



# HUMAN RIGHTS REGIMES IN THE AMERICAS

EDITED BY

MÓNICA SERRANO · VESSELIN POPOVSKI

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Vesselin Popovski

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# The human rights regime in the Americas: Theory and reality

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*Mónica Serrano*

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## Introduction

The idea of human rights has long been part of the political and social landscape in the Americas. The language of human rights has featured in the Americas since the sixteenth century, from the Thomist and Aristotelian accounts of the nature and origins of natural law, to the heated Salamanca and Valladolid debates over the rights of non-European peoples and the status of American Indians under natural law, to the “natural” rights invoked by European powers to legitimate their overseas empires.

From early on the Spaniards, in particular the religious orders, saw their mission in America as one of “reducing the savage people to Christianity and civility”.<sup>1</sup> At the same time, as early as 1512 the Junta de Burgos established that the Indians of America should be treated as a free people, one clearly entitled to hold property. This was followed by the New Laws of 1542, which, if implemented, would have paved the way for the “tutelary Kingship” advocated by Fray Bartolomé de Las Casas, in which all forms of personal service would have been abolished and Indians would have been considered direct vassals of the crown. Although in the impassioned Valladolid debate Bartolomé de Las Casas failed to firmly establish his defence of the Indians, his arguments were sufficiently powerful to prompt the crown to restate its obligations towards the Indian population. Moreover, both Francisco de Vitoria and Francisco Suarez invoked the Roman principle of *vicinage* to argue that the Spanish were obliged to come to the assistance of their barbarian neighbours and to rescue an

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“offendable humanity” from the acts of “warfare” perpetrated by their rulers and to defend it against such acts of aggression as human sacrifice.<sup>2</sup>

The Americas provided in turn the impetus for a “new kind of universalism” that by expanding the reach of the concept of a natural right to distant peoples – whether in its godly or earthly variants – extended the “legal claims of one particular culture” to all the peoples of the world. As Anthony Padgen reminds us, conceptually those rights which were to become human not only developed from the antique conception of natural rights, but were closely associated with European imperial expansion in the New World.<sup>3</sup>

By the late eighteenth century, the confluence of the French Revolution and the rising tide of nationalism marked the end of this universal, cosmopolitan and imperially driven notion of natural rights. Dominant ideas of natural law and natural right (understood as something akin to righteousness or rectitude) gave way to natural or human rights, now “in the sense of equal and inalienable individual entitlements”.<sup>4</sup> Although the replacement of the “promise of God” by the promise of the Rights of Man did not remove the aspirations for universality – that is, the principle of the universality of man and the equality of each to each – the idea of the Rights of Man took more specific root: it contained the “constitutive abstraction” for the foundation of a society composed of free and equal individuals, that is of modern democracy.<sup>5</sup> Thus in 1789 the *Déclaration des droits de l’homme et du citoyen* not only catalysed the conversion of natural rights into still inalienable and inviolable yet chiefly civil and political citizen rights; it also circumscribed them within a specific political order, to the boundaries established by a “society constituted as a nation”.<sup>6</sup> Likewise, although it still described human rights as “natural” and “sacred”, the philosophical tradition established by the Declaration would rely on these ideas to erect new political orders while encircling and bounding them into the destiny of the nation state.

Well known as it is, the transformative significance of the shift is hard to overstate. In the preceding centuries, the duty of rulers to advance the common good had originated in a divine mandate or natural law, not in the rights or entitlements of individuals. Since the great shift, the concept of human rights has been widely understood as concerning the relationship between the individual and the state – as a notion that encompasses the status, claims and duties of the individual in the jurisdiction of the state. “Rights are entitlements that ground claims with a special force” and, as such, they constitute a “particular type of social practice”.<sup>7</sup>

Although the contradictions and political conflicts that accompanied the diffusion of the “philosophical message” of the French Revolution would all too soon expose the tensions between the principles of equality and liberty, the power of the 1789 principles to capture the imagination

of millions around the world is beyond doubt. Over time, the political centralization of states and the rapid advance and market penetration of capitalism dislocated the prevailing social order, generating in turn an unprecedented demand for rights. The mobilization of such demands was a historically arduous process of chipping away at closed political rock-faces. Its legacy is the human rights machinery that is familiar to us today.

Thus, in the Americas as elsewhere, the protection of individual human rights was carried on as a matter to be confined within the boundaries of the political society in question. The status of “human rights law” remained a rather loose mix of diffuse and unrelated legal principles and institutional arrangements that were mostly designed to protect certain categories or groups of human beings beyond state borders. Included in this category were: state responsibility for injuries to aliens, the protection of minorities, and international humanitarian law.<sup>8</sup> With a few exceptions – slavery and labour rights – up until the Second World War, for the most part human rights remained a matter of sovereign national jurisdiction.<sup>9</sup>

## The United Nations’ human rights regime

The chain of events leading to the Second World War and the shatteringly definitive tragedy of the Holocaust turned human rights into a pressing issue of international politics. The tangible outcome was the UN human rights regime, and in discussions of its origins a number of key factors have been widely identified: widespread support for the human rights cause, the commitment of key dominant powers to human rights, and the vibrant contribution of private actors and civil society organizations.<sup>10</sup> The start-up and evolution of this regime – as with those that emerged in the areas of arms control and non-proliferation and illicit drugs – entailed complex processes in which the preferences and interests of dominant powers were clearly major factors.<sup>11</sup> However, in this regime as in those others, not only did moral considerations operating at both the domestic and international levels prove to be decisive, but so too did the committed and devoted contribution of “moral entrepreneurs”.

Undoubtedly, the leadership provided by both dominant and small powers was fundamental in the process of laying the foundations of the regime. In the immediate post-war period, human rights were identified among official circles in Washington, London or Paris as useful mechanisms to help stabilize emerging and unstable democracies and as an insurance against a resurgence of what was then termed fanatical nationalism; soon after, they were seen as a means to bolster defences against

communism. Alternatively, in the capitals of what we now call the South, and most clearly in Latin America, human rights were perceived as an important platform from which to press demands for equality.

So, while the sympathy of government officials towards human rights was instrumental in setting the foundations of the regime, the development of the regime as a “law-making framework” owes a great deal to the active and constant involvement of both leading individual figures and civil society organizations. The norms and rules that would emerge within the framework of this regime certainly reflected the preferences and interests of leading powers, but they have also been closely connected to the normative aspirations of smaller states and – equally important – to social mobilization on the ground.

Long before the drafting of the UN Charter, the efforts of non-governmental actors, including the Commission to Study the Organization of Peace (CSOP), provided ample evidence of the vital role that civil society and non-governmental initiatives would play in the creation and evolution of the UN human rights regime. Through the combination of thorough research, active engagement with the US government and an outstanding readiness to embark on assertive and strategically deployed advocacy campaigns, the CSOP not only succeeded in placing human rights on the international agenda; it also would play a key role in the process by which human rights commitments and standards were firmly imprinted in the UN Charter.<sup>12</sup>

This organization helped frame a new international discourse of rights that included ideas not only for an international bill of rights, but also for the setting up of a human rights commission. In the first press release of the CSOP, published in 1940, the authors called for a new framework allowing the individual and not just states to become a subject of international law; the protection of human rights had already been identified as a key function of the future world organization. But there are strong indications that the current of thinking informing the views of this Commission was in no way limited to idealist considerations. Its reflections (specifically those emanating from Quincy Wright) also incorporated into the analysis the potential and significant contribution that international human rights mechanisms could make to the global security agenda and to the prevention of war. Indeed, the protection of individual human rights, and in particular of civil liberties, was soon identified as an essential component of strategies aimed at curbing and containing the international repercussions of “fanatical nationalism”.<sup>13</sup>

The work produced on sovereignty by the Commission also anticipated the more recent and dramatic emphases upon conditioned and contingent sovereignty and sovereignty as responsibility. The CSOP’s first report identified five areas in which some limits to the “exaggerated develop-

ments of the idea of sovereignty” should be considered: the submission of disputes to international arbitration; the renunciation of the use of force; the control of armaments; the coordination of economic activity; and, after noting that the “destruction of civil liberties anywhere creates danger of war”, the expectation that states would accept “certain human and cultural rights in their constitutions and in international covenants”.<sup>14</sup>

The intellectual work and the intense rhythm of activities deployed by the CSOP appeared to have influenced not only the discourse but also the commitment of the Roosevelt administration in the United States to universal freedom and human rights. More than anywhere else, the views of the CSOP left an indelible mark in Roosevelt’s 1941 annual message to Congress and in the President’s commitment to “four essential human freedoms” – freedom of thought and expression, freedom of religion, freedom from fear, and freedom from want – and in his determination to pursue those freedoms not only at home but also “everywhere in the world”.<sup>15</sup>

Equally significant was the return of the language of rights, a theme that still attracts the attention of diplomatic historians. Some point to Roosevelt’s personal involvement, others to the fortuitous coincidence provided by the celebration of the 150th anniversary of the US Bill of Rights on 15 December 1942. Taken together, these developments would help secure the semantic shift to rights in the Declaration by the United Nations.

