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| **What are Human Rights?**   |  | | --- | |  |   Human rights are the basic rights and freedoms to which all humans are considered entitled: the right to life, liberty, freedom of thought and expression, and equal treatment before the law, among others. These rights represent entitlements of the individual or groups vis-B-vis the government, as well as responsibilities of the individual and the government authorities.  Such rights are ascribed "naturally," which means that they are not earned and cannot be denied on the basis of race, creed, ethnicity or gender. These rights are often advanced as legal rights and protected by the rule of law. However, they are distinct from and prior to law, and can be used as standards for formulating or criticizing both local and [international law](http://www.beyondintractability.org/essay/international-law). It is typically thought that the conduct of governments and military forces must comply with these standards.  Various "basic" [rights](http://www.beyondintractability.org/essay/rights) that cannot be violated under any circumstances are set forth in international human rights documents such as the [Universal Declaration of Human Rights](http://www.un.org/Overview/rights.html), the [International Covenant on Economic, Social and Cultural Rights](http://www.unhchr.ch/html/menu3/b/a-cescr.htm), and the [International Covenant on Civil and Political Rights](http://www.unhchr.ch/html/menu3/b/a-ccpr.htm). The rights established by these documents include economic, social, cultural, political and civil rights.  While human rights are not always interpreted similarly across societies, these norms nonetheless form a common human rights vocabulary in which the claims of various cultures can be articulated. The widespread ratification of international human rights agreements such as those listed above is taken as evidence that these are widely shared values. Having human rights norms in place imposes certain requirements on governments and legitimizes the complaints of individuals in those cases where fundamental rights and freedoms are not respected. Such norms constitute a standard for the conduct of government and the administration of force. They can be used as "universal, non-discriminatory standards" for formulating or criticizing law and act as guidelines for proper conduct.  Many conflicts are sparked by a failure to protect human rights, and the trauma that results from severe human rights violations often leads to new human rights violations. As conflict intensifies, hatred accumulates and makes restoration of peace more difficult. In order to stop this cycle of violence, states must institute policies aimed at human rights protection. Many believe that the protection of human rights "is essential to the sustainable achievement of the three agreed global priorities of [peace](http://www.beyondintractability.org/essay/peacekeeping), [development](http://www.beyondintractability.org/essay/development-conflict-introduction) and [democracy](http://www.beyondintractability.org/essay/democ-con-manag)." Respect for human rights has therefore become an integral part of [international law](http://www.beyondintractability.org/essay/international-law) and foreign policy. The specific goal of expanding such rights is to "increase safeguards for the dignity of the person."  Despite what resembles a widespread consensus on the importance of human rights and the expansion of international treaties on such matters, the protection of human rights still often leaves much to be desired. Although international organizations have been created or utilized to embody these values, there is little to enforce the commitments states have made to human rights. Military intervention is a rare occurrence. Sanctions have a spotty track record of effectiveness. Although not to be dismissed as insignificant, often the only consequence for failing to protect human rights is "naming and shaming."  **Interventions to Protect Human Rights**   |  | | --- | |  |   To protect human rights is to ensure that people receive some degree of decent, humane treatment. Because political systems that protect human rights are thought to reduce the threat of world conflict, all nations have a stake in promoting worldwide respect for human rights. International human rights law, [humanitarian intervention law](http://www.beyondintractability.org/essay/humanitarian-aid) and refugee law all protect the right to life and physical integrity and attempt to limit the unrestrained power of the state. These laws aim to preserve humanity and protect against anything that challenges people's health, economic well-being, social stability and political peace. Underlying such laws is the principle of nondiscrimination, the notion that rights apply universally.  Responsibility to protect human rights resides first and foremost with the states themselves. However, in many cases public authorities and government officials institute policies that violate basic human rights. Such abuses of power by political leaders and state authorities have devastating effects, including [genocide](http://www.beyondintractability.org/essay/war-crimes-genocide), [war crimes](http://www.beyondintractability.org/essay/war-crimes-general) and crimes against humanity. What can be done to safeguard human rights when those in power are responsible for [human rights violations](http://www.beyondintractability.org/essay/human-rights-violations)? Can outside forces intervene in order to protect human rights?  **Humanitarian Intervention**  In some cases, the perceived need to protect human rights and maintain peace has led to humanitarian intervention. There is evidence that internationally we are moving towards the notion that governments have not only a negative duty to respect human rights, but also a positive duty to safeguard these rights, preserve life and protect people from having their rights violated by others. Many believe that states' duties to intervene should not be determined by proximity, but rather by the severity of the crisis.  There are two kinds of humanitarian intervention involving the military: unilateral interventions by a single state, and collective interventions by a group of states. Because relatively few states have sufficient force and capacity to intervene on their own, most modern interventions are collective. Some also argue that there is a normative consensus that multilateral intervention is the only acceptable form at present.  There is much disagreement about when and to what extent outside countries can engage in such interventions. More specifically, there is debate about the efficacy of using [military force](http://www.beyondintractability.org/essay/military-intervention) to protect the human rights of individuals in other nations. This sort of debate stems largely from a tension between state sovereignty and the rights of individuals.  