The Development of International Human Rights Law

Volume I

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Series Preface

The *Library of Essays in International Human Rights Law* provides access, in a single series, to some of the most important and influential journal articles and papers on the subject. Selections include broad overviews of key areas in international human rights law, critical assessments of this law and of human rights institutions and inquiries into areas of contestation. Some are classic works in the field; others are more recent works that provide insight into important developments or debates.

The series comprises five volumes. A volume on the development of international human rights law covers both the historical and philosophical development of human rights law as well as major issues during this development. A volume on challenges of human rights law presents works not only on issues of non-state actors, transitional justice and terrorism, but also articles on a human rights approach to public health, severe poverty as a human rights violation, investment arbitration as a venue of human rights challenges and climate change. The subject of equality and non-discrimination under international law merited its own volume, as the principles of equality and non-discrimination lie at the heart of human rights law. They are the only human rights explicitly included in the UN Charter, and they appear in virtually every major human rights instrument.

The volume on the United Nations system for protecting human rights presents leading articles on the UN bodies specially created to promote and monitor the implementation of human rights, but it also goes beyond those entities to present articles on the human rights work of UN specialized agencies such as the World Health Organization, the International Labour Organization, UNICEF and UNESCO. Finally, the volume on regional systems for protecting human rights provides selections on the regional human rights instruments and on institutions and their jurisprudence, procedures, activities and effectiveness.

Each volume opens with an introductory essay providing an overview of the topic covered and discussing the significance and context of the works selected. It is my hope that this series will serve as a valuable research resource for those already well-versed in the subject as well as those new to the field.

STEPHANIE FARRIOR
Vermont Law School, USA
Series Editor

Introduction

The essays in this volume trace the development of modern human rights law. We reflect on an ever-expanding corpus of legal norms; their articulation in treaty and soft law form; and the expanding national, regional and international institutional settings in which such rights are created, reviewed and enforced. In the first part, essays explore the philosophical, religious and historical roots of this body of law. The second part examines the drafting of the United Nations Charter and the Universal Declaration of Human Rights. In the third part, the selected writers consider the universality of human rights. The fourth part addresses the interdependence and indivisibility of rights, whether civil, political, economic, cultural or social. Turning to implementation, the fifth part looks at compliance with human rights standards, and the causes of non-compliance, including the role of bystanders. In the sixth part, selected contributors examine the role of non-governmental organizations (NGOs) in the development of human rights. Finally, the seventh part looks at the proliferation of human rights as well as the benefits and challenges norm fragmentation poses to the integrity and enforcement of norms.

Selecting 23 essays with which to illustrate the development of human rights law is a challenging task. While this selection is focused on the modern development of human rights norms, the idea of human rights has deep historical resonance and has been a part of political and moral discourses for centuries. The post-World War II 'rights revolution' has been accompanied by a flood of books, policy papers and articles about human rights norms and their enforcement. As an indication of the quantity of writings on the subject matter, the combined library catalog WorldCat lists over 125,000 English-language works with the subject 'human rights', and this total excludes journal articles. Inevitably, many outstanding scholarly and policy works were left out of the present volume; this Introduction tries to map the works we have chosen and references other key works that have not been included. Nonetheless, the essays in this volume provide the interested reader with a diverse, authoritative and stimulating look at the development of human rights law.

Philosophical, Religious and Historical Influences Underlying the Development of Human Rights Law

Michael Freeman's 2002 essay (Chapter 1) on the origins of human rights summarizes the earliest manifestations of the concept of individual rights in Western thought.[1] He identifies

[1] Other scholars have plunged more deeply into the philosophical bases of human rights. Jerome Shestack (1984) summarizes some of the key questions: the relationship between rights and duties; the relationship between civil and political rights vis-à-vis economic and social rights; the scope of human rights; and their philosophical or religious justifications. An earlier analysis of the philosophical history of human rights is found in Lauterpacht (1944).

key documents and influential formulations of concepts of rights, while noting controversies over the significance and meaning of these formulations. For example, he considers competing views on whether the ancient Greeks maintained concepts of rights in theory and practice, concluding that although Aristotle had a concept of a 'just claim', this notion does not tally with now broadly agreed conceptions of human rights. In the Western development of human rights ideas, natural rights, developed in the work of early Christian thinkers such as Thomas Aquinas, rose with the writings of Hugo Grotius and expanded with the work of John Locke. For these thinkers, natural rights followed from belief in a divine being. Ideas of natural rights found expression in the French Declaration of the Rights of Man and the Citizen, and gained further traction in Thomas Paine's writings.

