unfortunately, morality is not a shared virtue by all cultures and this fact has significantly affected the legitimacy of international human rights law.

203 Ibid.
204 Henkin, 269.
205 Ibid.
CURRENT ISSUES IN INTERNATIONAL HUMAN RIGHTS LAW

"Injustice anywhere is a threat to justice everywhere."206 Before exploring the legitimacy and universality of international human rights law, one must first take a closer look at current human rights issues that have made international human rights law indispensable. Understanding the injustices that exist worldwide exposes what these injustices have done to the efforts of the human rights movement in guaranteeing justice for infractions on liberties and freedoms.

Common human rights violations highlight the worst aspects of the global community. Furthermore, "human rights abusers act with impunity despite laws that states are morally and legally obliged to honor."207 This complete disregard of moral and legal duties has led to countless acts of human rights violations, including slavery, and abuses against women and children.

Slavery

Slavery is one of the first human rights abuses to be regulated through international law.208 Slavery, once defined simply as the ownership of one person by another, has evolved to include a variety of acts such as "debt bondage, serfdom, child indenture, and marital and sexual bondage."209 The effort to abolish slavery has been ongoing for over two centuries. In 1815, the Congress of Vienna declared that slavery diluted the values of the international community.210 While such a statement by the Congress of Vienna brought global attention to the issue of slavery, it did little to penalize states that had yet to prohibit it within their respected borders. In fact, it took

206 Martin Luther King, Jr., Letters from Birmingham Jail, April 16, 1963.
207 Devine, Hansen and Wilde, 229.
208 Ibid., 270.
209 Ibid.
210 Ibid.
over a century to introduce the first international instrument that prohibited slavery. The Slavery Convention of 1926\textsuperscript{211} and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery\textsuperscript{212} are perhaps the two most significant anti-slavery treaties that enumerate criminal responsibility and penalties. Slavery was now deemed illegal globally.\textsuperscript{213}

With slavery comes the issue of forced labor. While, under customary international law, slavery has been deemed as “incurring criminal responsibility insofar as all states have at least permissive jurisdiction under their domestic law to prescribe law against slavery,”\textsuperscript{214} the criminality of forced labor has not been clearly defined. In 1957, the International Labour Organization issued a Convention Concerning the Abolition of Forced Labor\textsuperscript{215} that required its parties to suppress forced labor if it somehow was used for “purposes of political coercion, economic development, labor discipline, punishment for participations in strikes, and racial, social, national, or religious discrimination.”\textsuperscript{216} While both the International Covenant on Civil and Political Rights and the European Convention on Human Rights have banned the practice of forced labor, neither has criminalized the practice.\textsuperscript{217} This raises the issue of whether to criminalize forced prostitution, which is a form of forced labor. Its lack of criminalization has hindered the

\textsuperscript{211} Sept. 25\textsuperscript{th}, 1926, as amended by the Protocol of December 7\textsuperscript{th}, 1953, art. 6, 212 UNTS 17, 22. (The Convention included 91 parties, “whose laws do not at present make adequate provision for the punishment of infractions [under the Convention]... undertake to adopt the necessary measures in order that severe penalties may be imposed”.)
\textsuperscript{212} Sept. 7\textsuperscript{th}, 1956, 18 UST 3201, 266 UNTS 3 (included 114 parties).
\textsuperscript{213} Devine, Hansen and Wilde, 270.
\textsuperscript{215} June 25\textsuperscript{th}, 1957, 320 UNTS 291, 294, 296.
\textsuperscript{216} Ratner, 108.
\textsuperscript{217} ICCPR, art. 8(3)(c)(iii), 999 UNTS at 175; European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4\textsuperscript{th}, 1950, art. 4(3)(c), 213 UNTS 221, 226.
global women’s rights movement, veiling from the public the most common victims of forced prostitution, who remain more vulnerable to these exploitive conditions.218

*The Women’s Rights Movement*

The unrelenting exploitation of women, in its various forms, has fueled the women’s rights movement and its condemnation of the treatment of women as second-class citizens. Following World War II, the role of women in the workplace surged. Yet, this surge failed to establish any firm equalities for women, who instead remained stigmatized due to their gender.219 The establishment of transnational social networks that sought to end such inequalities, quickly spilled onto the international stage. But it was quickly realized that the goals of the feminist movement varied from country to country, often revolving around the level of repression women faced in their respective countries.

"Western feminists were fighting to change sexist stigma and to achieve social and economic equality, African women were demanding the removal of the bride price, and feminists of the Muslim world were seeking the relaxation of the dress code and regulations enforcing separation of the sexes."