Some defend the principles of state sovereignty and nonintervention, and argue that other states must be permitted to determine their own course. They point out that the principles of state sovereignty and the non-use of force are enshrined in the [charter of the United Nations](http://www.un.org/aboutun/charter), which is regarded as an authoritative source on international legal order.  This argument suggests that different states have different conceptions of justice, and international coexistence depends on a pluralist ethic whereby each state can uphold its own conception of the good. Among this group, there is "a profound skepticism about the possibilities of realizing notions of universal justice." States that presume to judge what counts as a violation of human rights in another nation interfere with that nation's right to self-determination. Suspicions are further raised by the inconsistent respect for sovereignty (or human rights for that matter); namely, the Permanent Members of the UN Security Council have tremendous say over application of international principles. In addition, requiring some country to respect human rights is liable to cause friction and can lead to far-reaching disagreements.Thus, acts of intervention may disrupt interstate order and lead to further conflict. Even greater human suffering might thereby result if states set aside the norm of nonintervention.  Others point out that humanitarian intervention does not, in principle, threaten the territorial integrity and political independence of states. Rather than aiming to destabilize a target state and meddle in its affairs, humanitarian intervention aims to restore rule of law and promote humane treatment of individuals.  Furthermore, people who advocate this approach maintain that "only the vigilant eye of the international community can ensure the proper observance of international standards, in the interest not of one state or another but of the individuals themselves." They maintain that massive violations of human rights, such as genocide and crimes against humanity, warrant intervention, even if it causes some tension or disagreement. Certain rights are inalienable and universal, and "taking basic rights seriously means taking responsibility for their protection everywhere."  If, through its atrocious actions, a state destroys the lives and rights of its citizens, it temporarily forfeits its claims to legitimacy and sovereignty. Outside governments then have a positive duty to take steps to protect human rights and preserve lives. In addition, it is thought that political systems that protect human rights reduce the threat of world conflict. Thus, intervention might also be justified on the ground of preserving international security, promoting justice and maintaining international order.  Nevertheless, governments are often reluctant to commit military forces and resources to defend human rights in other states. In addition, the use of violence to end human rights violations poses a moral dilemma insofar as such interventions may lead to further loss of innocent lives. Therefore, it is imperative that the least amount of force necessary to achieve humanitarian objectives be used, and that intervention not do more harm than good. Lastly, there is a need to ensure that intervention is legitimate, and motivated by genuine humanitarian concerns. The purposes of intervention must be apolitical and disinterested. However, if risks and costs of intervention are high, it is unlikely that states will intervene unless their own interests are involved. For this reason, some doubt whether interventions are ever driven by humanitarian concerns rather than self-interest.  Many note that in order to truly address human rights violations, we must strive to understand the underlying causes of these breaches. These causes have to do with underdevelopment, economic pressures, social problems and international conditions. Indeed, the roots of repression, [discrimination](http://www.beyondintractability.org/essay/prejudice) and other denials of human rights stem from deeper and more complex political, social and economic problems. It is only by understanding and ameliorating these root causes and strengthening both [democracy](http://www.beyondintractability.org/essay/democ-con-manag) and [civil society](http://www.beyondintractability.org/essay/civil-society) that we can truly protect human rights.  **Restoring Human Rights in the Peacebuilding Phase**  In the aftermath of conflict, violence and suspicion often persist. Government institutions and the judiciary, which bear the main responsibility for the observation of human rights, are often severely weakened by the conflict or complicit in it. Yet, a general improvement in the human rights situation is essential for rehabilitation of war-torn societies. Many argue that [healing](http://www.beyondintractability.org/essay/trauma-healing) the psychological scars caused by atrocities and [reconciliation](http://www.beyondintractability.org/essay/reconciliation) at the community level cannot take place if the truth about past crimes is not revealed and if human rights are not protected. To preserve political stability, human rights implementation must be managed effectively. Issues of [mistrust](http://www.beyondintractability.org/essay/distrust) and betrayal must be addressed, and the rule of law must be restored. In such an environment, the international community can often play an important supporting role in providing at least implicit guarantees that former opponents will not abandon the peace. Because all international norms are subject to cultural interpretation, external agents that assist in the restoration of human rights in post-conflict societies must be careful to find local terms with which to express human rights norms. While human rights are in theory universal, ideas about which [basic needs](http://www.beyondintractability.org/essay/human-needs) should be guaranteed vary according to cultural, political, economic and religious circumstances. Consequently, policies to promote and protect human rights must be culturally adapted to avoid distrust and perceptions of intrusion into internal affairs.  To promote human rights standards in post-conflict societies, many psychological issues must be addressed. Societies must either introduce new social norms or reestablish old moral standards. They must design programs that will both [address past injustice](http://www.beyondintractability.org/essay/address-injustice) and prevent future [human rights violations](http://www.beyondintractability.org/essay/human-rights-violations). Human rights must not become just another compartmentalized aspect of recovery, but must be infused throughout all [peacebuilding](http://www.beyondintractability.org/essay/peacebuilding) and [reconstruction](http://www.beyondintractability.org/essay/reconstructive-programs) activities. [Democratization](http://www.beyondintractability.org/essay/democratization) implies the restoration of political and social rights. Government officials and members of security and police forces have to be trained to observe basic rights in the execution of their duties. Finally, being able to [forgive](http://www.beyondintractability.org/essay/apology-forgiveness) past violations is central to society's [reconciliation](http://www.beyondintractability.org/essay/reconciliation).  **Rights Protection Methods**  Various methods to advance and protect human rights are available:   * During violent conflict, [safe havens](http://www.beyondintractability.org/essay/safe-havens) to protect [refugees](http://www.beyondintractability.org/essay/refugees) and war victims from any surrounding violence in their communities can sometimes help to safeguard human lives. * As violent conflict begins to subside, [peacekeeping](http://www.beyondintractability.org/essay/peacekeeping) strategies to physically separate disputants and prevent further violence are crucial. These measures, together with violence prevention mechanisms, can help to safeguard human lives. Limiting the use of violence is crucial to ensuring groups' survival and creating the necessary conditions for a return to peace. * [Education](http://www.beyondintractability.org/essay/peace-education) about human rights must become part of general public education. Technical and financial assistance should be provided to increase knowledge about human rights. Members of the police and security forces have to be trained to ensure the observation of human rights standards for law enforcement. Research institutes and universities should be strengthened to train lawyers and judges. To uphold human rights standards in the long-term, their values must permeate all levels of society. * [Dialogue](http://www.beyondintractability.org/essay/dialogue) groups that assemble people from various ethnicities should be organized to overcome mistrust, fear and grief in society. Getting to know the feelings of ordinary people of each side might help to change the [demonic image](http://www.beyondintractability.org/essay/enemy-image) of the enemy group. Dialogue also helps parties at the grassroots level to discover the truth about what has happened, and may provide opportunities for [apology](http://www.beyondintractability.org/essay/apology-forgiveness) and forgiveness. * External specialists can offer legislative assistance and provide guidance in drafting press freedom laws, minority legislation and laws securing gender equality. They can also assist in drafting a constitution, which guarantees fundamental political and economic rights. * Those who perpetrate [human rights violations](http://www.beyondintractability.org/essay/human-rights-violations) find it much easier to do so in cases where their activities can remain secret. International [witnesses](http://www.beyondintractability.org/essay/witnesses), [observers](http://www.beyondintractability.org/essay/witnesses) and reporters can exert modest pressure to bring violations of human rights to public notice and discourage further violence. Monitors should not only expose violations, but also make the public aware of any progress made in the realization of human rights. In order to ensure that proper action is taken after the results of investigations have been made public, effective mechanisms to [address](http://www.beyondintractability.org/essay/address-injustice) injustice must be in place. * [Truth commissions](http://www.beyondintractability.org/essay/truth-commissions) are sometimes established after a political transition. To distinguish them from other institutions established to deal with a legacy of human rights abuses, truth commissions can be understood as "bodies set up to investigate a past history of violations of human rights in a particular country -- which can include violations by the military or other government forces or armed opposition forces." They are officially sanctioned temporary bodies that investigate a pattern of abuse in the past. Their goal is to uncover details of past abuses as a symbol of acknowledgment of past wrongs. They typically do not have the powers of courts, nor should they, since they do not have the same standards of evidence and protections for defendants. As such, they usually do not "name names" of those responsible for human rights abuses, but rather point to institutional failings that facilitated the crimes. Finally, they conclude with a report that contains recommendations to prevent a recurrence of the crimes and to provide reparations to victims. * [International war crimes tribunals](http://www.beyondintractability.org/essay/int-war-crime-tribunals) are established to hold individuals criminally responsible for violations of international human rights law in special courts. The international community rarely has the will to create them. As the experiences with the war tribunals for Rwanda and Yugoslavia indicate, even where they are created, they are imperfect. They cannot hold all perpetrators accountable and typically aim for the top leadership. However, it remains difficult to sentence the top-level decision-makers, who bear the ultimate responsibility for atrocities. They often enjoy political immunity as members of the post-conflict government. Incriminating a popular leader might lead to violent protests and sometimes even to relapse into conflict. Leaders may be necessary to negotiate and implement a peace agreement. * Various [democratization](http://www.beyondintractability.org/essay/democratization) measures can help to restore political and social rights. For sustainability and long-term viability of human rights standards, strong local enforcement mechanisms have to be established. An independent judiciary that provides impartial means and protects individuals against politically influenced persecution must be restored. [Election monitors](http://www.beyondintractability.org/essay/election-monitoring) who help to guarantee fair voting procedures can help to ensure stable and peaceful elections. And various [social structural changes](http://www.beyondintractability.org/essay/social-structural-changes), including reallocations of resources, increased [political participation](http://www.beyondintractability.org/essay/public-participation), and the strengthening of [civil society](http://www.beyondintractability.org/essay/civil-society) can help to ensure that people's basic needs are met. * [Humanitarian aid](http://www.beyondintractability.org/essay/humanitarian-aid) and [development assistance](http://www.beyondintractability.org/essay/humanitarian-aid) seeks to ease the impact that violent conflict has on civilians. During conflict, the primary aim is to prevent human casualties and ensure access to basic survival needs. These basics include water, sanitation, food, shelter and health care. Aid can also assist those who have been displaced and support rehabilitation work. Once conflict has ended, development assistance helps to advance [reconstruction programs](http://www.beyondintractability.org/essay/reconstructive-programs) that rebuild infrastructure, institutions and the economy. This assistance helps countries to undergo peaceful development rather than sliding back into conflict. |