After the eighteenth century, however, the idea of natural rights lost favour amongst many philosophers. Thinkers like Edmund Burke and Jeremy Bentham were unconvinced that the foundations of human rights were found in natural rights, at least in part. Utilitarian and economic thinking pushed the idea of natural rights aside. As Freeman (Chapter 1) notes, '[i]t took the horrors of Nazism to revive the concept of the Rights of Man as human rights' (p. 20).

Louis Henkin's The Age of Rights picks up the narrative, arguing that the modern concept of human rights emerged during World War II. For Henkin, rights are grounded less in philosophy or political theory than in international instruments and the commitment made by states that ratify them, a strongly institutionalist approach. Moreover, it was political leaders and citizens, not philosophers, who developed modern human rights concepts.

Henkin distils some essential principles from the post-war human rights treaties and other instruments. Human rights are universal; they do not differ based on geography, time or identity, and they cannot be transferred, forfeited or lost. (Derogation is permissible only for some rights and only in dire public emergencies.) Rights consist of claims upon society; in addition to limiting what the government may do to an individual, they require the government to fulfil basic needs (for example, food, housing). Hence, rights have both positive and negative dimensions. While some rights, such as the right to marry, or to practise a religion, may relate to activities conducted with others, most human rights are understood as individual.

Although human rights are not 'natural rights' by virtue of a religious doctrine,[2] they are natural in the sense that they 'correspond to the nature of human beings and of human society' (Chapter 2, p. 27). They derive in part from ideas of human dignity. Recognition of human rights, in Henkin's view, does not mandate a particular political or economic system, as long as the system rests on popular sovereignty and permits the exercise of such rights such as the right to own property and to work.

In contrast to the purely Western origins traced by Michael Freeman, some thinkers have examined human rights ideas as found in other cultural traditions. A thoughtful discussion of the Hindu conception of human rights is found in the work of S.V. Puntambekar (1949, pp. 195–98), and a Chinese perspective articulated by Chung-Shu Lo (1949, pp. 186–90). The detailed exposition of human rights values as integral to non-Western cultures and legal traditions is central to broader assertions as to the universality of human rights, and their claims to compliance beyond the Western canon.

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[2] Some scholars disagree, arguing that human rights must be understood as having a religious foundation. See, for example, Perry (1998, pp. 11–12).

In his essay, Abdullahi A. An-Na'im (Chapter 3) seeks to reconcile human rights theory with religious practice in general and in practice with Islamic religious beliefs. An-Na'im argues that human rights cannot be separated from religious practices and belief and the relationship between the two need not be antagonistic. Because individuals and groups value their religious traditions, human rights must be legitimated in the context of those traditions. Reconciliation between religious practices and belief systems requires the modern application of human reason, however, rather than strict adherence to previous interpretations of divine law. Like Henkin, An-Na'im (Chapter 3) characterizes 'human rights' not as an abstract philosophical concept, but as 'the particular normative and institutional system' (p. 36) for realizing the objectives of freedom and justice in the world today.

In addressing the complexity of Islamic law to contemporary understanding and practices of human rights, An-Na'im notes that historical formulations of Shari'a (Islamic law) protected human rights more comprehensively than other historical systems in some important dimensions. For example, Shari'a required that women possess independent legal personality. Nonetheless in many contemporary contexts, 'the rights of women and non-Muslims under sharia are not equal to those of men and Muslims, respectively' (p. 34).

Charlotte Bunch (Chapter 4) adds another dimension to our understanding of the concept and practice of human rights by questioning why violations of women's rights are not historically and presently treated as violations of human rights.[3] To Bunch, 'much of the abuse against women is part of a larger socioeconomic web that entraps women, making them vulnerable to abuses which cannot be delineated as exclusively political or solely caused by states' (p. 41). The Western focus on civil and political rights, with a lacunae in the enforcement of economic, social and cultural rights accordingly, is one reason women's rights have been sidelined and substantially under-enforced. Bunch argues for a redefinition of human rights practice and theory to encompass women's rights; because human rights has become a widely accepted goal, framing women's rights as a key part of human rights would enable women to seek redress from abuses linked to their gender.