Even with its differing individual goals, the feminist movement caught the attention of the international community, prompting the United Nations to undertake supportive action. This action cumulated with the 1979 adoption of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).221

Despite CEDAW’s demand for the elimination of discrimination against women in the political and public life (Article 7) and discrimination in employment (Article 11),

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218 Ishay, 296.
219 Ibid.
220 Ibid., 297.
221 Convention on the Elimination of All Forms of Discrimination against Women, Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, in accordance with article 27(1).
it failed to eliminate total discrimination against women and establish equality.\textsuperscript{222} Furthermore, crimes against women – such as rape and the trafficking of women – have grown immensely and have caught the attention of the international community. Rape is "sexual intercourse achieved by the use of force or coercion and without the victim’s consent."\textsuperscript{223} It has been recognized as a human rights issue of international concern, growing out of the interest of women’s protection during times of war. The United States Lieber Code of 1863 – which established laws for land warfare – made the act of rape a capital offense.\textsuperscript{224} The Hague and Geneva Conventions have also barred rape and other sexual brutalities. Although rape in wartime has been a violation of international law since the aforementioned conventions, it is often overlooked as a serious crime.

"Regrettably, the atrocious offense committed against women in Nankin, Borneo, the Philippines, and French Indochina were mentioned only in passing, viewed as part of the barbarous collection of crimes and tales of horror traditionally associated with the normal ‘collateral damage’ of war."\textsuperscript{225}

In fact, the Charter of the International Military Tribunals at Nuremberg following World War II did not recognize rape as being a crime against humanity.\textsuperscript{226} It was not until the 1993 inception of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda that rape finally received the legal attention it rightfully deserved. These tribunals adjudicated rape as a crime against humanity, enabling the prosecution of war rapists and hopefully deterring future perpetrators.\textsuperscript{227}

\textsuperscript{222} CEDAW, articles 7 and 11.
\textsuperscript{223} Devine, Hansen and Wilde, 266.
\textsuperscript{224} HJR 192, Senate Doc 43, art. 44, 46. The document insisted for the humane treatment of all populations in occupied areas. Considered one of the first documents to spell out such ‘war rules,’ it is often seen as the precursor of The Hague and Geneva Conventions.
\textsuperscript{225} Ishay, 300.
\textsuperscript{226} Devine, Hansen and Wilde, 267.
\textsuperscript{227} Ishay, 301.
Women are often the overwhelming targets of crimes of rape. Forced prostitution and the trafficking of women have further intensified the crime of rape, making it not just a crime of war anymore. The trafficking of women refers to "the practice of abducting, delivering or selling women across international borders." Trafficking often results in forced prostitution by the bourgeoning mail-bride industry as well as by the need of cheap labor. While the sale of human beings – whether male or female – is a blatant human rights violation, human rights activists have become greatly concerned about the safety and treatment of women after the sale. While the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others as well as CEDAW both forbid trafficking. The crime of trafficking women has increased significantly in recent years for reasons previously mentioned. Women may be obtained by traffickers in various ways, such as being kidnapped or being tricked into voluntary going under the misrepresentation of a possible job awaiting them. Unfortunately, women are not only the victims of trafficking. Moreover, young girls are either sold by their parents or kidnapped and made part of this trafficking organization. Trafficking is but one example of the increased abuses children are facing internationally.

228 Devine, Hansen and Wilde, 273.
229 Ibid.
230 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others Approved by General Assembly resolution 317(IV) of 2 December 1949 entry into force 25 July 1951, in accordance with article 24 of the UN Charter.
231 CEDAW.
232 Devine, Hansen and Wilde, 274.
Children's Human Rights Abuses

The rights of young girls were included in CEDAW and were further defined in the Convention on the Rights of the Child (CRC). The broadness of the CRC called for a revision to reflect and shed a light on the particular abuses of children worldwide. A revised version of the CRC was adopted in 1989, which reaffirmed the indivisibility of the civil, economic, social and cultural rights of children. In adopting the 1989 version, the Convention on the Rights of the Child addressed labor, sexual and refugee exploitation of children. While the CRC recognized these rights, in reality it did not put an end to the exploitation of children. In fact, several signatories to the CRC have failed to provide the children of their respective countries with the protection of these rights. The failure to guarantee these rights to children is perhaps most recognizable with the rise of the child soldier.

War-torn countries often claim children as victims or recruit them to become soldiers. Child soldiers are becoming increasingly more common. While the practice is clearly a human-rights violation, children are still thrown into the woes of war, at risk to wide variety of abuses. Children are used as soldiers for various reasons. They can be manipulated more easily than adults; their age and innocence make them unaware of what war means and what they are doing; and sadly, they are considered to be the "most 'disposable' to do dangerous jobs such as minesweeping." These children are often

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234 Ishay, 301.
235 Ibid.
236 Ibid.
237 Ibid., 302.
238 Devine, Hansen and Wilde, 237.
coerced into joining the army, either out of fear or out of empty promises of a better life out of poverty. Also, the availability of small weapons has made it physically easier for children to use. For these war-torn, poverty-stricken countries, child soldiers have become far too commonplace.