**I.  The Meanings of Globalization**

Globalization is a multidimensional phenomenon, comprising “numerous complex and interrelated processes that have a dynamism of their own.” It involves a deepening and broadening of rapid transboundary exchanges due to developments in technology, communications, and media. Such exchanges and interactions occur at all levels of governance and among non-state actors, creating a more interdependent world.

Globalization is not new, although its forms and the technology that spurs it have changed. Globalization today is most often associated with economic interdependence, deregulation, and a dominance of the marketplace that includes a shifting of responsibilities from state to non-state actors. Economic globalization has been accompanied by a marked increase in the influence of international financial markets and transnational institutions, including corporations, in determining national policies and priorities. In addition, information and communications technology has emerged as a dominant force in the global system of production, while trade in goods, services, and financial instruments are more prevalent than any time in history.

Some see this emergence of cross-border networks of production, finance, and communications as posing profound challenges to traditional concepts of state sovereignty. Richard Falk has spoken of the “disabling of the state as guardian of the global public good” in the face of a shift of power and autonomy from the state to markets. Kenichi Ohmae refers to a “borderless world” in which “[m]ore than anything else, the burgeoning flow of information directly to consumers is eroding the ability of governments to pretend that their national economic interests are synonymous with those of their people.” He adds that, “[i]n today’s world there is no such thing as a purely national economic interest.” Perhaps the same may be said for national political interests. Other authors refer to the decline of the western nation state. The presence of weakened and failed states is an undeniable modern phenomenon,[16](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F16" \t "LAW_FTN) yet there is no clear causal link between globalization and failed states. Moreover, state sovereignty remains the international frame of reference, even if the exact contours of sovereignty change over time, as they have throughout history.

Paul Streeten has pointed out that globalization can come “from above,” in the form of multinational firms, international capital flows, and world markets, or it can come “from below,” reflecting the concerns of individuals and groups throughout the world. It seems evident that globalization has enhanced the ability of civil society to function across borders and promote human rights. The past two decades have seen a shift to multi-party democratic regimes, as more than 100 countries ended rule by military dictatorships or single parties. Pressed by an international network of non-governmental organizations and activists, the international protection of human rights itself can be seen as an aspect of globalization, reflecting universal values about human dignity that limit the power of the state and reduce the sphere of sovereignty.

Global technology and the information revolution have limited the ability of governments to control the right to seek, receive, and transmit information within and across boundaries. Ideas and information can circulate more freely, as can individuals. The number of televisions per 1000 persons doubled between 1980 and 1995, while the number of Internet subscribers exceeds 700 million persons. Free circulation enhances the ability to inform all persons about rights and avenues of redress. It also makes it more difficult for governments to conceal violations and allows activists more easily to mobilize shame in order to induce changes in government behavior. Information technology and the media also can be used, however, to violate human rights when the government is weak. In Rwanda, the radio and television channel “Radio-Television Libre des Mille Collines” was an important avenue for inciting genocide. Internet too has been used for hate speech.