One response to this claim of differential treatment of women is its justification as a cultural, private issue. But defining human rights violations primarily as horizontal violations (namely as violations in which a state party must be involved to invoke or engage state responsibility) ignores rampant abuses of women and others at the hands of private actors. As human rights courts are increasingly coming to acknowledge, states sanction, condone or at best ignore these violations. Reflecting the exclusion of women and the need for a structured response through norms and institutions, in a seminal essay widely reprinted elsewhere, Hilary Charlesworth, Christine Chinkin and Shelley Wright (1991) identify the public/private distinction as one that has left international law unresponsive to the concerns of women. Such analysis has been critical in framing how we understand the structural violations and exclusions that women face and the inability of international legal norms to address them adequately.

Bunch argues that few states exhibit more than token commitment to women's equality as a human right, nor have NGOs made women a priority. Sex discrimination has lethal consequences, however, as women are killed before birth, during childhood and in adulthood because of preference for males and disregard of women. Statistics demonstrating the

[3] Human rights scholars and activists have worked to incorporate women's rights into the framework of international law. See, for example, Ní Aoláin (2009); Freeman *et al.* (2012).

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frequency of violence against women are staggering; moreover, those figures do not reveal the full extent of the problem, much of which remains hidden. After making the case for fully incorporating women's rights into human rights discourse, Bunch outlines numerous approaches to addressing existing lacunae and overcoming them.

Drafting of the Human Rights Provisions of the UN Charter and of the Universal Declaration of Human Rights

Human rights became an early part of the political agenda at the 1945 United Nations conference in San Francisco. Jan Herman Burgers (Chapter 5) inquires into the causes of this visibility. He questions the conventional wisdom as to whether the renewed focus on human rights stemmed from the keen knowledge of atrocities committed during World War II. Instead, he starts with the League of Nations' Covenant, and the drafters' attempts to include various clauses designed to protect certain minority rights. At the time, various nations objected to the inclusion of those clauses; hence, the final Covenant included no real human rights provisions.

Despite the Covenant's restrictions, certain post-World War I treaties contained provisions aimed at protecting minorities, to be supervised by the Council of the League of Nations. Significantly, these provisions were 'unprecedented limitations on national sovereignty under international law' (p. 58). Although the Eastern European countries targeted by these provisions objected to the protections, the League's only response was to pass a resolution expressing the 'hope' that other countries would adhere to at least the same standard of treatment of their own minority populations. Interwar efforts to raise human rights awareness at the international level included a few failed attempts to create an international convention on human rights protection. Some of these earlier efforts were triggered by reports of Ottoman/Turkish treatment of Armenians and by measures taken by Nazi Germany against Jews in the 1930s.

During the interwar period, although various individuals and organizations sought to draw attention to what are now called human rights violations, they did not use the term 'human rights'. Burgers highlights in particular the role of British author H.G. Wells. Wells advocated strongly for a Declaration of the Rights of Man, spearheaded the drafting of such a declaration, had it translated into numerous languages and disseminated it both popularly, through a widely sold booklet, and by sending it to influential political figures, including Franklin D. Roosevelt. Burgers also notes the importance of Roosevelt's 'Four Freedoms' speech in raising public awareness of human rights in the United States. Meanwhile, during the interwar years (1920–39) scholars such as Hersch Lauterpacht and members of the American Law Institute had begun preparing various international bills of rights. In 1944, initial efforts to incorporate human rights into the work of a new world organization met resistance. Even before the Allies released news and photographs of concentration camp atrocities to the world, however, major countries had tabled their opposition. Hence, Burgers's essay questions the traditional narrative that has post-War World II human rights law emerging solely in response to the Nazi atrocities and tells a more textured and nuanced tale of ongoing efforts to engage human rights norms in the interwar period.

Turning to the drafting of the Universal Declaration of Human Rights, however, Johannes Morsink (Chapter 6) finds that 'all the delegations [to the drafting conference] generally agreed that the pattern of gross human rights abuses which occurred during World War II was the major impulse behind the drafting of the Declaration' (p. 87).[4] The war not only created a general perception of the need for the Declaration, but particular aspects of the war gave rise to specific provisions in its text. Nazi violations of human rights during the war prompted the inclusion of articles dealing with personal security; legal rights; rights linked to procedures of democratic government; and rights which Morsink (Chapter 6) calls 'international rights' (p. 89), including the right to enter and leave countries. Nazi Germany's emphasis on 'blood' and 'race' as markers for divisions between human beings evoked the response in Article 1 that '[a]ll human beings are born free and equal in dignity and rights' (p. 92). Similarly, because the Nazi government deprived its people of their liberty under colour of law, Article 3 declares the right 'to life, liberty and security of person' (p. 96) without a proposed limitation which permitted deprivations prescribed by law.[5]

Retreating from an earlier interpretation (Morsink, 1984), Morsink (Chapter 6) locates belief in human rights to 'the experience of rebellion' (p. 89) rather than in divine law, natural law or philosophy. To understand the Universal Declaration of Human Rights, Morsink focuses on the war that led to it: 'Each human right has its own justification, one that is discovered when that right is violated in some gross way' (p. 129). Moreover, in the process of negotiation a common process of discovery can overcome differences in social, political, cultural and religious beliefs.