As works for a possible permanent international organization started and progressed through 1943, the CSOP advisory role in the drafting of a preliminary constitution for the new international organization and of an international bill of rights intensified. Then in 1944, when US Secretary of State Cordell Hull decided abruptly to end participation by outside groups and congressional representatives in the post-war planning process, the efforts from human rights groups ran into difficulties. However, the still embryonic but unyielding determination of human rights activists, along with their public and vocal reaction against the Dumbarton Oaks Proposals, soon forced the State Department to step back and to seek their assistance after all to guarantee the much-needed public support for the envisaged international organization. This allowed the CSOP and other groups to come back with a forceful lobbying campaign for the inclusion of more progressive and human rights provisions in the final UN Charter. A key component in this crusade, which involved the mobilization of major figures, the 48 state governors in the United States and the mass media (radio), was the creation of a human rights commission as a pillar of the new international architecture. Roosevelt, impressed by the energy and mobilizing power of these groups, soon decided to designate a number of organizations as “consultants” to the US delegation.<sup>16</sup>

Clearly, the inclusion and official recognition of these groups and the unprecedented status granted to them at the San Francisco Conference were a prescient decision, one that offers valuable insights into the contribution and future role to be played by private and civil society groups within the United Nations.<sup>17</sup> This logic can best be captured by the way in which the need to campaign on behalf of the human rights cause expanded from the US government to a wider circle that included the more reluctant UK and Soviet governments. Although a four-point plan – which included the new and decisive general principle stating that human rights are “a matter of international concern” – enabled this constituency effectively to influence the US position, an improvised but passionately effective speech delivered by Isaiah Bowman, US adviser and President of Johns Hopkins University, at a meeting of the four leading delegations may also have helped win over the reticent UK and Soviet representatives.

The persistent efforts by civil society groups – representing churches, trade unions, ethnic groups and peace movements – and the commitment of leading powers including the United States and the United Kingdom, as well as smaller states such as Brazil, Colombia, Cuba, the Dominican Republic, Mexico, Panama and South Africa, to the human rights cause made possible the articulation of human rights and the inclusion of fundamental references to them in the UN Charter. Although at San Francisco the big powers entrusted the United Nations with the promotion rather than the active protection of human rights, one can easily forget the continued important role played by smaller states in enhancing and consolidating the principle of international concern for human rights within the new organization.<sup>18</sup> As we have seen, the Latin American perspectives of international order not only considered human rights as a fundamental and constitutive feature, but also saw in the promotion of human rights and in particular of social and economic rights an entry point that could help them in their efforts to address the inequalities of the international order. Some of the Latin American views expressed at the time in regional debates were clearly in line with notions of conditioned and contingent sovereignty. In the words of the Uruguayan Foreign Minister, Eduardo Rodríguez Larreta, “‘non intervention’ is not a shield behind which crime may be perpetrated, laws may be violated”.<sup>19</sup> For Latin American countries, whose representation in the early days of the newly established organization would far outweigh that of other regions – 20 out of 50 state members – the promotion of human rights, and in particular of social and economic rights, was also seen as a way to address and tackle the long neglected inequalities of the international order. Thus at these negotiations Latin American representatives were soon identified as ardent advocates of the indivisibility of rights.<sup>20</sup>

In contrast with its predecessor, the League of Nations, in its Preamble and Article 1 the UN Charter explicitly acknowledged the promotion of human rights and fundamental freedoms among its main purposes. True, in the Charter human rights were proclaimed to be central purposes of the new organization. Yet it is hard to avoid the conclusion that the strong prohibitions on intervention inserted in Article 2 had turned the Charter into a fundamentally non-interventionist text. The recognition of human rights as a matter of legitimate international concern had thus been coupled with a firm commitment to the ostensibly contradictory principle of absolute national sovereignty. Ironically, some of the wording of the strongest and often-cited prohibition on intervention in Article 2(7) originated in British imperial concerns over the powers and authority of the new organization and the potential implications for the permanence of the British empire.<sup>21</sup> Not only was the weight of non-intervention clearly imprinted in the Charter, but over the years UN practice would also help foster the culture of non-intervention, propagating the perception of an organization clearly associated with the principle of non-intervention in the internal affairs of states.<sup>22</sup>

Yet the Charter's references to human rights and the body of human rights law that would emanate from them would also eventually shift the scales. There is a good deal of evidence to suggest that, once the foundations of the regime had been laid down, a framework for continued negotiation and law-making was also set into operation.<sup>23</sup> In the period from 1945, disagreement over both the origins and the boundaries of human rights ideas remained as familiar as always but, as the impetus of human rights law gathered force, the "radical statist logic" that had for centuries underpinned human rights practices gradually disintegrated.<sup>24</sup>

The first landmark was the Universal Declaration of Human Rights adopted by the General Assembly in 1948, which helped establish the foundations of the modern human rights doctrine.<sup>25</sup> The Universal Declaration not only advanced the view that the way in which states treat their own citizens is a legitimate international concern, but sought to subject the actions of governments to international standards. By and large a non-binding document, the Declaration nevertheless soon emerged as an authoritative point of reference establishing the meaning and significance of the general references to human rights enshrined by the Charter.<sup>26</sup> In contrast with previous traditions, the Universal Declaration did not invoke any "justifying theory", but instead just declared certain values to be human rights. Beyond the Declaration's silence about its theoretical foundations lay the belief in "a common standard of achievement for all peoples and all nations".<sup>27</sup>

Similarly, and despite their contamination by the reality of "victors' justice", the Nuremberg and Tokyo war crime trials lent substance to

the idea of internationally punishable extreme crimes. The Nuremberg and Tokyo judgments of 1946 and 1948 not only played a key role in the codification of crimes against humanity but helped advance the cause of international consequences for gross human rights crimes. Under this charge, state soldiers and officials “were liable for offences against individual citizens, not states”, and against victims who often were nationals and not foreigners. Undoubtedly, these processes, together with the decisive 1948 Convention on the Prevention and Punishment of the Crime of Genocide, brought the actions of governments against their own citizens into the province of international concern and action.<sup>28</sup>

Nowhere was the impact of these foundational instruments more evident than in their role as catalysts for the revolution in international human rights. Although in the immediate post-war period the idea of internationally protected human rights had been clearly placed on the international agenda, at the time doubts remained as to whether it could be translated into practice. Both state and non-state actors soon learned what an uncertain and erratic process this would prove to be.<sup>29</sup> Yet the main thrust of the emerging human rights norms was to provide a framework in which general principles were first negotiated and formalized and an arena for negotiation and lobbying “from which more specific ‘harder’ rules” would subsequently emerge. The contribution of the United Nations to this process has been widely acknowledged. Indeed, the consolidation of human rights as a standard subject of international relations owes a great deal to this organization.<sup>30</sup>

In the early post-war period the United Nations acted swiftly and assumed a leading role in the codification of human rights, as well as in fostering a “global human rights culture”.<sup>31</sup> In the period after 1948 the rights enshrined by the Universal Declaration would be further elaborated in a constellation of treaties and conventions. Thus, over the years, not only did human rights emerge as a new reality in international relations, and as a specific branch of international law, but the post-war era also ushered in a new reality, that of internationally codified human rights.

On the other hand, although in the period between 1945 and 1953 the United States – under the outstanding leadership of Eleanor Roosevelt, US representative, president and chair of the United Nations Commission on Human Rights – played a leading role in laying down the foundations of the UN human rights regime, its medium- and long-term prospects looked increasingly fragile as the Cold War settled in.<sup>32</sup> With the exception of Europe, where a Convention for the Protection of Human Rights and Fundamental Freedoms had been adopted in 1950 under the auspices of the Council of Europe, progress on the human rights front was slow and erratic. As Cold War dynamics developed in Eastern Europe and other regions, the reach of human rights ideas and norms was clearly

severed. In the Western camp, what once was seen as a clear commitment to human rights was increasingly subordinated to strategic and security considerations. If the United States and other Western states had played a major role in the creation of the post-war human rights regime, the ascendancy of security priorities implied a serious erosion of their commitment to upholding the regime. In the United States, the compounded effect of the unfolding of the Cold War and the rise of a powerful conservative group – the Bricker coalition, which was determined to thwart efforts against racial discrimination and to prevent further adherence to human rights instruments – soon forced Washington to back away from its leading role as a promoter of internationally recognized human rights.<sup>33</sup> Thus, unsurprisingly, through the Cold War period the leadership once provided by the United States and other Western powers remained in retreat.