The international community has acknowledged this horrible human-rights violation and has taken steps to condemn its practice. Article 38 of the United Nations CRC stipulates, "Parties shall refrain from recruiting any person who has not attained the age of fifteen into their armed forces."\(^{239}\) Today many states and human rights activists agree that fifteen is too young and that the minimum age should be raised to eighteen; but a consensus has yet to be reached. Becoming a soldier at such a young age inflicts devastating physical, emotional and social damages that make the tasks of demobilization and rehabilitation very difficult.\(^{240}\) This daunting task also becomes even more difficult when their rehabilitation into society is rarely a top priority for a state that is in the middle of a war or has just ended one.

Human rights groups and other nongovernmental agencies have pushed for a "public opinion and political will" to ban the use of child soldiers in armed conflicts.\(^{241}\) Continued advocacy for the disarmament of child soldiers and the provision of assistance for their reintegration into society – despite the existence of an articulated ban of the practice by the UN – brings to mind a startling question. How exactly does one enforce international human rights law when a popular consensus does not exist due to clashing cultural, religious and political ideologies? That question is the underlying issue beyond

\(^{239}\) CRC, article 38.
\(^{240}\) Devine, Hansen and Wilde, 237.
\(^{241}\) Ibid., 238.
the questionable legitimacy of international human rights law and its authority as a body of law.

ENFORCING INTERNATIONAL HUMAN RIGHTS LAW

The Universal Declaration of Human Rights set the modern human rights movement into motion. It envisioned the promotion of "universal respect and observance of human rights" as stated in its preamble. Furthermore, the Declaration envisioned the promotion of human rights as a way to achieve friendly relations between nations.\textsuperscript{242} The drafters of the UDHR believed that the risk to peace by nations committing human rights violations within their own territories would eventually spill into neighboring countries and onto the international stage. The visions of the drafters of the Declaration are evident from its preamble, noting the importance of evaluating human rights conditions in countries to determine compliance with international human rights law.\textsuperscript{243} Evaluation of human rights violations has become readily available through various governmental and nongovernmental reports. But, when failure of compliance is discovered, the issue of enforcement must be addressed.

\textit{Enforcement Mechanisms}

The range of enforcement mechanisms envisioned by the Declaration illustrates the diverse nature of human rights violations. The preamble of the Declaration explicitly proclaims the necessity of "progressive measures, national and international to ensure the universal and effective recognition and observance" of human rights.\textsuperscript{244} At the top of these mechanisms sits the United Nations Charter, in charge of setting human rights

\textsuperscript{242} Devine, Hansen and Wilde, 69.
\textsuperscript{243} Ibid.
\textsuperscript{244} Ibid.
standards and overseeing the compliance of the states. Article 1, Section 3 states that one of the Charter’s purposes is “[T]o achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all.” This international co-operation exists in the form of various laws passed by states, non-governmental organizations (NGOs) and international organizations that have all created measures to promote and ensure human rights. However, the commitment of states implementing sanctions against violators has proven to be an insufficient measure to ensure compliance with international human rights law. Stronger enforcement is required at the international level and is manifested as the International Criminal Court (ICC).

The ICC was established under the Rome Statute in 1998 and came into effect in 2002 after being ratified by more than sixty states. The idea of establishing an international criminal court was not new. It was first conceived in 1937 with the League of Nations’ attempt at drafting a statute that would establish a court in which international terrorists would be tried. Following the Nuremberg trials, the possibility of an international criminal tribunal became even more plausible. However, the deep freeze of the Cold War soon halted that project and it was not until the late 1980s that serious conversation struck up again for the creation of a court, mostly as a means to fight the trafficking of illegal drugs. With many governments under the pressure of NGOs and their human rights campaigns, support for the creation of a court grew intensely and culminated in the drafting of a proposed tribunal to be presented at the Rome Conference in 1998.

246 UN Charter, Article 1, Section 3.
247 Robertson, 324.
248 Ibid.
249 Ibid., 325.
While many governments were in favor of establishing an international court, many disagreed about the type of court it should be. When the conference began, three categories emerged about the kind of court to be created. The first model, supported by Canada, Germany and the United Kingdom, called for a “powerful prosecutor and a court genuinely independent of the Security Council, endowed with universal jurisdiction over war crime suspects anywhere in the world.”\textsuperscript{250} This model called for a court that would free of any pressure by outside Councils and governments. The second model involved over the creation of a court that would be overseen by the Security Council and was supported by the United States, China and France. Looking out for their own interests, this model would allow these countries to “use their superpower veto to stop any embarrassing prosecutions.”\textsuperscript{251} Finally, the third category of delegations preferred no model at all because these countries – Iraq, Iran, and Libya among others – did not want a court at all.\textsuperscript{252}