Article 55 of the UN Charter[6] (Chapter 7) states that the UN shall promote 'respect for, and observance of, human rights ...'. Eibe H. Riedel and Jan-Michael Arend trace the 'golden thread' of human rights references in the Charter, noting that Article 55 also expresses the obligation of UN member states to respect human rights.[7] They also lay out the generational division of human rights, which has informed much of human rights theory and practice. In this typology, originally proposed by Karel Vasak (1977, p. 11),[8] first generation rights are the 'negative rights' of freedom from state interference – classical civil and political freedoms. Second generation rights pertain to economic, social and cultural aspects of life. The third generation of rights is less easily categorized, as it has been said to encompass such varying rights as environmental protection, self-determination, peace and development. Unlike rights in the first and second generation, some of the third generation rights may be claimed by groups rather than individuals. Greater overlap, synergy and the fundamental indivisibility of these rights have been formally acknowledged at the Vienna World Conference on Human Rights in 1993, and since by various United Nations High Commissioners for Human Rights.

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[4] Morsink (1999) has analysed the drafting of the Declaration in greater detail. For a detailed analysis of the fair trial provisions, see Weissbrodt and Hallendorff (1999).

[5] Note, however, that Articles 29 and 30 do contain such limitations.

[6] The UN Charter is the UN's founding document; it outlines the powers and procedures of the organization.

[7] See Humphrey (1976). Another essay describing the inclusion of human rights goals in the UN Charter is Weissbrodt (1988).

[8] The generations formulation, however, is problematic, because it suggests incorrectly that one group of rights overcomes earlier rights.

The Debate over Universality of Human Rights

Few issues in human rights have sparked as much controversy as the debate over the role of culture in human rights. Jack Donnelly's contribution (Chapter 8) extracted in this reader lays out the two poles of opposition in the debate. At one extreme, 'Radical Cultural Relativism' holds that culture is the sole source of moral right; that is, practices of which a culture approves cannot violate human rights. At the other extreme, 'Radical Universalism' holds that culture is irrelevant to the validity of moral rules, which are universal; that is, a practice can violate human rights regardless of its entrenched position within a culture. Between those two opposites lies a spectrum of views. 'Strong Cultural Relativism' takes the position that culture is the principal source of moral right, but universal human rights can serve as a check on relativism. 'Weak Cultural Relativism' acknowledges culture as an important source of moral right; in this view, culture serves as a check against the 'potential excesses of universalism' (p. 152). Donnelly adopts the latter position. He accepts the overarching norms of the human rights system, arguing that 'the Universal Declaration does represent a minimal response to the convergence of basic crosscultural human values and the special threats to human dignity posed by modern institutions' (pp. 167–68). As such, this set of rights 'has a very strong claim to relative universality' (p. 168).

Confronting one of the classic examples of universalism versus relativism, female genital mutilation (FGM),[9] Donnelly supports the idea of 'educational programs aimed at reducing the popularity of such practices', but believes even such programmes 'raise the controversial issue of the modern or majority culture exerting pressure against minority cultural practices' (pp. 169–70). He considers whether a practice is defensible within the basic value framework of that society ('internal evaluation'). FGM has strong cultural backing within some societies including support from women, though the factors facilitating this phenomenon are complex.[10] His Weak Cultural Relativism position allows external evaluation of the practice, but permits strong internal practices to be overridden only by strong external judgements. Apparently, for Donnelly, even the immediate and long-term consequences for the health of women (some potentially fatal) do not clearly override the cultural norms in question.[11]

Makau Mutua (Chapter 9) exemplifies the challenges posed to human rights orthodoxy from African scholars. He challenges the Western human rights narrative as he articulates it is currently framed. He indicts the metaphor of 'savages, victims, and saviors' and its operationalization through multiple practices and doctrines of human rights and the ways in which human rights continue Western imperialism in a new guise. Mutua notes that atrocities against non-white people failed to stir the same reaction that Morsink and Freeman believed

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[9] The controversy over this practice plays out, in part, in arguments over how to name it; possibilities include 'female circumcision', 'female genital cutting', 'irua' (a Kenyan term) or 'female genital surgery'. See, for example, Lewis (1995).