The Cold War not only sapped the leadership so far provided by a number of governments, but was also to have a profound impact on the voices of political entrepreneurs and civil society groups that had so powerfully propelled the human rights cause in the early post-war period. Two points are worth stressing here. First, in the mid-1940s an external favourable setting had helped magnify the voices of these actors, but in the new context this was no longer the case. Secondly, well into the 1960s these groups remained few and loosely connected and had clearly not yet developed the density and intensity of contacts and exchanges of information and resources that would later characterize their activity.<sup>34</sup>

By the second half of the 1970s, however, a number of regional and international events helped swing the balance again in favour of a new wave of international human rights activism. Through the 1970s a number of important decisions and actions would all contribute to the renewed normative salience of the idea of human rights – including the first World Conference on Human Rights held in Teheran in 1968; the activation in the second half of the 1960s of the protection function of the United Nations through the creation of a procedure that enabled the Commission on Human Rights to investigate, on an annual basis, allegations of gross violations of human rights;<sup>35</sup> the decision taken in 1973 by the US Congress to explicitly link US foreign aid to the human rights performance of recipients; the negotiation of the 1975 Helsinki Final Act, which brought human rights to the fore of East–West relations and detente; and the new prominence gained by non-governmental organizations (NGOs), symbolized by the Nobel Peace Prize granted to Amnesty International in 1977.<sup>36</sup>

But the incremental institutional deepening of the regime can be finally understood and explained only in the light of the confluence of a number of important developments that were taking place at global level.<sup>37</sup> These

included: the presence of newly independent states pressing the United Nations to pay attention to gross human rights violations in countries including South Africa and Israel, and the gradual shift of the United Nations from standard-setting towards protection and implementation.<sup>38</sup> Equally pivotal was the entry into force in 1976 of the international human rights Covenants – on Civil and Political Rights and on Economic, Social and Cultural Rights – which not only helped translate into specific rights many of the aspirations embodied in the 1948 Universal Declaration, providing them with a legal foundation, but re-energized and helped legitimize the activities of human rights advocates around the world.<sup>39</sup> Likewise, the arrival of Jimmy Carter in the White House not only turned human rights into a leading priority of US foreign policy but helped modify the – regional and global – institutional environment in which internationally recognized human rights were debated and advanced.<sup>40</sup> Last but not least, widespread revulsion towards the brutal repression exercised by military rule in both Chile and Argentina acted as a catalyst for a wider and deeper global shift characterized by the mutually reinforcing dynamics of state-led policies and grassroots activism.<sup>41</sup> Thus, in the United States activists not only helped trigger concern for human rights, but would emerge as vital sources of information for debates in the US Senate and country hearings in Congress.<sup>42</sup>

The combination of factors and events that made for this deepening of the regime is too complex to be unravelled here, but we can at least point to some auspicious trends and identify some of the key factors. It is obvious, for a start, that the unfolding of detente provided a more promising atmosphere in which to advance the human rights cause. But one must also consider the key role played by a group of developed and developing countries in pushing the human rights agenda, as well as the impact of the emergence of a much tighter and strategic network of human rights groups.<sup>43</sup> Thus, helped by the leadership provided by countries including the United States, Canada and the Netherlands, a chain of new human rights treaties were negotiated in this period, including: the International Convention on the Elimination of All Forms of Racial Discrimination (1965); the human rights Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); and the Convention on the Rights of the Child (1989). The degree of support granted by states to these half a dozen core international human rights treaties can be gauged by the level of endorsement granted by 168 parties and 86 ratifications.<sup>44</sup>

Since the Second World War, then, international human rights had undergone an unparalleled degree of growth and evolution, at both the

global and the regional levels. In the post-1945 world, the continuous codification of human rights norms and law laid the basis for the emergence of a truly “global human rights culture”. These changes are difficult to understand without reference to the growing body of standards and conventions that have come to regulate relations among states. But, at the same time, it is impossible to account for such a cultural transformation without giving due weight to the emergent human rights constituency within political communities across the world – from Latin America to South Africa, from Eastern Europe to parts of Asia. It would be wrong to make a hasty judgement of the extent to which these apparent changes have redefined the boundaries and contexts within which human rights values and practices are routinely exercised. But it would be equally misleading to disregard and ignore the growing awareness about human rights and the power of human rights to mobilize against impunity and abuse.<sup>45</sup>

The bounce forward of international human rights through the 1970s had reflected the understandable confidence unleashed by the adoption of human rights as a central component of US foreign policy. Under President Carter, not only did human rights gain an institutionalized foreign policy status but efforts were again made to bring the United States on board for the ratification of human rights instruments. Although, even under Carter, the implementation of US human rights policy was undoubtedly uneven and marked by inconsistencies, there were clearly consequential outcomes that helped keep human rights afloat through harder times.<sup>46</sup> Indeed, once human rights were institutionalized in US law and foreign policy and embedded in national, regional and international institutions, their normative resilience allowed them to survive the adversity of the Reagan years as well as the more recent and tortuous war on terror.

As was the case in the early 1980s, at the turn of the century many of the policies deployed by the United States and other powerful countries were in direct conflict with human rights norms and values. In both these periods, a reputation for effectiveness in combating communism and terrorism again came to challenge its international reputation for upholding human rights. Indeed, in both the second Cold War and through the post-9/11 era the social practices and the normative understandings that had helped steer interactions among state and non-state actors around human rights were seriously challenged by common assumptions about the ascendancy of security concerns over fundamental freedoms and human rights considerations.

In all these periods, the gravitational pull of the United States on the direction of the international human rights regime has been noteworthy. Through the 1970s and in the early post-Cold War period, Washington’s

actions played a key role in establishing the reputational weight of human rights standards; through the 1980s and in the ensuing post-9/11 period, the United States' promotion of reputational security benchmarks endangered human rights standards.<sup>47</sup> On this account, as has been the case in the context of other international regimes, policy decisions taken by Washington tend to have a significant impact on the direction and shape of the regime and thus on the range of opportunities and constraints facing state and non-state actors.

In the 1980s, then after 9/11, there is no doubt that the human rights cause was not only poorly served by the salience gained by US security priorities but seriously damaged by Washington's decisions to pursue security goals at high costs.<sup>48</sup> The symmetries are stark: in the early 1980s the perception of an unfolding second Cold War led the Reagan administration to prioritize security and stability over human rights; in the most recent post-9/11 period, security imperatives again prevailed over human rights obligations and considerations. So too in the 1980s, countries that had been targeted for human rights abuses, including Argentina and Chile, were suddenly promoted to the status of key partners; and, in the early twenty-first century, countries once reproved by Washington, such as Pakistan, Malaysia and Indonesia, were soon rehabilitated because of the priorities established by the counter-terrorism agenda.<sup>49</sup>

In the two periods, serious doubts arose not only about the compatibility between the security measures taken by the United States and the protection of human rights, but also about Washington's overall commitment to the human rights regime.<sup>50</sup> In the 1980s, the Reagan administration sought to downgrade human rights policies in favour of democracy promotion; in the recent past, the enactment of the Patriot Act, the amendments made to several federal statutes and immigration laws, and the new powers granted to law enforcement and intelligence agencies have clearly come at the expense of fundamental freedoms. Moreover, actions such as the imprisonment, in some cases without trial, of 1,200 non-US citizens and the incarceration in the notoriously irregular Guantánamo Bay naval base prison of several hundred detainees have seriously called into question Washington's adherence to the human rights cause.