The multiple and sometimes contradictory impacts of globalization are reflected in the complete disagreement of views over the pattern and direction of globalization. Proponents point to a rise in average incomes for the world as a whole. Opponents note that there is persistent inequality and poverty. The World Bank Development Report estimates that, at purchasing power parity, the per capita GDP in the richest twenty countries in 1960 was eighteen times that of the poorest twenty countries. By 1995, the gap had widened to thirty-seven times. According to the International Labor Organization (ILO), only 24%of the world’s foreign direct investment (FDI) went to developing countries in 1999, down from 38% over the period 1993–97, and 80% of recent investment went to only ten developing countries. Wealth concentration is not only seen among countries, but among individuals as well. According to the *UNDP Human Development Report 1999,* the assets of the three wealthiest individuals in the world is more than the combined gross national product of all least developed countries, while the annual sales of one transnational corporation exceeds the combined gross domestic product of Chile, Costa Rica, and Ecuador.

Globalization, thus, has created powerful non-state actors that may violate human rights in ways that were not contemplated during the development of the modern human rights movement. This development poses challenges to international human rights law, because, for the most part, that law has been designed to restrain abuses by powerful states and state agents, not to regulate the conduct of non-state actors themselves or to allow intervention in weak states when human rights violations occur. An increasingly globalized civil society is likely to respond to economic globalization by opposing liberalized trade and investment regimes that are not accompanied by accountability, transparency, public participation, and respect for fundamental rights.

The result may be viewed as a “clash of globalizations.” The clash plays out in the international institutional and normative system that has separated human rights matters from economic policy and regulation, creating distinct institutions, laws, and values for each field. Integrating them is no easy task; indeed, some commentators view a conflict as inevitable.

**A.  *The Framework of International Human Rights Law***

The development of human rights law in response to globalization is not new, and there is nothing inherent in the international system that would prevent further protective measures. The movement against the slave trade, which was largely a private enterprise, and to combat the more indiscriminate or destructive forms of weaponry, such as gas warfare and dum-dum bullets, are early examples of international movements to counter the negative side of international trade and technology. Broader efforts to establish international protection for human rights can be traced to the surge of globalization and the emergence of international markets that occurred at the end of the nineteenth century. During this period, the telephone, the telegraph, and radio transmissions first opened the world to rapid transboundary communications; the development of railroads and steamships allowed trade to move more quickly from one market to another, while the abuses associated with industrialization provoked efforts to improve working conditions and the standard of living in many countries.

Efforts to avoid competitive distortions and enhance the protection of fundamental rights of workers necessitated international labor standards. The resulting movement led to the creation of the ILO in 1919. Unlike all subsequent international organizations, the ILO engaged all the relevant actors in its operations from the beginning. Using a tripartite structure of representation, the ILO ensured the participation of business, labor, and governments in developing worker rights and minimum labor standards for member states. While the standards adopted are addressed to member states for implementation, compliance requires the cooperation of the non-state actors as well, because the organization primarily aims to respond through regulation to poor treatment of labor by private industry. Such regulation is made easier by the participation of labor and business in the law-making and supervisory procedures of the ILO.

The international protection of civil and political rights emerged later, becoming an aim of the international community at the end of World War II in response to the atrocities committed during that conflict. While human rights theory supports the claims of rights holders against all others, international human rights law treats the state as the principal threat to individual freedom and well being. In the post-World War II paradigm, the state and its agents are obliged to respect and ensure rights. Indeed, some acts are explicitly defined as human rights violations only if committed by state agents or those acting in complicity with them. If rights are violated, the state is obligated to ensure domestic remedies to correct the harm are available. A failure to do so may allow the individual to bring a complaint against the state before an international tribunal. No *international* procedures exist at present whereby an injured individual may directly hold responsible the individual perpetrator of the harm.

Despite the emphasis on state responsibility, international human rights instruments continue to recognize human rights that are violated predominately by non-state actors, for example, freedom from slavery and forced labor. The duty imposed in such instances, however, remains primarily on the state to ensure the right against the slave holders and employers of forced labor. Human rights instruments also speak to the obligations of non-state actors. The first general international human rights instrument, the American Declaration of the Rights and Duties of Man (American Declaration), begins its preamble with an exhortation to all individuals to conduct themselves with respect for the rights and freedoms of others. It clearly views individuals as having duties towards each other. The Universal Declaration of Human Rights (Universal Declaration), adopted some six months later, refers to itself as “a common standard of achievement for all peoples and all nations, to the end that every individual, and every organ of society” shall strive to promote respect for, and observance of, the rights. Article 1 of the Universal Declaration specifically refers to the behavior of individuals towards each other. This is complemented at the close of the Universal Declaration with a firm statement that, “[n]othing in this Declaration may be interpreted as implying for any [s]tate, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.” Human rights law also imposes individual responsibility for some human rights violations and other acts designated as crimes under international law. These offenses require the state where the offender is found to try or extradite the individual, and in a few instances may allow prosecution before an international tribunal. More generally, Article 28 of the Universal Declaration recognizes that, “[e]veryone is entitled to a social and international order in which the rights and freedoms set for in th[e] Declaration can be fully realized.” From this may emerge the principle that respect for human rights applies to all societal relations locally, regionally, and globally. Thus, although positive human rights law generally addresses state action or inaction, the theoretical and positive foundation is there to apply human rights guarantees to non-state actors.