While the Rome Statute is far from flawless, it is still quite an achievement despite the many differences in opinions on what it ought to be. Article 1 of the Rome Statute establishes the existence of an International Criminal Court as a permanent court with “power to exercise its jurisdiction over persons for the most serious crimes of international concern” while being “complementary to national criminal jurisdictions.”\textsuperscript{253} Furthermore, its legal status and powers are articulated in Article 4, granting it the legal

\textsuperscript{250} Robertson, 325.
\textsuperscript{251} Ibid.
\textsuperscript{252} These diverse opinions on the establishment of an International Criminal Court are reflective of the divide that exists in international law and what its role and power ought to be.
capacity to exercise and fulfill its functions. Its jurisdiction, admissibility and applicability are expressed in Articles 5 to 22. Crimes under the jurisdiction of the Court include: genocide, crimes against humanity, war crimes and crime of aggression. While the Court has jurisdiction over these crimes, it only does so if a state becomes a party to the Rome Statute and thus accepts the jurisdiction of the Court. This stipulation of jurisdiction is why many states such as the United States are not signatories to the Statute, fearing prosecution for crimes under the jurisdiction of the Court. This failure of having true universal jurisdiction undermines its true purpose – that of combating “unimaginable crimes” as its preamble states.

Still, the establishment of the International Criminal Court was a triumphant step in international human rights law and in the human rights movement. Its concept was seen as a great working mechanism of protecting human rights and holding human rights violators accountable for their actions. However, the limited jurisdiction of the ICC and its lack of support by major powers, such as the United States, have made the enforcement of its decisions once rendered extremely difficult if not impossible. The inability to enforce decisions by the Court undermines the human rights movement and the international human rights law system.

254 The Rome Statute, article 4.
255 Ibid., article 5.
256 Ibid., article 12.
Problems with Enforcement

The incapability of enforcement in international human rights law weakens the struggle for human rights. The problem with enforceability revolves around the multiplicity of "instruments, entities and individual interests." There is no single ideology on what human rights are, what they ought to be or even how they should be protected. This lack of consensus results in the lack of a single, powerful structure that could supervise the enforcement of treaties, charters and decisions handed down by the ICC.

While many states have incorporated explicit provisions of the Universal Declaration of Human Rights in their policies, an enforcement issue indigenous with Western states, specifically, has emerged. This issue revolves around the rights of the individual and the role of the state. Major Western declarations, such as the American and French Declarations, have given the individual more freedom with less expected of the individual from the state. However, a greater expectation of rights and freedoms, like those articulated in the Universal Declaration of Human Rights, has resulted in "greater state efforts to protect them [human rights]." The state has been required to expand its power to protect individuals from human rights violators and guarantee them the freedoms and liberties illuminated in the UDHR. But this expanded responsibility on the state to safeguard these rights has put the state in a predicament.

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257 Devine, Hansen and Wilde, 129.
258 Ibid.
259 Ibid., 132.
260 Ibid.
261 Ibid.
“Today the state is caught between two poles of human rights advocates. Whenever it intercedes on behalf of one individual or group, it can be accused of denying or neglecting others.”

This dilemma of what the state’s authority in the protection of human rights should be has made enforceability difficult as states become torn between their own guarantees of liberties, specifically that of the government’s entrenchment of individual liberties, and international expectations of human rights protections.

This problem of enforceability can also be traced to concerns raised during the drafting of the UDHR about what the role of the declaration ought to be. The chair of the Human Rights Commission, Eleanor Roosevelt, stated that the UDHR “is not a treaty; it is not an international agreement, it is not and does not purport to be a statement of law or obligation.”

This lack of a binding authority foreshadows the problems that could arise in trying to enforce the provisions of the Declaration. Still, many of the drafters hoped that the document would go beyond a recommended ideology of human rights and would essentially become the international standard on human rights. And in some way it has. Over time, the UDHR has come to be regarded as binding on its signatories, with its binding authority affirmed by the passage of the Convention on the Elimination on All Forms of Racial Discrimination and the International Covenant on Economic, Social and Cultural Rights, where the declaration’s principles have been reaffirmed. However, its binding authority is still ultimately dependent upon the signatory state, thus weakening the Declaration’s authority. The weakening of the binding provision of the UDHR also

262 Devine, Hansen and Wilde, 132.
264 Ishay, 304.
weakens international human rights law as a whole, which ultimately questions the
universality of human rights.