Certainly, at different times, the erratic commitment by powerful states to the international human rights regime has allowed authoritarian and repressive states to take advantage of such permissive environments. Evidently, where the human rights culture has remained thin and where judicial and legislative independence has failed to take root, human rights can hardly be expected to thrive. Yet experience has also shown that the presence of a dense and vibrant civil society, a clear separation of powers and the rule of law are all vital components of a resilient human rights culture. This has been well illustrated by the role played by certain states,

mostly characterized by a reasonable level of human rights institutionalization, in resisting the retreat of human rights at the regional and international level. Indeed, largely because of this, the reputation for human rights protection has survived the adversity of hard times.<sup>51</sup>

Thus, despite the uneven support and occasional disparagement by Washington and other powerful states of the UN human rights regime, a more nuanced strand of interpretation is required to account for the resilience of the human rights idea. Indeed, even in the midst of adverse times it is possible to trace the power of the human rights norm and the capacity of both domestic and international institutions to resist the backsliding of national and international human rights standards.<sup>52</sup> At the regional and international level, both the embeddedness of the human rights norm and a continuing political offensive deployed by key state and non-state actors have ensured that pressures do continue to play a critical role in weighting the case of human rights against that of security considerations. Of all the many factors that help explain the resilience of human rights norms, three in particular deserve special consideration: the weight gained by human rights ideas and values within domestic and international institutions; the density of, and impetus attained by, domestic and international human rights constituencies; and, finally, the magnetic power and entrapment logic of the human rights discourse.<sup>53</sup>

In the course of over half a century not only has the language of human rights spread out to almost all corners of the world, but the system of international law devised to protect a cluster of basic human rights has also steadily expanded. The consent given by the majority of states to the seven core human rights treaties and the proliferation of national human rights institutions, ombudsmen, national truth commissions and transitional justice exercises all testify to the ever-deepening endorsement of the idea of human rights.

In sum then, from the mid-1970s human rights standards were set and reaffirmed by a dense layer of reporting and monitoring bodies supplied by human rights instruments, and carried out by both state and non-state organizations. Indeed, human rights institutions both internationally and regionally, along with many political actors, strove hard to sustain certain core values and ideas even during hard times.<sup>54</sup>

True, with the exception of cases of genocide and torture, sovereignty most often continues to trump human rights. But it would be wrong to conclude that such an impressive body of human rights treaties and agreements signed under the auspices of the United Nations has no import.<sup>55</sup> Indeed, the expansion and widespread acceptance of this body of law has had significant implications for relations between citizens and states and for the wider conduct of international relations. The worldwide legal and political recognition granted to human rights law has strongly

reinforced the view that a government's treatment of its citizens can be a matter of legitimate international concern, and also that the protection of internationally recognized human rights is a precondition of full political legitimacy.<sup>56</sup>

Clearly, there is a danger of overstating an elite-based international legal universality. However, the evidence from the Americas suggests that the language of human rights has trickled down and penetrated more deeply than ever imagined. It is to there that we now turn.

## The rise of a human rights regime in the Americas

In the early post-war period, the Americas played their own part in the new position gained by human rights in international relations. The protection of human rights was a theme in the Inter-American conferences from the 1920s, and an embryonic regional system for the protection of human rights began to take shape in 1945 with the adoption of a resolution on the "International Protection of the Essential Rights of Man" at the Inter-American Conference on Problems of War and Peace (also known as the Chapultepec Conference), held in Mexico City only a few days before the more remembered meeting in San Francisco. Three years later, in 1948, the American states signed the first major international document on human rights, the "American Declaration of the Rights and Duties of Man". Drawing on natural law theory, this Declaration asserts that the fundamental rights of man "are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality".<sup>57</sup>

As was the case with the Universal Declaration, this Declaration did not have the status of a legally binding instrument. Yet, as of 1948, the Latin American republics had endorsed the idea of a regional convention and had entrusted the Inter-American Juridical Committee with the task of drafting a statute for an Inter-American Court to be charged with the protection of the rights regionally enshrined.

Although in its early stages this regional campaign, like previous regional efforts, sought to promote human rights within the framework of a regional order built around the principles of non-intervention and national sovereignty, by the late 1950s the tension between non-intervention and human rights gradually eased in favour of the latter. The initial position in favour of a human rights regime that recognized the need to keep human rights within international purview, but that stopped short of any multilateral monitoring or enforcement of human rights, had been well in line with wider international trends vis-à-vis human rights.<sup>58</sup> Yet, by the end of the 1950s, regional states cautiously moved away from a rigid

adherence to the imperatives of sovereignty and – partially inspired by the European example – shifted, in an incremental way, towards a system of regionally enforced human rights norms. Thus, as the 1950s came to an end, a number of decisions helped lay the foundations for a regional system devoted to the protection of human rights. During the Fifth Meeting of Consultation of Ministers of Foreign Affairs held at Santiago de Chile in 1959, regional states addressed the interrelationship between anti-democratic regimes and poorly protected human rights. That conference approved resolutions for the drafting of a Convention on Human Rights and the establishment of two regional bodies entrusted with the regional protection of human rights: an Inter-American Commission on Human Rights and an Inter-American Court for the Protection of Human Rights.

Soon after, in the summer of 1960, the Council of the Organization of American States (OAS) approved the statute of the Inter-American Commission on Human Rights as an “autonomous entity”, one responsible for raising awareness of human rights among the peoples of the Americas, issuing recommendations to regional governments and preparing case studies and reports. Although drafting the Convention proved to be a more complex and lengthy process – owing to the impact of the Cuban Revolution on regional dynamics and disagreements over the actual content of the text – the final text was eventually approved during the Inter-American Specialized Conference on Human Rights held in San José, Costa Rica, in November 1969.<sup>59</sup>

As was the case in Europe, the Inter-American human rights system was designed to rest on two pillars: the Commission and a regional human rights court adjudicating cases of individual human rights violations. Although important differences in the human rights context in the two continents help explain the evolution and performance of their respective regimes, both systems shared important similarities in terms of the design of their enforcement mechanisms. Notwithstanding the wide regional disparities in the conditions underpinning the development of regional human rights systems in both Europe and the Americas, it is impossible to deny that the provision of international enforcement procedures built around individual petition and compulsory jurisdiction shifted the balance against non-intervention in both continents while providing the basis for the eventual activation of these regional legal systems.

There is little doubt either, though, that the rise of Cold War politics and the spread of authoritarianism and military dictatorship in the region did not augur well for the development and consolidation of the regional human rights regime, to put it mildly. Although the Inter-American Commission on Human Rights and the human rights regime itself were soon caught in the turbulence of these regional trends – with Cuba emerging

as an early and continued priority – already in 1965 a resolution passed by the OAS not only expanded the functions and power of the Commission but demanded that it pay special attention to the rights embodied in the 1948 American Declaration: rights to life, liberty and personal security; to equality before the law, due process and fair trial; to religious freedom, freedom of investigation, opinion, expression; protection from arbitrary arrest.<sup>60</sup>

Yet, as was the case at the global level, regional progress on the human rights front was slow and erratic. Both the impact of the Cold War and the presence of a hostile and tortuous environment, with authoritarian and military regimes sweeping into power in Central America and the Southern Cone, held back any further initiatives. Human rights norms had been in effect internationalized, but their implementation and enforcement remained in the hands of national states.

Although Cold War dynamics seriously challenged not just the practice of the Commission but also the conceptual coherence of the regional human rights regime, in a quiet way the regime continued to evolve – largely from decisions taken by some regional governments and from the country reports issued by the Commission. The impact of these developments gathered force in the second half of the 1960s, when the Commission was upgraded into a special organ of the OAS. The notable role played by this body in the Dominican Republic in 1965 and in the context of hostilities between Honduras and El Salvador in 1969 further strengthened its position.

At the regional level, the entry into force of the American Convention on Human Rights in 1978 provided a new impetus to the regional Commission. Although the Commission had exercised self-restraint and had refrained from using its powers to submit cases to the Inter-American Court, it clearly played a leading role in advancing the human rights agenda in the Western hemisphere.<sup>61</sup> This was nowhere truer than in the three country reports produced by the Commission on Chile in 1974, 1976 and 1977, those for Paraguay and Uruguay in 1978, and the groundbreaking report on Argentina in 1980. Not only did these reports unveil the systematic nature of human rights violations in these countries, but, most importantly, they provided a crucial referent that enabled other governments and agencies both to shape their policies and to enhance their capacity to exert pressure on these repressive regimes.

Although the supervisory bodies had been established, there was little regional enforcement of human rights. Through the 1970s and well into the mid-1980s, the individual petition system remained in a state of paralysis. Cases opened by the Commission were simply blocked or boycotted by hostile military and authoritarian governments, and no regional human rights norms were effectively enforced. Notwithstanding this, by the

1980s an incremental deepening of the human rights regime had become evident in the region. The changes that accompanied this trend have, of course, a long history, but what is beyond doubt is that they helped consolidate the position of human rights norms as an important feature of the region's international relations.