In recent years, the many facets and importance of the complex interplay of human rights and globalization are reflected in the multiple studies conducted on aspects of globalization by the human rights organs of the United Nations (U.N.). The Sub-Commission on the Promotion and Protection of Human Rights (Sub-Commission) has undertaken studies on transnational corporations, on the impact of globalization on the enjoyment of human rights generally, the impact of globalization on racism and xenophobia, the relationship between the enjoyment of human rights and income distribution, and on human rights as the primary objective of international trade, investment, and finance policy and practice. Beginning in 1998, the Commission on Human Rights (Commission) established a working group on the impact of structural adjustment programs on economic, social, and cultural rights. The working group is largely composed of developing countries, with France, Germany, and Italy representing industrialized countries among the sixteen states participating. The Commission also has appointed an independent expert on the topic.

Both the Commission and the Sub-Commission have adopted resolutions on globalization and human rights. The Sub-Commission also unanimously adopted a resolution on trade liberalization and its impact on human rights, in which it asked all governments and forums of economic policy to take fully into consideration the obligations and principles of human rights in the formulation of international economic policy. At the same time, the resolution expressed opposition to unilateral sanctions and to negative conditionality on trade as a means to integrate human rights into the policies and practices governing international economic matters. The resolution requested the High Commissioner for Human Rights to cooperate with the World Trade Organization (WTO) and its member states to underline the human dimension of free trade and investments and to take measures to see that human rights principles and obligations are fully taken into account in future negotiations in the framework of the WTO.

Finally, it is noteworthy that human rights law not only potentially imposes duties on non-state economic actors, it guarantees rights essential for the furtherance of globalization. It protects the right to property, including intellectual property, freedom of expression and communications across boundaries, due process for contractual or other business disputes, and a remedy before an independent tribunal when rights are violated. Furthermore, the rule of law is an essential prerequisite to the long-term conduct of trade and investment.

**B.  *The Framework of International Trade Law***

Intrinsic to globalization is the contemporary legal and institutional framework within which the regimes of international trade, finance, and investment are being conducted. In general, economic globalization has a focus on economic efficiency, the goal being to improve economic well being through efficient market exchanges. The system is based upon enhancing the economic well being of nations through trade, on the theory that gains are maximized through the unrestricted flow of goods across national boundaries. The system rests upon a view of humans as economic beings that seek to maximize wealth and self-interested satisfaction of personal preferences. In a pure economic model, values outside efficiency are irrelevant, even pernicious because they complicate or hamper the trading system.

The legal dimensions of the framework are expressed in international economic law and the institutional structure of the Bretton Woods multilateral lending institutions and the WTO. International trade and finance institutions were created largely to operate on the economic model and generally exclude from consideration other values of international society, like human rights and environmental protection.

The international trade regime is clearly marked by a commitment to open markets. The Uruguay Round agreements that concluded with the establishment of the WTO expanded the substantive reach of international trade regulation to include trade-related aspect of intellectual property, trade in services, and trade-related investment measures. Yet, within the legal instruments and policies related to trade and investment there can be found some considerations of human rights. The General Agreement on Tariffs and Trade (GATT) allows states to ban the importation of products stemming from prison labor. In addition, GATT Article XX(a) permits trade measures “necessary to human morals.” GATT Article XX(b) allows measures “necessary to protect human, animal or plant life or health.” All of these exceptions are limited by the Article XX *chapeau* that requires the measures taken not be a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

The agreement establishing the WTO refers to “reciprocal arrangements” for tariff reductions and the “elimination of discriminatory treatment in international trade relations.” Yet, the annexes to the WTO Agreement comprise seventeen interwoven trade agreements that accord rights indirectly to individuals and other non-state actors. Among the rights protected are those of intellectual property. The General Agreement on Trade in Services (GATS) applies most-favored nation and national treatment principles to service suppliers, requiring that governments accord non-national service suppliers treatment no less favorable than that granted to suppliers from any other country. The earlier GATT Article X requires remedies before independent tribunals for those affected by the application of national laws and public information about those laws and regulations. The WTO extends these procedural rights to the agreements on antidumping, subsidies, intellectual property, and services.

In jurisprudence and statements of international officials, the rights of non-state actors are beginning to be considered. In a 1999 panel decision, the panel stated that, “the multilateral trading system is, per force, composed not only of States but also, indeed mostly, of individual economic operators” whose needs should be a factor in deciding disputes brought to the WTO. The U.N. Secretary-General has found that the goals and principles of the WTO agreements and those of human rights law have much in common in part because the WTO agreements “seek to create a liberal and rules-based multilateral trading system” according to which states can trade under conditions of fair competition.