UNIVERSALIZING HUMAN RIGHTS

The Universal Declaration of Human Rights clearly conceptualizes human rights
as inherent to human existence. These rights are regarded as universal and held equally
by all human beings. Human rights are based on human nature, which is "universal,
equal, and inalienable."\textsuperscript{265} However, this is not an opinion shared by all. There are many
factors that have affected the universality of human rights and the authority of
international human rights law. The issue of enforceability of human rights treaties and
covenants undermines the power of international human rights law. Furthermore, a
consensus on human rights, what they ought to be or how they should be protected has
yet to be reached mostly due to cultural, political, social and religious clashes between
prominent Western and non-Western cultures.

\textit{When East Meets West}

The universality of human rights discourse has been more idealistic than realistic,
drawing on moral lessons rather than actually changing reality.\textsuperscript{266} The concept of human
rights has captivated the attention of the international community, although it is clear that
not everyone in the international community aspires to the same human rights. The
universality of human rights aspirations has been explored since the writing of the UDHR
and the same arguments continue to emerge.\textsuperscript{267} The debate that questions the universality
and enforceability of human rights its universality down to its core comes from the

\textsuperscript{265} Jack Donnelly. "Human Rights as Natural Rights." \textit{Human Rights Quarterly} 4, no. 3 (Autumn, 1982):
pp. 401-402.
\textsuperscript{266} Chandler, 225.
\textsuperscript{267} Falk, 18.
widespread conviction that “human rights are a Western invention being shoved down non-Western throats.” While some view this argument as nothing more than a propaganda ploy by individuals seeking to hide their abusive behavior from international criticism, it is still an argument that carries great weight and highlights the on-going struggle of reconciling Western and non-Western ideologies towards human rights.

The view that human rights are a Western invention, imposed on individuals from vastly different cultures and religions, is not without merit. These non-Westerners “believe that the highly individualist declaration does not adequately balance rights with responsibilities,” such as those required in Islam. Islamic critics of these so-called Westernized human rights claim that human rights exist in Islam but “human rights ... in the Muslim world must work within the framework of Islam to be effective.” But Abdullahi Ahmed An-Na’im, a prominent Islamic human rights scholar and advocate, argues that while human rights notions must fit within the Islamic framework, the dictates of Islam and the modern concepts of human rights may clash. Such a clash is acceptable to An-Na’im, who suggests that, “religious texts, like all other texts, are open to a variety of interpretations.” These interpretations should be used as “the new Islamic scriptural imperatives for the contemporary world,” thus forging a reconciliation between Islamic texts and current international human rights law.

The argument set forth by Islamic scholars that Islamic values should be applied to the human rights concept is but one argument, which questions the universality of

268 Falk, 18.
269 Ibid.
271 Ibid.
272 Ibid., 78.
273 Ibid.
international human rights. Opponents of universal human rights assert that human rights as specified in the Universal Declaration of Human Rights are not necessarily relevant to all nations. The UDHR articulates rights and freedoms that it perceives as universal, thus applying to “all human beings by virtue of their common humanity.”

Adversaries of universal rights refute this notion on several grounds. Cultural particularities, social and religious differences make it difficult to interpret human rights universally. Furthermore, since societies have different priorities, individual freedoms may not be as important in these societies as other factors such as economic development and social cohesion may trump their importance. Human rights advocates fear this “cultural particularity” that non-Western nations are hiding behind may simply just give individual governments the opportunity to pick and choose which standards apply to them and which clash with their cultures. But, the option to choose which human rights standards apply to an individual government does not sit well with international human rights advocates, as “the universality of these rights and freedoms is beyond question,” and/or negotiation.

Relativists argue that moral values are not universal; rather, they are historically or culturally specific, thus voiding the universality of human rights. This argument suggests that, “there are a variety of distinctive and defensible conceptions of human rights that merit ... respect and toleration.” This argument, while valid as a matter of respect and toleration, infringes on the universality of human rights and weakens

274 Egendorf, 28.
275 Ibid.
276 Ibid., 29.
277 Ibid.
278 Ibid., 20.
279 Egendorf, 20.
international human rights law. Meanwhile, universalism is the belief that all values, such as human rights, are entirely universal and should not be modified to fit cultural and historical differences, a notion proposed by relativists.\textsuperscript{280} However, universalism is sometimes seen as imposing universalistic notions of human rights, completely ignoring the culture of the nation on which these rights are being imposed. "Human rights do not require cultural homogenization."\textsuperscript{281} If the legacy of imperialism has taught Westerners anything it is that special caution and sensitivity is needed "when dealing with clashing with cultural values."\textsuperscript{282} This caution, though, should not be misinterpreted as meaning that no action should be taken be against strongly sanctioned traditions.