Events in the mid- and late-1970s had already demonstrated how the weight of human rights in the region had begun to change. Human rights norms had been effectively internationalized and regionalized, but their implementation remained firmly in the hands of national governments, and no significant transfer of power or authority from states to regional mechanisms and institutions had as yet taken place. Yet, by the 1980s a number of developments in the normative and practical dimensions of human rights helped reposition the place of these norms in regional politics, as referents for the ordering of political and social life. A long and traumatic process of struggle had borne fruit.

Tracing the origins and causes of this regional shift is a complex task, but the evidence of the period points to four major internal and external causal factors. They were: the adoption of human rights as a key component of US foreign policy; the incorporation of human rights concerns into regional bilateral relations; the third wave of democratization; and the rise of human rights NGOs as an international political actor to be reckoned with. These all played a part in the deepening and widening of human rights in the region. In the course of the 1980s, the human rights regime evolved largely as the result of the interaction of internal change and normative external concern about the conditions of human rights in key regional states. Indeed, through the compounded effect of these factors, states in the region were not only locked into discursive human rights enunciations but progressively enmeshed in the normative web of the regional human rights regime. By the 1990s, the issue of human rights had become an integral part of regional politics. That is not to say, however, that things had become clear-cut. In many ways, indeed, the following years were defined by new uncertainties. Why should this have been so?

## Conclusion: Looking back and ahead

On the large scale, the historical developments traced so far indicate that there has been a steady convergence around the idea of global legal commitments to protect human rights. The forces for convergence have been so strong that periods such as the 1980s and the immediate post-9/11 years stand out as exceptions – serious setbacks to be sure, but surmountable setbacks. The Obama administration in the United States is set to

make its contribution to the process of rectification here. A liberal internationalist discourse of human rights has become a key part of the international landscape, and the contours of a global human rights regime are clearly visible.

Tracing back to the landmark declarations of the years following the Second World War, the global evolution of the human rights regime was given depth by a little-known but remarkably parallel thrust within the Americas as of 1945. That coincidence alone makes the Americas especially fruitful as an object of investigation into the actual workings of the regime.

Normative and institutional evolution has brought with it many notable achievements in this region, to which the subsequent chapters in this volume pay due regard. Yet, still on the grand scale, the single most salient factor anyone looking at this regional landscape – like others – soon confronts is the disparity between the rhetoric of human rights and the realities of state behaviour.<sup>62</sup> Human rights aspirations have become highly articulate, but the effective implementation of human rights instruments remains an elusive goal. More than anything else, this is why we find the human rights *Zeitgeist* to be one of stress and frustrated transition.

The glum tone of most of the case studies assembled in this book speaks for itself. Behind this is the even more discouraging appreciation now of the amount of evidence suggesting that widespread ratification of international human rights instruments does not automatically translate into an effective protection of human rights. Moreover, the actual protection of human rights afforded by ratification has been seriously called into question by the vicious practices of states parties to these instruments. This is grimly illustrated by the cases of Guatemala and Iraq. In the period between 1982 and 1992 Guatemala ratified the six core human rights treaties while engaging in genocidal and vicious practices. Similarly, as Iraq ratified the fifth of the six core instruments in 1994, Amnesty International made public its sombre conclusion that repression had become extreme, systematic and population-wide.<sup>63</sup> These and other experiences undoubtedly show that, in itself, ratification of human rights instruments is a poor indicator of a state's observance of human rights commitments. They also suggest that some of the headier talk of "norms cascades" should be treated warily.

States' ratification of human rights instruments has often been aimed at signalling their implicit acceptance of the goals and values enshrined by human rights norms, even their tentative willingness to comply with such norms, but not often have they counted on having to match words with deeds. What seems clear is that the structures of incentives under-

lying both ratification and implementation do not necessarily share a common logic.<sup>64</sup>

Discouraging as this is, it becomes all the more important to reflect on why compliance levels have remained patchy and irregular. Examination of the main causes of compliance points to both legal and more complex sources of conformity, as well as to internal and external variables. What is at issue here is the way in which states, having endorsed certain legal norms, comply, resist or fail to observe their provisions. Legal explanations of compliance point to the self-interest of states in entering into norm negotiations in the first place, to the mechanical inertia of compliance and to the more elaborated impact of normative standards and legal norms on state behaviour. Although the logic of these arguments may help us understand the considerations underpinning adherence processes, it falls short of explaining *compliance* levels.

There is little doubt that treaties and conventions establish global legal commitments to protect human rights. But at the same time it is difficult to deny – as Engstrom and Hurrell show here in Chapter 2 – that the resulting normative regime was poorly provided with institutional mechanisms to monitor and effectively enforce these norms. In the course of over half a century, the regime developed an elaborate institutional capacity to accumulate, compile and share human rights information, but its legal enforcement capability remained fairly weak.<sup>65</sup> This helps explain why ratification of legal instruments in itself does not translate into an effective protection of human rights. Yet, endorsement and compliance with human rights norms have been a function not simply of legal obligations but of the presence of more complex systems of compliance.

As many of the chapters in this volume show, the basis of this complex system of compliance was laid both by the very negotiation and tacit endorsement of human rights instruments by governments, and by the attendant rise of human rights organizations with the remit of monitoring their performance. Although the very commitment to global norms opened up opportunities and offered arenas for the vigorous engagement of human rights organizations, the credibility of the complex system of compliance relied on the capacity of state and non-state actors to both socialize states and build human rights capacity, as well as to publicize abusive practices, to name and shame repressive states and ultimately to delegitimize failing governments.

Indeed, as the cases examined in this book suggest, once the provisions of legal commitments and complex systems of compliance came together, the pressure exerted by human rights organizations helped produce change at the level of national policies and institutions, while contributing to the reconfiguration of regional and international organizations.

The credibility and effective implementation of human rights norms thus ultimately depends on the capacity to exert pressure effectively on a targeted state.

So, whereas some perspectives attribute improvement in human rights standards more or less exclusively to international legal commitments, the analysis of these complex systems of compliance rather places the emphasis on human rights organizations and on the density of their linkages to international civil society. This seems a promising pathway for future research, enabling us to better understand the failures as well as the successes.

There is, though, another road, one that has been more travelled in the Americas. On this route, domestic dynamics and internal political bargaining are identified as the key variable, with democratic accountability being singled out as the main arena within which human rights implementation is more commonly accomplished. In its simplest and most appealing form, the argument is that democracy provides the best, or only, context for the respect of human rights.

In the Americas, as elsewhere, mobilization around human rights norms played an important part in the overthrow of authoritarian and repressive regimes and, in many places, transition to democracy was to have a significant impact on the human rights landscape. And yet, tracing the contribution of democratization and democratic rule to the protection of human rights can be a tricky business. Often democratization processes can have murky trajectories, with their contributions to human rights clouded and not clearly apparent. A growing sense of this is also near the heart of current uncertainties.

On one level, in processes of transition and democratization the challenge of authoritarian legacies and enclaves often takes centre stage, unleashing two powerful and opposing logics: that of impunity and that of democratic survival. Separate cases reveal how distinct have been the ways in which these logics have been juggled in the Americas, with an arguably clearer consensus now emerging (and challenging some of the influential early literature) that transitions will remain incomplete unless the authoritarian enclaves are dismantled and human rights issues effectively tackled.<sup>66</sup> Yet the issue is deeper than hitting on the right mechanisms to punish past impunity; it involves the manner in which “accepted” democracies, possessing most of the standard institutional attributes of democratic government, have managed to coexist with poor or relapsing human rights standards.<sup>67</sup>

The so-called Third Wave of democracy did significantly increase the number of recognized electoral democracies, but the expansion of political competition and contestation did not necessarily result in the strengthening of civil and minority rights. On the contrary, in some cases

the gradual consolidation of the formal institutions of procedural democracy has been accompanied by a clear deterioration of civil liberties and minority rights. In cases including Guatemala, Colombia and Brazil, not only did the transition to democracy and the intensification of political competition fail to improve the human rights landscape but, in a context punctuated by the continued presence of oligarchic power and military prerogatives, it may well have played a role in the worsening of civil and minority rights.<sup>68</sup>

Thus, where representation and electoral representation have not been matched by a parallel improvement in the rule of law and an effective protection of individual and group liberties, the gap between the commitments embraced by governments in international forums and the realities within states will continue to widen.