Yet, efforts to strengthen human rights protections in trade law have run into difficulties. The WTO Singapore Ministerial Declaration made reference to international labor standards, yet primarily affirmed the jurisdiction of the ILO over the matter. Before and during the meeting of member states of the WTO in Seattle, developing countries opposed any discussion or negotiation on worker rights. Industrialized countries recommended enhanced cooperation between the secretariats of the WTO and the ILO, while the United States called for the elaboration of a working program dedicated to employment standards. It seems clear that at present the WTO would oppose the use of unilateral or multilateral trade sanctions for human rights violations. Regional economic bodies have more easily raised human rights matters.

With globalization, the International Monetary Fund (IMF) and the World Bank have received considerable attention because of the substantial impact they can have on human rights, although both initially resisted taking human rights into account in their operations. The General Counsel of the World Bank at first rejected the idea that the Bank should take into account human rights concerns, arguing a need to honor the Bank’s Charter[82](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F82" \t "LAW_FTN) “and to respect the specialisation of different international organisations.”[83](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F83" \t "LAW_FTN) Recently, the World Bank has begun to consider the human dimension of its work and it has declared that the alleviation of poverty is its main objective. The Bank has also been active in designing mechanisms to address the issue of the debt burden, culminating in the highly indebted poor countries (HIPC) initiative.

These efforts mark a shift from the “Washington Consensus” methods of structural adjustment and economic liberalization that were applied in the 1980s and early 1990s to the macroeconomic policies of developing countries. The Washington Consensus privileged market forces, and the Bank followed by promoting privatization programs that took the state out of health, education, and housing. Reduced social spending transferred resources to the private sector and, in some cases, to the military. Human rights activists responded by demanding greater attention to human rights and a social safety net to meet the basic needs of individuals.

Largely as a result of scrutiny from non-governmental organizations and activists concerned about increasing wealth disparity, increased unemployment and other failures to improve the human condition in the countries subject to Bank operations, the Bank has begun to pay attention to social safety nets, human rights, and the notion of good governance. By 1990, the General Counsel determined that, “[v]iolation of political rights may . . . reach such proportions as to become a Bank concern due to significant direct economic effects or if it results [in violation of] international obligations.”[85](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F85" \t "LAW_FTN) In 1998, the Bank published a report on development and human rights emphasizing equality and development and the protection of vulnerable groups.[86](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F86" \t "LAW_FTN) It also instituted its Inspection Panel to hear a narrow spectrum of complaints about violations of Bank policy.

The IMF has been less accommodating and remains under pressure to incorporate human rights concerns in its activities. After a difficult public encounter in May, 2001 between the IMF and the U.N. Committee on Economic, Social and Cultural Rights (CESCR), the latter invited three members of the CESCR to meet with the IMF in Washington on October 31, 2001, to have informal, private discussions to try to find some common ground and build confidence.

The IMF argues that its founding Charter mandates that it pay attention only to issues of economic nature. The IMF has issued a document on “Good Governance,” said to respond to the fact that, “a much broader range of institutional reforms is needed if countries are to establish and maintain private sector confidence and thereby lay the basis for sustained growth.” The IMF’s concerns still appear confined to:

Issues such as institutional reforms of the treasury, budget preparation and approval procedures, tax administration, accounting, and audit mechanisms, central bank operations, and the official statistics function. Similarly, reforms of market mechanisms would focus primarily on the exchange, trade, and price systems, and aspects of the financial system. In the regulatory and legal areas, IMF advice would focus on taxation, banking sector laws and regulations, and the establishment of free and fair market entry.

The “Good Governance” document emphasizes combating corruption and the need to establish transparent operational systems within states; there is no mention of human rights. The Guidelines also say nothing about the IMF itself and its operations.

While both the World Bank and the IMF have modified their policy stances to reduce the emphasis on structural adjustment policies to give greater emphasis to poverty reduction, the ILO still faults them for failing to give enough importance to employment. In its view, a number of country experiences clearly show that integration in global markets is compatible with successful social policy, provided there are adequate national social security systems, functioning systems of social dialogue and relatively low income inequality.

**II.  Is Globalization Good for Human Rights?**

There is considerable debate over the question of whether or not globalization is good for human rights. One view is that globalization enhances human rights, leading to economic benefits and consequent political freedoms. The positive contributions of globalization have even led to the proposal that it be accepted as a new human right. In general, trade theory predicts a significant increase in global welfare stemming from globalization, indirectly enhancing the attainment of economic conditions necessary for economic and social rights. Many thus believe that market mechanisms and liberalized trade will lead to an improvement in the living standards of all people. Some also posit that free trade and economic freedom are necessary conditions of political freedom, or at least contribute to the rule of law that is an essential component of human rights. Certainly, globalization facilitates international exchanges that overcome the confines of a single nation or a civilization, allowing participation in a global community. There is also the possibility that economic power can be utilized to sanction human rights violators more effectively. Ease of movement of people, goods, and services are enhanced. Increased availability and more efficient allocation of resources, more open and competitive production and improved governance could lead to faster growth and more rights. In sum, Judith Bello argues that:

Trade liberalization promotes the growth of stability-promoting middle class all over the globe; trade enhances efficiency and wealth and thereby creates potential revenue for environmental protection. Trade creates jobs in developing as well as developed countries, thereby reducing the pressure on both illegal immigration and illicit drug trafficking. Trade liberalization is not a panacea for the world’s problems, but it can be part of a solution for many of them.