The issue of human rights has become a top priority for the international community and has revolutionized the language of international relations. The human rights vernacular can now be heard in every discussion and in every language.\textsuperscript{283} This human rights vernacular is heard in discussions on economic development, on environmental issues and on discussions relating to the civil and political rights of all individuals. The issue of human rights has become so intertwined in global politics that "today, practically no state can afford not to participate in some form of human rights diplomacy."\textsuperscript{284} Even states like Russia, China and Cuba who tend to be on the opposite end of the human rights spectrum, argue that not only do they enforce human rights principles but they also claim to be supportive of the international movement of human rights. Such a claim may render an opinion that human rights perhaps have become truly

\textsuperscript{280} Egendorf, 22.
\textsuperscript{281} Ibid., 24.
\textsuperscript{282} Ibid., 25.
\textsuperscript{283} Chandler, 8.
\textsuperscript{284} Ibid.
universal. However, criticism on the universality of human rights still exists. And it is that criticism that makes the enforceability of human rights principle a difficult task.

A majority of the criticism stems from non-Western cultures that view the concept of human rights as being a Western invention. For these critics, its Western origin limits its applicability, while undermining its universality. While human rights may be a liberal notion, it does not necessarily mean that it is inapplicable to the rest of the world.285 Modern human rights emerged out of Western revolutions that were set in motion by individuals demanding certain rights and freedoms from their kings and nobility in power. Today, there are many individuals around the world demanding the same rights from their depredations of class-ruled governments, as their Western counterparts did many years ago.286 Clearly, the concept of human rights transcends not only time, but culture as well.

Human rights violations have escalated to unprecedented proportions. They "command a level of political and popular attention" unseen before.287 Media attention and pressure by human rights groups bring attention to the problems and the triumphs of the human rights movement. Despite this attention and pressure, human rights violations remain all too common.

The concept of human rights cannot be imposed on societies. Even with the many covenants and treaties that protect individual liberties and freedoms, for institutions of human rights to cultivate and develop, they must do so on their own in any given

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285 Donnelly and Howard, 23.
286 Ibid.
287 Shelley, 53.
society.\textsuperscript{288} For some societies, this development will be quick and painless. For others, it is an on-going process and struggle to even recognize that a concept such as human rights even exists. "One can only hope that there will be two steps forward for every one taken backward."\textsuperscript{289}

\textit{Universal Human Rights: Rhetoric or Reality?}

An international framework consisting of various enforcement mechanisms has been in place for many years. These mechanisms have sought to defend the liberties and freedoms expressed in the human rights movement. Yet, these mechanisms have failed given the unending human rights violations taking place around the globe. Slavery, forced labor, rape and abuses against children unfortunately remain all too common in some parts of the world. The diverse nature of these violations is addressed in various conventions and treaties. While the establishment of the ICC was meant to prosecute human rights violators and to bring justice to their victims, it has yet to be used in its full capacity as no mechanism exist to force any individual to appear before the court, unless he or she does so voluntarily. This lack of enforcement capability greatly undermines international human rights law.

The failure of not having an effective enforcement mechanism in international human rights law can also be attributed to the current discord between the West and prominent, middle-Eastern, Islamic nations. The disparity of human rights ideologies between these two cultures questions the universality of human rights. Opponents of universal notions of human rights persist that the Western influence on the human rights movement have it made it universality impossible to be reconciled with non-Western

\textsuperscript{288} Shelley, 54.
\textsuperscript{289} Ibid., 55.
ideals and beliefs. But such an argument ignores the very definition of human rights that
rights are natural – that is, they are inherent in all human beings by the simple virtue of
being a human. This definition ignores any cultural, political, or religious ideologies and
relies solely on natural law and universally accepted morals. The misconception that
human rights are innate solely in Western cultures greatly undermines the hundreds of
years of the human rights movement.

Presently, there is no common ground in the promotion of human rights between
Western and Islamic nations because of the role of religion in these two diverse cultures.
This lack of common ground creates a tension between law and religion. This
incompatibility between law and religion – highlighted in the existing tension between
democracies and theocracies – is exemplified in the case of the United States and Iran.
Procedurally, reconciliation between democracies and theocracies will never be possible
due to the lack of religion in democracies and the importance of religion in theocracies.
Since such reconciliation is not viable, what is necessary is a reassessment of the
definition and declaration of human rights in hopes of universalizing its concept and
applicability.

The Eastern experience has proven antithetical to conditions that have been so
fertile in germinating human rights in the West. Plunder of the natural resources of
developing nations engendered suspicion by its eastern victims. Secular social and
political traditions that might have established a momentum of empirically based legal
institutions and mechanisms failed to materialize. Without individual incentive embedded
in a system of codified personal liberties such as freedom of expression, private property
and checks and balances on government incursion into personal spheres, efficient
economic markets failed to distribute wealth and goods widely. Religious based communitarian concepts of social organization overwhelmed attempts at developing individual rights. Various military, economic and cultural collisions from the Crusades and the Mongol invasions through World War II served to deepen suspicions between East and West.