This is not to say that democracy should be a negligible concern for all concerned with human rights, but it is to say that the promotion of human rights now has hit an uncomfortable paradox. Essentially it is that the international regime depends more than ever on individual state capacities, for, in the contexts of institutional breakdown that menace so many states in the Americas, human rights are sure to be the losers. It seems fair to claim that this was not the conclusion that earlier generations of human rights campaigners had in mind when they braved repressive state apparatuses. Yet their very achievement in making human rights a cause for inspiration and an agent for political mobilization may best be honoured by creative adaptation to the bracing challenges of new times.<sup>69</sup> If, as this book sets out to demonstrate, the rhetoric and reality of human rights have come adrift, the need for fresh analysis does not have to be understated.

## Notes

1. Quoted in J. H. Elliott, *Empires of the Atlantic World, Britain and Spain in America 1492–1830* (New Haven, CT: Yale University Press, 2007), p. 66.
2. Elliott, *Empires of the Atlantic World, Britain and Spain in America 1492–1830*, pp. 66–78; J. H. Elliott, “Spain and America in the Sixteenth and Seventeenth Centuries”, *The Cambridge History of Latin America*, vol. I (Cambridge: Cambridge University Press, 1984), pp. 304–310; Anthony Padgen, “Human Rights, Natural Rights and European Imperial Legacy”, *Political Theory* 31:2 (2003), pp. 177, 182; Jack Donnelly, “The Social Construction of International Human Rights”, in Tim Dunne and Nicholas J. Wheeler, eds, *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), pp. 82–83.
3. Padgen, “Human Rights, Natural Rights and European Imperial Legacy”, pp. 173 & 177.
4. Jack Donnelly, “The Relative Universality of Human Rights”, *Human Rights Quarterly* 29:2 (2007), pp. 281–306.

5. François Furet, "The French Revolution and the Development of Western Democracy", Annual Lecture XXVI, Ditchley Foundation, 30 June 1989.
6. Padgen, "Human Rights, Natural Rights and European Imperial Legacy", p. 189; Hans Peter Schmitz and Kathryn Sikkink, "International Human Rights", in Walter Carlsnaes, Thomas Risse and Beth A. Simmons, eds, *Handbook of International Relations* (London: Sage, 2002), p. 517.
7. Donnelly, "The Relative Universality of Human Rights", p. 284; Donnelly, "The Social Construction of International Human Rights", pp. 78–79.
8. The few-and-far-between interventions to safeguard human lives were more often restricted to the protection of nationals in difficulty abroad, and the restrictions present in humanitarian law concerned foreign nationals and not the state's own citizens. Jack Donnelly, "Human Rights and International Organizations: States, Sovereignty, and the International Community", in Friedrich V. Kratochwil and Edward D. Mansfield, eds, *International Organizations: A Reader* (New York: HarperCollins, 1994), p. 204.
9. *Ibid.*, p. 204; Kathryn Sikkink, "Human Rights, Principled Issue-Networks, and Sovereignty in Latin America", *International Organization* 47:3 (1993), p. 413.
10. The broad agreement on human rights among the Western powers did not, by any means, lead to an absolute consensus, as the case of the United Kingdom shows. Imperial considerations and diverging perspectives between the Foreign Office and the Home and Colonial Offices help explain the more rhetorical and defensive UK approach to international human rights and more specifically to the issue of mandatory enforcement mechanisms. Whereas the Foreign Office perceived only benefits and was keen to bolster the United Kingdom's stature and credibility in the post-war order, the Home and Colonial Offices were concerned with the costs to British domestic and colonial policy. Clearly the costs of implementation would be transferred to the Home and Colonial Offices, the offices "directly involved in the messy business of government". See Adam Roberts, "The United Nations and Humanitarian Intervention", in Jennifer Welsh, ed., *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), p. 73; Andrew Moravcsik and Ioannis D. Evrigenis, "Britain and the Creation of the United Nations Human Rights Regime", paper prepared for the Annual Meeting of the American Political Science Association, Philadelphia, 2003, p. 14; Brian A. W. Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001).
11. The two standard definitions of regimes are those given by Stephen Krasner and Robert Keohane. The first defines regime as "implicit or explicit norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations". Keohane's definition equates regimes with "institutions with explicit rules, agreed upon by governments, which pertain to particular sets of issues in international relations". Although the emphasis of both definitions on "explicit, persistent and connected sets of rules" has brought regime theory and international law closer together, they both seem to imply that regimes are intergovernmental constructions and so allow little or no role to civil society. See Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables", in Stephen D. Krasner, ed., *International Regimes* (Ithaca, NY: Cornell University Press, 1983), pp. 1–21; Oran R. Young, "Regime Dynamics: the Rise and Fall of International Regimes", in Krasner, ed., *International Regimes*, pp. 93–115; and Robert O. Keohane, "Neo-Liberal Institutionalism: A Perspective on World Politics", in Robert O. Keohane, ed., *International Institutions and State Power: Essays in International Relations Theory* (Boulder, CO: Westview Press, 1989), pp. 1–20. See also Andrew Hurrell, "International Society and the Study of Regimes. A Reflective Approach", in Wolker Rittberg (with Peter Mayer), ed., *Regime Theory and International Relations* (Oxford: Clarendon Press, 1993), p. 54, and

- John Gerard Ruggie, *Constructing the World Polity* (London and NY: Routledge, 1998), Part 1 “International organization: ‘I wouldn’t start from here if I were you’”, pp. 41–130.
12. Key members of CSOP were Clark M. Eichelberger, James T. Shotwell and Quincy Wright among others. For a detailed account of the invaluable contribution of this Commission, see Glenn Tatsuya Mitoma, “Civil Society and International Human Rights: The Commission to Study the Organization of Peace and the Origins of the UN Human Rights Regime”, *Human Rights Quarterly* 30 (2008), pp. 607–630.
  13. In Wright’s view, an international bill of rights and the development of international mechanisms for its enforcement could offer a solid defensive barrier against militant nationalism. See Tatsuya Mitoma, “Civil Society and International Human Rights”, pp. 614–615.
  14. *Ibid.*, p. 613.
  15. *Ibid.*, p. 616.
  16. *Ibid.*, p. 625.
  17. Although the first blueprints for the new organization did not consider a role for non-governmental organizations, the San Francisco Conference, attended by big, small and middle powers, provided for the establishment of a relationship between the Economic and Social Council (ECOSOC) and civil society organizations. At the time, the provisions envisaged in Article 71 of the UN Charter allowing for ECOSOC’s consultation with non-governmental organizations concerned economic and social issues, but in no way matters related to peace and security. Subsequently, the alliance forged among small and middle powers and NGOs concerned with these issues would enable the latter to secure a voice within the UN system. Carolyn M. Stephenson, “NGOs and the Principal Organs of the United Nations”, in Paul Taylor and A. J. R. Groom, eds, *The United Nations at the Millennium: The Principal Organs* (London: Continuum, 2000), pp. 271–294.
  18. Colombia and South Africa submitted draft preambles declaring that the promotion of rights was a key catalyst for the creation of an international organization. Mexico, Brazil and the Dominican Republic submitted a joint proposal that identified the protection of human rights as a main purpose of the organization, while Panama and Cuba submitted specific lists and bills of rights. Tatsuya Mitoma, “Civil Society and International Human Rights”, p. 625; Bertrand Ramcharan, *The Quest for Protection. A Human Rights Journey at the United Nations* (Geneva: The Human Rights Observatory, 2009), p. 16. See also Jack Donnelly, “Universal Human Rights: A Critique”, in Dunne and Wheeler, eds, *Human Rights in Global Politics*, p. 73.
  19. Quoted in Kathryn Sikkink, *Mixed Signals: US Human Rights Policy towards Latin America* (Ithaca, NY: Cornell University Press, 2004), p. 28.
  20. Sikkink, *Mixed Signals*, p. 24.
  21. Roberts, “The United Nations and Humanitarian Intervention”, p. 73; Moravcsik and Evrigenis, “Britain and the Creation of the United Nations Human Rights Regime”, pp. 14–15.
  22. Roberts, “The United Nations and Humanitarian Intervention”, p. 71.
  23. Hurrell, “International Society and the Study of Regimes”, p. 54.
  24. Donnelly, “Universal Human Rights: A Critique”, p. 71.
  25. *Ibid.*, p. 73.
  26. Roberts, “The United Nations and Humanitarian Intervention”, p. 75.
  27. Charles Beitz, “What Human Rights Mean”, *Daedalus* 132:1 (2003), p. 41.
  28. Donnelly, “Human Rights and International Organizations”, p. 204; Donnelly, “Universal Human Rights: A Critique”, p. 72; Roberts, “The United Nations and Humanitarian Intervention”, p. 75.