[10] Moreover, some Western scholars have questioned the demonization of the practice and the lack of attention to practices in Western countries (for example, breast augmentation). See, for example, Gunning (1992, p. 195); Gunning (1997, p. 445).

[11] For a more detailed examination of the challenges of female genital mutilation for cultural relativism, see Brennan (1988). Another issue that exemplifies the conflict between relativism and universalism is the Islamic headscarf debate (see Bennoune, 2007).

was triggered by German treatment of Jews and other groups during World War II. Mutua (Chapter 9) asserts that after World War II, '[t]he West was able to impose its philosophy of human rights on the rest of the world because it dominated the United Nations at its inception' (pp. 184–85).

Mutua echoes Charlotte Bunch's conclusion that Western human rights efforts focus on civil and political rights, and acknowledges that violations of these rights are 'common and flagrant' in the Third World. But NGOs and intergovernmental organisations (IGOs) have ignored violations of civil and political rights of minorities and the poor in rich countries such as the United States. Worse, NGOs and IGOs have ignored violations of economic and social rights by developed industrialized countries. Instead, they focus on substituting 'universal' – that is, European – norms for local ones. Participation by Third World elites in human rights law-making fails to legitimize this focus, as they do not necessarily represent the people of their own countries.[12]

For Mutua, the Convention for the Elimination of All Forms of Discrimination against Women is 'the most transformatively radical' (p. 193) of the human rights treaties. The work of NGOs on women's rights is particularly dubious because they have focused on practices characteristic of non-Western culture without parallel response to the abuses of women's human rights in the West.

Mutua's view clashes with Henkin's claims for the universality of human rights as expressed in documents such as the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights. Mutua questions the voluntary nature and the meaning of developing countries' acceptance of these instruments.[13] His and other critical scholars' questioning stance opens up a more critical space to challenge the construct and practice of human rights.

R.P. Peerenboom (Chapter 10) attacks the universality concept from the perspective of Chinese thought. The idea of innate, self-evident human rights has no resonance in traditional Chinese legal and political philosophy. Chinese culture stresses compromise and harmony rather than absolute principles. Neither Confucianism nor socialism concentrates on the idea of individual rights. In the Chinese view as captured by this contribution, '[s]tate interests override the interests and rights of any given individual' (p. 227); however, individual and state interests can be brought into harmony. Similarly, socialism expects individuals to contribute to society. Duties play a greater role, particularly the duties owed to others and to the state. Unlike universal, Kantian rights, which are based on the equality of all human beings, Confucian duties depend on one's relationship to others. While this perspective on rights bodes ill for the full enforcement of civil and political rights, the Chinese approach clearly favours social and economic rights. Hence, important economic rights, such as the right to education, medical care and employment, have found significant expression in the Chinese legal system.

Like Mutua, Peerenboom argues for engaging non-Western cultures on their own terms, rather than imposing Western human rights ideology. This dialogue does not foreclose the possibility of judging other cultures; these cultures must at least justify their practices on their own terms, and be able to respond to criticisms of those practices. Human rights 'with a Chinese face' will be contingent, rather than universal, and will reflect the current state of

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[12] Mutua's thinking reflects the concerns of the TWAIL (Third World Approaches to International Law) movement. For his description of this school of thought, see Mutua (2000).

[13] For an excellent exploration of other objections to universalism, see Otto (1997).

Chinese society. These rights will likely have a more communitarian character than human rights in the West, and may serve as a starting point for resolving conflicts rather than as a guarantee of protection against the state. Moreover, the duties arising from rights will vary in strength depending on the person (or the institution) to whom they are owed.

Interdependence and Indivisibility of Civil, Economic, Cultural, Political and Social Rights[14]

While distinctions between political, civil, social and economic rights have a long genealogy, their stark articulation as engaging differential legal and political consequences came during the Cold War. During the Cold War period, many politicians, human rights scholars and advocates made sharp distinctions between, on the one hand, civil and political rights, and, on the other hand, social, cultural and economic (ESC) rights. The negotiation and agreement of two separate International Covenants (one for civil and political rights, the other for ESC rights) epitomized and fore-grounded this distinction. Civil and political rights have been seen as categorical, while the realization of ESC rights was articulated as being variable and depended on society's capability and resources.