The human rights chasm between East and West is one of fundamental philosophical and cultural principles. Religious differences are not reason based and are not amenable to compromise. Social differences are rooted in cultural traditions and may, thus, be moderated. Furthermore, it is necessary to rethink the Western human rights paradigm so that universality may be achieved. Instead of dismissing the claims of non-Western cultures on their views of human rights, perhaps a tolerance on their diverse views while engaging economically might forge a human rights concept that resembles that of a popular accord on what rights are, what they ought to be and how they should be protected.

The wholesale merging of cultures and traditions is not necessary. Instead a simple “respect and reconciliation between and among ever changing and ever diverse peoples and nations” will foster a concept of human rights that is accepted across nations, traditions, cultures and religions. For now, the clash of cultures between Western and

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290 Falk, 91.
291 Hunt, 16.
292 Ibid., 92.
293 Protection may be provided in the form of binding treaties and covenants that prohibit several human rights violations. While such treaties and covenants already do exist, what is necessary is a working enforcing mechanism that will follow through on those found to have committed human rights violations. A more binding International Criminal Court with jurisdiction over all its signatories regardless of ratification might be one way to provide an enforcement mechanism that would punish human rights violators.
294 Falk, 92.
non-Western societies will continue to undermine international human rights law. Only when these cultures agree upon a global definition of human rights and reaffirm its universality, will human rights become reality rather than simple rhetoric.
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IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good. He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures. He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people. He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within. He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands. He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judicial powers. He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance. He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.
He has combined with others to subject us to a jurisdiction foreign to our constitution, and
unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation:
For Quartering large bodies of armed troops among us:
For protecting them, by a mock Trial, from punishment for any Murders which they should commit
on the Inhabitants of these States:
For cutting off our Trade with all parts of the world:
For imposing Taxes on us without our Consent:
For depriving us in many cases, of the benefits of Trial by Jury:
For transporting us beyond Seas to be tried for pretended offences
For abolishing the free System of English Laws in a neighbouring Province, establishing therein
an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and
fit instrument for introducing the same absolute rule into these Colonies:
For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the
Forms of our Governments:
For suspending our own Legislatures, and declaring themselves invested with power to legislate
for us in all cases whatsoever.
He has abdicated Government here, by declaring us out of his Protection and waging War against
us.
He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our
people.
He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death,
desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled
in the most barbarous ages, and totally unworthy the Head of a civilized nation.
He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their
Country, to become the executioners of their friends and Brethren, or to fall themselves by their
Hands.
He has excited domestic insurrections amongst us, and has endeavoured to bring on the
inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an
undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated
Petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act
which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of
attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the
circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity,
and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would
inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of
consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them,
as we hold the rest of mankind, Enemies in War, in Peace Friends.

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing
to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the
good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right
ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and
that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and
that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances,
establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the
support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to
each other our Lives, our Fortunes and our sacred Honor.
Appendix B — The French Declaration of the Rights of Man and Citizen²

Declaration of the Rights of Man - 1789

Approved by the National Assembly of France, August 26, 1789

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen:

Articles:

1. Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.

2. The aim of all political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

3. The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation.

4. Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law.

5. Law can only prohibit such actions as are hurtful to society. Nothing may be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.

6. Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.

7. No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law. Any one soliciting, transmitting, executing, or causing to be executed, any arbitrary order, shall be punished. But any citizen summoned or arrested in virtue of the law shall submit without delay, as resistance constitutes an offense.

8. The law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense.

9. As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner’s person shall be severely repressed by law.

10. No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.

11. The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.

12. The security of the rights of man and of the citizen requires public military forces. These forces are, therefore, established for the good of all and not for the personal advantage of those to whom they shall be intrusted.

13. A common contribution is essential for the maintenance of the public forces and for the cost of administration. This should be equitably distributed among all the citizens in proportion to their means.

14. All the citizens have a right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely, to know to what uses it is put; and to fix the proportion, the mode of assessment and of collection and the duration of the taxes.

15. Society has the right to require of every public agent an account of his administration.

16. A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all.

17. Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified.

Appendix C – The Universal Declaration of Human Rights

Universal Declaration of Human Rights - English (English)

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

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Everyone has the right to life, liberty and security of person.

**Article 4**
No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5**
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**
Everyone has the right to recognition everywhere as a person before the law.