29. Such uncertainty played both ways. In the case of the United Kingdom, initial concern about potential human rights restrictions on “the power of those in authority” and their implications for colonial interests was handily reconciled by a perception that the instruments negotiated at the time, including the 1950 European Convention on Human Rights, were non-binding. See Simpson, *Human Rights and the End of Empire*, pp. 11–18.
30. Ramcharan, *The Quest for Protection*, pp. 1–26; Hurrell, “International Society and the Study of Regimes”, p. 54; Sikkink, “Human Rights, Principled Issue-Networks”, pp. 411–441; Donnelly, “Universal Human Rights: A Critique”, p. 73.
31. Ken Booth and Tim Dunne, “Learning Beyond Frontiers”, in Dunne and Wheeler, eds, *Human Rights in Global Politics*, p. 304.
32. The first signs of the potential reach of the regime were nonetheless also evident in this period. In the United States itself, civil rights organizations and social movements not only resorted to the human rights language but actually filed three petitions before the United Nations against the US government on charges of racism and racial discrimination. Sikkink, *Mixed Signals*, pp. 38–39.
33. The relentless pressure exerted by this coalition on the US government eventually forced the Eisenhower administration to remove Eleanor Roosevelt from her role as US representative to the UN Human Rights Commission and to pledge to the US Senate that the United States would not become a party to the UN Human Rights covenants. *Ibid.*, pp. 39–42.
34. The literature on the role played by what is now widely referred to as “transnational civil society” in the codification, institutionalization and actual human rights practice is massive. For key references see the inspiring account by Hopgood on the role and moral and practical dilemmas faced by the pioneer Amnesty International in its efforts to advance the cause of human rights since the early 1960s: Stephen Hopgood, *Keepers of the Flame. Understanding Amnesty International* (London: Cornell University Press, 2006). See also Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998); Ken Booth and Tim Dunne, “Learning Beyond Frontiers” and Stephen Krasner, “Sovereignty, Regimes and Human Rights”, in Rittberg (with Mayer), ed., *Regime Theory and International Relations*, pp. 139–167; Andrew Hurrell, “Norms and Ethics in International Relations”, in Carlsnaes, Risse and Simmons, eds, *Handbook of International Relations*, p. 143, and Andrew Hurrell, *On Global Order. Power, Values, and the Constitution of International Society* (Oxford: Oxford University Press, 2007), chapter 6, “Human Rights and Democracy”, pp. 143–164.
35. In carrying out this procedure the Commission on Human Rights adopted a resolution in 1967 that provided the ground for its annual investigations of serious human rights violations. This decision paved the way for the conduct of investigations in countries across the world. Ramcharan, *The Quest for Protection*, pp. 17–18.
36. By 1977 Amnesty’s work on disappearances and its worldwide efforts aimed at “pushing out the normative boat of human rights” and human rights law were duly acknowledged with the Nobel Peace Prize. Ironically, success and crisis came in tandem. While its membership expanded, the proportion of paying members soon outnumbered that of active members, and this was inevitably reflected in the cases taken up by the organization. Hopgood, *Keepers of the Flame. Understanding Amnesty International*, pp. 81–83.
37. Donnelly, “The Social Construction of International Human Rights”, pp. 77–78.
38. The pressure exerted by these member states prompted the UN to move from standard-setting towards implementation of human rights norms. This involved a shift within the UN Human Rights Division towards innovative investigative methods and mechanisms that were first adopted in 1975 under the leadership of its Director, Marc

- Schreiber. Such innovative approaches included the creation of working groups and the appointment of special and thematic rapporteurs looking at enforced and involuntary disappearances, summary executions and torture in several countries including Burundi, Brazil, Chile, Haiti, Indonesia, Portugal, Tanzania and Uganda. See Ramcharan, *The Quest for Protection*, pp. 19–26.
39. The Covenant on Civil and Political Rights invokes certain key rights – to life, liberty and security; against arbitrary imprisonment, slavery, torture and genocide – and establishes provisions associated with the rule of law (the right to a fair trial) and political rights (the right to take part in the government of the country and to periodic and genuine elections). The economic and social rights designated in the Covenant on Economic, Social and Cultural Rights include: choice of employment, just and favourable remuneration [sufficient for] an existence worthy of human dignity, health care and the rights of communities (self-determination). Beitz, “What Human Rights Mean”, pp. 36–38; Donnelly, “The Social Construction of International Human Rights”, pp. 74–75.
  40. The origins of the US human rights policy can be traced to a decade-long chain of key hearings on US policy and human rights violations around the world. These hearings not only established the foundations for the main body of US human rights legislation, which would eventually help condition and regulate US military and economic aid, but also set the institutional stage for US human rights policy with the creation of a Bureau of Human Rights within the State Department and the compilation of the now highly esteemed country reports. See Jack Donnelly and Debra Liang-Fenton, “Introduction” in Debra Liang-Fenton, ed., *Implementing U.S. Human Rights Policy: Agendas, Policies and Practices* (Washington DC: United States Institute of Peace, 2004), pp. 3–25; Sikkink, *Mixed Signals*, pp. 53–70; Rosemary Foot, “Human Rights and Counterterrorism in Global Governance: Reputation and Resistance”, *Global Governance* 11 (2005), p. 294.
  41. The powerful and widespread revulsion against the Pinochet regime took tangible form with the adoption of a ground-breaking resolution by the Commission on Human Rights forcefully condemning the mass human rights violations which were taking place in Chile. This was soon followed by the creation of the first Ad Hoc Working Group within the Commission tasked with the investigation of the allegations of serious human rights violations in Chile. Ramcharan, *The Quest for Protection*, pp. 27–42.
  42. These hearings and debates proved to be instructive for both US officials and grassroots activists. The intense deliberations accompanying these hearings prepared the ground for a more complex elucidation of the limits of state sovereignty and contributed to the professionalization of human rights organizations. Sikkink, *Mixed Signals*, pp. 66–70.
  43. Sikkink refers to the emergence of this network as an “international human rights issue network” more expansive than the obvious proliferation of human rights groups – 38 in 1950, 72 in 1960, 103 in 1970 – and more characterized by the density and quality of their interconnections. See Sikkink, “Human Rights, Principled Issue-Networks”, pp. 415–419.
  44. Drawing on the UN Working Group on Chile, new special representatives and rapporteurs were appointed in particular countries – Bolivia, El Salvador, Equatorial Guinea, Iran and Afghanistan – and also instructed to deal with specific issue areas: enforced or involuntary disappearances, summary or arbitrary executions and torture. See Donnelly, “The Social Construction of International Human Rights”, p. 76; Donnelly, “The Relative Universality of Human Rights”, pp. 281–306.
  45. See Booth and Dunne, “Learning Beyond Frontiers”, p. 316.
  46. Carter’s human rights record has been divided into two phases: an active initial period that ran through 1977–1978, and a period of disenchantment, which coincided with the