Stephen P. Marks (Chapter 11) attacks the separation of these rights on several grounds. He notes that the Universal Declaration as the core post-war legal instrument united both types of rights, and explores the neglected history of ESC rights in Western discourse. To understand why these rights have been politically articulated as separate, Marks identifies four conceptual features. First, some argue that civil and political rights arise from the unchanging nature of human beings; accordingly, they are timeless and immutable. Marks notes, however, that conceptions of human rights and acceptable practices have changed greatly over time, showing that human rights evolve. In this evolution process augmentation and deepening of human rights have been the constant motif. Moreover, he takes the specific example of the social norm of caring for the needy as having deeper historical roots than the prohibition of torture, which suggests that some ESC rights pre-date civil and political rights. These and other examples focus our attention on the contingency of contemporary understanding of human rights' norm hierarchy.

As other contributors to this volume have noted, civil and political rights have been seen as the focus of Western human rights thought, while ESC rights have not. Marks rejects this second justification for separating the two categories, finding that values are not sharply divided between Western and non-Western societies.

The third purported distinction rests on the role of the state. In the argument, civil and political rights require only non-interference by the state (the negative duties of first generation rights). By contrast, economic, cultural and social rights require the state to provide benefits and services (the positive duties implied by second generation rights). Like the previous distinction, this one fails upon closer examination. Full realization of many civil and political rights requires affirmative acts by the state; full realization of some ESC rights implies 'negative duties'. For example, the right to a fair trial requires many affirmative duties including training lawyers and judges, and building courts and jails. The right to be free

[14] For a short essay on four books addressing this topic, see Petersmann (2003).

from racial discrimination in education involves negatives duties that can be implemented immediately. A better typology separates rights into three categories of obligations or duties: 'the obligations to respect, protect, and fulfill' (Chapter 11, p. 263).

In addition to philosophical distinctions, Marks identifies policy-based reasons to distinguish between categories of human rights. Policy reasons contributed to the separation of rights represented in the two Covenants. Civil and political rights, at first glance, seem as if they can be implemented immediately, and are amenable to judicial remedies for 'violations'. Economic, social and cultural rights, by contrast, appear to require progressive implementation, and are not readily justiciable, making a 'programmatic' approach more suitable than a 'violations' approach. Finally, the most common argument for separating the two types of rights is that civil and political rights appear not to require resources, while ESC rights require large amounts of resources. Marks questions each of these assumptions. Neither philosophical nor practical arguments justify the separation of civil and political rights from those that are economic, social or cultural.

The economist Amartya Sen (Chapter 12), like Marks, sees 'extensive interconnections between political freedoms and the understanding and fulfillment of economic needs' (p. 286). In opposition to those advocates who say economic needs must be met before turning to civil and political rights, Sen argues that democracy and political liberty allow people to draw attention to economic needs, and to 'demand appropriate public action' (pp. 289–90). Evidence suggests that poor people care deeply about civil and political rights; moreover, contemporary democracies tend to avoid famines and address their citizens' essential needs better than governments that deny civil and political rights. This instrumental value of democracy is among the reasons why Sen rejects the cultural relativist argument of writers like Mutua and Peerenboom.

Like Marks, William A. Schabas (Chapter 13) believes that Cold War politics led to, or at least exacerbated, the split between civil and political rights, on the one hand, and economic, social and cultural rights, on the other. The creation of the International Labour Organization in 1919 manifested early twentieth-century attention to ESC rights. But despite the attention paid to those rights in the Universal Declaration, decades of inattention to ESC rights have followed.

Taking Canada as a case study, Schabas traces early resistance to the incorporation of ESC rights in the Universal Declaration.[15] Canada, like the USA and the UK, opposed the inclusion of ESC rights with civil and political rights in a covenant to enforce the Universal Declaration. The two separate covenants emerged as a compromise. Schabas shows that the compromise led to incomplete and incoherent results; for example, both covenants omit the right to property because drafters could not decide in which covenant it belonged.[16]

Schabas rejects the arguments for separating civil and political rights from ESC rights. He notes that Canada's implementation of the Civil and Political Covenant includes measures aimed at reducing infant mortality and increasing life expectancy, both requiring the expenditure of significant resources.

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[15] Weissbrodt (2006) provides a comparable look at the history of the USA's approach to ESC rights in foreign and domestic law.

[16] For a more in-depth treatment of the drafting of the International Covenant on Economic, Social and Cultural Rights, see Craven (1995).

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