**Article 7**
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8**
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9**
No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10**
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11**
1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12**
No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13**
1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14**
1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23
1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24**

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26**

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28**

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29**

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.
Appendix D – *Gitmo Interrogation Techniques* 

**GTMO INTERROGATION TECHNIQUES**

Approved by SECDEF In Dec 2002:

**Category I**
- Incentive
- Yelling at Detainee
- Deception
- Multiple Interrogator techniques
- Interrogator identity

**Category II**
- Stress positions for a maximum of four hours (e.g., standing)
- Use of falsified documents or reports
- Isolation up to 30 days (requires notice)
- Interrogation outside of the standard interrogation booth
- Deprivation of light and auditory stimuli
- Hooding during transport & interrogation
- Use of 20-hour interrogations
- Removal of all comfort items
- Switching detainee from hot meal to MRE
- Removal of clothing
- Forced grooming (e.g., shaving)
- Inducing stress by use of detainee's fears (e.g., dogs)

**Category III**
- Use of mild, non-injurious physical contact

Used Dec 2002 through 15 Jan 2003:

**Category I**
- Yelling (Not directly into ear)
- Deception (Introducing of confederate detainee)
- Role-playing interrogator in next cell

**Category II**
- Removal from social support at Camp Delta
- Segregation in Navy Brig
- Isolation in Camp X-Ray
- Interrogating the detainee in an environment other than standard interrogation room at Camp Delta (i.e., Camp X-Ray)
- Deprivation of light (use of red light)
- Inducing stress (use of female interrogator)
- Up to 20-hour interrogations
- Removal of all comfort items, including religious items
- Serving MRE instead of hot rations
- Forced grooming (to include shaving facial hair and head – also served hygienic purposes)
- Use of false documents or reports

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Appendix E – *Humane Treatment of al Qaeda and Taliban Detainees*

The White House

Washington

February 7, 2002

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF STATE
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
CHIEF OF STAFF TO THE PRESIDENT
DIRECTOR OF CENTRAL INTELLIGENCE
ASSISTANT TO THE PRESIDENT FOR NATIONAL SECURITY AFFAIRS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF

SUBJECT: Humane Treatment of al Qaeda and Taliban Detainees

1. Our recent extensive discussions regarding the status of al Qaeda and Taliban detainees confirm that the application of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 (Geneva) to the conflict with al Qaeda and the Taliban involves complex legal questions. By its terms, Geneva applies to conflicts involving “High Contracting Parties,” which can only be States. Moreover, it assumes the existence of “regular” armed forces fighting on behalf of States. However, the war against terrorism ushers in a new paradigm, one in which groups with broad, international reach commit horrific acts against innocent civilians, sometimes with the direct support of States. Our Nation recognizes that this new paradigm – ushered in not by us, but by terrorists – requires new thinking in the law of war, but thinking that should nevertheless be consistent with the principles of Geneva.

2. Pursuant to my authority as Commander-in-Chief and Chief Executive of the United States, and relying on the opinion of the Department of Justice dated January 22, 2002, and on the legal opinion rendered by the Attorney General in his letter of February 1, 2002, I hereby determine as follows:
   a. I accept the legal conclusion of the Department of Justice and determine that none of the provisions of Geneva apply to our conflict with al Qaeda in Afghanistan or elsewhere throughout the world because, among other reasons, al Qaeda is not a High Contracting Party to Geneva.
   b. I accept the legal conclusion of the Attorney General and the Department of Justice that I have the authority under the Constitution to suspend Geneva as between the United States and Afghanistan, but I decline to exercise that authority at this time. Accordingly, I determine that the provisions of Geneva will apply to our present conflict with the Taliban. I reserve the right to exercise this authority in this or future conflicts.
   c. I also accept the legal conclusion of the Department of Justice and determine that common Article 3 of Geneva does not apply to either al Qaeda or Taliban detainees, because, among other reasons, the relevant conflicts are international

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5 Greenberg, 136.
in scope and common Article 3 applies only to "armed conflict not of an international character."

d. Based on the facts supplied by the Department of Defense and the recommendation of the Department of Justice, I determine that the Taliban detainees are unlawful combatants and, therefore, do not qualify as prisoners of war under Article 4 of Geneva. I note that, because Geneva does not apply to our conflict with al Qaeda, al Qaeda detainees also do not qualify as prisoners of war.

3. Of course, our values as a Nation, values that we share with many nations in the world, call for us to treat detainees humanely, including those who are not legally entitled to such treatment. Our Nation has been and will continue to be a strong supporter of Geneva and its principles. As a matter of policy, the United States Armed Forces shall continue to treat detainees humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

4. The United States will hold states, organizations, and individuals who gain control of United States personnel responsible for treating such personnel humanely and consistent with applicable law.

5. I hereby reaffirm the order previously issued by the Secretary of Defense to the United States Armed Forces requiring that the detainees be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of Geneva.

6. I hereby direct the Secretary of State to communicate my determinations in an appropriate manner to our allies, and other countries and international organizations cooperating in the war against terrorism of global reach.

[Signed George Bush]
Appendix G - Major Detention Events Following 9/11