- rise of the second Cold War in 1979–1980. But the overall consistency and effectiveness of human rights policies varied depending on the country and the capacity of the United States to work with other countries and through multilateral institutions. See the various chapters included in Liang-Fenton, ed., *Implementing U.S. Human Rights Policy*; Sikkink, *Mixed Signals*, pp. 121–124.
47. Foot, “Human Rights and Counterterrorism”, pp. 291–293.
  48. As the reputation for security considerations took precedence over human rights obligations, the costs for human rights violations diminished. Equally troublesome has been the interpretation of the security obligations in both developed and developing states as an authorization to abuse human rights in the name of anti-communist and anti-terrorist security priorities.
  49. Foot, “Human Rights and Counterterrorism”, pp. 299–300.
  50. Not only has the record of the international leadership provided by the United States in promoting human rights been clearly uneven; it has also been defiant of international obligations. According to Ignatieff it is precisely this combination of leadership and resistance that defines “American human rights behavior as exceptional”. See Michael Ignatieff, “Introduction: American Exceptionalism and Human Rights”, in Michael Ignatieff, ed., *American Exceptionalism and Human Rights* (Princeton: Princeton University Press, 2005), pp. 1–26.
  51. In the United States, the two opposing trends have been plainly visible in the recent past. In the aftermath of 9/11, the Bush administration spent time and effort weighing up Washington’s legal commitments to human rights, and more specifically against torture and war crimes. In a number of infamous documents, US officials claimed that the costs of violating instruments such as the Convention against Torture were low, and that its definition of torture was so high that only “serious physical injury, such as organ failure, impairment of bodily function or even death” would qualify as torture. On the other hand, the production of the documents themselves suggests concern about the potential costs of treaty violations, and the perception that the executive was exceeding the limits of its authority mobilized other powers. Not only did the media soon label Dick Cheney as the “Vice President for Torture”, but the Supreme Court both challenged the administration’s claim that detainees held in Guantánamo were beyond US law and firmly reaffirmed the US commitment to due process. See Jay Goodliffe and Garren G. Hawkins, “Explaining Commitment: States and the Convention Against Torture”, *Journal of Politics* 68:2 (2006), pp. 358–359; Foot, “Human Rights and Counterterrorism”, pp. 304–307.
  52. Foot, “Human Rights and Counterterrorism”, pp. 302–304.
  53. In the post-9/11 context, the pressures exerted on the working procedures of the UN Sanctions Committee and Counter-Terrorism Committee (CTC), via the human rights standard provisions of Security Council Resolutions 1267 and 1373, bear witness to the power and relative autonomy of human rights. The key steps taken by various actors mobilizing in favour of civil liberties and human rights included: the decision taken by the then UN Secretary-General Kofi Annan to establish a Policy Working Group on the United Nations and Terrorism; his remarks to the Security Council in 2002; the statements made by various UN human rights experts including Mary Robinson, Sergio Vieira de Mello and Sir Nigel Rodley; the actions taken by regional organizations, most notably the European Union and the Organization of American States; the strong individual statements made by key states, most notably Brazil, Costa Rica, Germany and Mexico before the CTC itself, calling for the appointment of a human rights expert within that body; the informal working groups on targeted sanctions set up by various states; and the report issued in 2004 by Human Rights Watch. See Rosemary Foot, “The United Nations, Counter Terrorism, and Human Rights: Institutional Adaptation and Embedded Ideas”, *Human Rights Quarterly* 29:2 (2007), pp. 489–514.

54. Sikkink, *Mixed Signals*, pp. 18–22. See, more generally, Michael Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Ithaca, NY: Cornell University Press, 2004), and Hurrell, *On Global Order*.
55. The arrest of Augusto Pinochet in London on 10 October 1998 unleashed by the efforts of the Spanish judges Baltasar Garzón and Manuel García Castellón to have the dictator account for the brutality that followed his overthrow of the government of Allende in 1973, and the setting up of international tribunals, including the momentous establishment of the International Criminal Court in 2002, opened a heated debate and raised expectations about universal jurisdiction. Yet the practice of states suggests that states have endorsed the principle of universal jurisdiction for a limited range of human rights abuses, chiefly war crimes and torture, but not necessarily for crimes against humanity and other human rights abuses. See Darren Hawkins, “Universal Jurisdiction for Human Rights: From Legal Principle to Limited Reality”, *Global Governance* 9 (2003), p. 348.
56. Donnelly, “The Relative Universality of Human Rights”, pp. 281–306; Roberts, “The United Nations and Humanitarian Intervention”, p. 76.
57. This Declaration includes civil and political rights and economic and social rights. The civil and political rights enumerated broadly reaffirm those already included in the constitutions of most Latin American republics: equality before the law, rights to due process, petition and assembly, religious freedom, protection from arbitrary arrest, and so on. The economic and social rights include the right to the preservation of health and to well-being, to the benefits of culture, to work and to a fair remuneration for work. The first human rights commitments adopted by regional states to focus on “naturalised citizens”, “aliens” and asylum appeared to be aimed at bolstering a regional order underpinned by the principles of non-intervention. See Robert K. Goldman, “Historia y Acción: el Sistema Interamericano de Derechos Humanos y el Papel de La Comisión Interamericana de Derechos Humanos”, in Ana Covarrubias and Daniel Ortega, *La Protección Internacional de Los Derechos Humanos: Un Reto en el Siglo XXI* (México D.F.: El Colegio de México, 2007), pp. 113–114.
58. In its first session, held in 1947, the UN Commission on Human Rights concluded that it had “no power to take any action in regard to any complaints concerning human rights”. Quoted in Donnelly, “Universal Human Rights: A Critique”, p. 73.
59. The entry into force of the Convention on Human Rights in 1978 in effect established a dual regional human rights system. The Convention emerged as the primary human rights referent for party states, whereas the Declaration and the OAS Charter continued as the main referents of regional states not party to the Convention. Although the Commission can decide cases submitted against both groups of states, it can refer cases to the Court only against states that have both ratified the Convention and accepted the jurisdiction of the Court. Goldman, “Historia y Acción: el Sistema Interamericano de Derechos Humanos y el Papel de La Comisión Interamericana de Derechos Humanos”, p. 122.
60. *Ibid.*, pp. 124–125.
61. The fact that only 11 countries had by then ratified the Convention limited its prerogative to submit cases to the Court. *Ibid.*, p. 131.
62. Approximately 150 countries have ratified two of the key human rights instruments, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and yet states parties have remained engaged in grossly abusive practices. See Emilie M. Hafner Burton, “Human Rights Institutions: Rhetoric and Efficacy”, *Journal of Peace Research* 44:4 (2007), pp. 379–383.
63. Emilie M. Hafner-Burton and Kiyoteru Tsutsui, “Human Rights in a Globalising World: The Paradox of Empty Promises”, *American Journal of Sociology* 110:5 (2005), pp. 1374–1377.

64. Ratification can proceed on the assumption that it will have little or no consequence or, more troublesomely, that it may help a state fend off international pressures. The United Kingdom's early decisions to adhere to human rights instruments fit the first scenario, Guatemala the second. See Hafner-Burton and Tsutsui, "Human Rights in a Globalising World", p. 1384.
65. *Ibid.*, p. 1383. See also Emilie M. Hafner-Burton and James Ron, "Human Rights Institutions: Rhetoric and Efficacy", *Journal of Peace Research* 44:7 (2007), pp. 379–383; Emilie M. Hafner-Burton and Kiyoteru Tsutsui, "Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most", *Journal of Peace Research* 44:4 (2007), pp. 407–425.
66. Manuel Antonio Garretón, "Human Rights in Processes of Democratization", *Journal of Latin American Studies* 26 (1994), pp. 221–234.
67. Laurence Whitehead, "Democratisation and Human Rights in the Americas", in Louise Fawcett and Monica Serrano, eds, *Regionalism and Governance in the Americas. Continental Drift* (Basingstoke: Palgrave Macmillan, 2005), pp. 159–184.
68. Joe Foweraker and Roman Krznaric, "The Uneven Performance of Third Wave Democracies: Electoral Politics and the Imperfect Rule of Law in Latin America", *Latin American Politics and Society* 44:2 (2002), pp. 35–37. See also Joe Foweraker and Todd Landman, "Constitutional Design and Democratic Performance", *Democratization* 9:2 (2002), pp. 43–66.
69. Paul Gready, "The Politics of Human Rights", *Third World Quarterly* 24:4 (2003), pp. 745–757.

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# Human Rights Regimes in the Americas

Edited by **Mónica Serrano** and **Vesselin Popovski**

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The Americas have witnessed considerable progress in the field of human rights. Although painful legacies persist, large-scale, systematic human rights violations of the kind common during Latin America's dictatorships are hopefully never to return. Abuses of rights and challenges to the rule of law have not disappeared completely, but rather they have taken on a different and elusive character. At the same time, the relatively good records of the developed North American countries continue to be undermined by their inconsistent approaches both at home and abroad.

*Human Rights Regimes in the Americas* examines the complex role of human rights norms and standards in the region's progression, illustrating the evolution and impact of international conventions, laws and institutions. The chapters combine historical detail with a focus on present-day challenges for regional and domestic human rights regimes, highlighting particular obstacles as well as successful approaches and strategies. Taking the reader through cases in North, Central and South America, the volume provides a rich account of the evolving regional environment for rights protection and promotion, which will be of particular interest to scholars of politics, human rights and law, as well as policymakers and practitioners at all levels.

"At last, we have a quality overview of human rights progress and challenges in the Americas. This volume fills a crucial gap in the literature, allowing us to assess the complex and fascinating human rights ebb and flow that has been the experience of Latin America, including the often contradictory role of the United States as champion and obstacle."  
—Richard Falk, Albert G. Milbank Professor Emeritus of International Law at Princeton University, and Visiting Distinguished Professor in Global and International Studies at the University of California, Santa Barbara.

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