The pro-globalization assumption that globalization is in the common good and market forces will achieve general well being is not a consensus view. Anne Orford, for example, argues that, “[t]he trade and investment liberalization furthered by the Uruguay Round agreements entrenches a relationship between states and transnational corporations that privileges the property interests of those corporations over the human rights of local peoples and communities.” As such, the economic and technological changes associated with globalization may lead to a world in which the state is no longer the principal threat to human rights, but one where the threats are more posed by multinational corporations, multilateral intergovernmental organizations, and transnational criminal syndicates or organized terrorists. The U.N. Development Program devoted its 2000 *Human Development Report* to “Human Development and Human Rights” in which it pointed out that, “global corporations can have enormous impact on human rights—in their employment practices, in their environmental impact, in their support for corrupt regimes or in their advocacy for policy changes.”

It has been argued that values associated with human rights emerge with multinational free market growth, as the rule of law follows investors who seek predictability and safeguarding of investments, leading to strengthened independent institutions for civil and political rights, but human rights advocates assert that liberalization in trade, investment, and finance does not necessarily lead to general economic development or better human rights performance. According to the Oxfam Poverty Report:

Trade has the power to create opportunities and support livelihoods; and it has the power to destroy them. Production for export can generate income, employment, and the foreign exchange which poor countries need for their development. But it can also cause environmental destruction and a loss of livelihoods, or lead to unacceptable levels of exploitation. The human impact of trade depends on how goods are produced, who controls the production and marketing, how the wealth generated is distributed, and the terms upon which countries trade. The way in which the international trading system is managed has a critical bearing on all of these areas.

Opponents of globalization see it as a threat to human rights in several ways. First, local decision-making and democratic participation are undermined when multinational companies, the World Bank, and the IMF set national economic and social policies. Second, unrestricted market forces threaten economic, social, and cultural rights such as the right to health, especially when structural adjustment policies reduce public expenditures for health and education. Third, accumulations of power and wealth in the hands of foreign multinational companies increase unemployment, poverty, and the marginalization of vulnerable groups.

Some criticism has been particularly strong. In resolution 1997/11, the U.N. Sub-Commission on the Promotion and Protection of Human Rights asked El Hadji Guiss to prepare a working document on the impact of the activities of transnational corporations on the realization of economic, social, and cultural rights. The report, delivered in June, 1998, is a wholesale condemnation of economic globalization. It begins, “[t]oday’s economic and financial systems are organized in such a way as to act as pumps that suck up the output of the labour of the toiling masses and transfer it, in the form of wealth and power, to a privileged minority.” Given this opening, it is not surprising that Guiss finds little in globalization that assists in the realization of human rights. Yet, he agrees that the pursuit of profit is not necessarily incompatible with the promotion and protection of human rights.

Globalization is leading to greater problems of state capacity to comply with human rights obligations, particularly economic, social, and cultural rights, such as trade union freedoms, the right to work, and the right to social security. It also may have a disproportionate effect on minorities. Cooperation internationally and from non-state actors is needed in the face of an undoubted concentration of wealth in the hands of multinational enterprises, greater than the wealth of many countries. Globalization is a particular issue for women, because they often bear a disproportionate burden of poverty, which may be exacerbated by economic restructuring, deregulation, and privatization. Investors have demonstrated a preference for women in the “soft” industries such as apparel, shoe- and toy-making, data-processing, and semi-conductor assembling—industries that require unskilled to semi-skilled labor, leading women to bear the disproportionate weight of the constraints introduced by globalization. The process of economic liberalization has also led to growth in the informal sector and increased female participation therein. Employment in the informal sector generally means that employment benefits and mechanisms of protection are unavailable. Underemployment seems to be as big a problem as open unemployment.

It also has been asserted that states feel compelled to ease labor standards, modify tax regulations, and relax other standards to attract foreign investment, seen especially in the export production zones (EPZs) where employment may be plentiful, but working conditions poor. Labor unions claim that EPZs are sometimes designed to undermine union rights, deny or restrict rights to free association, expression, and assembly.[110](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F110" \t "LAW_FTN) There are some twenty-seven million workers employed in such zones worldwide. It is estimated that the number of developing countries with EPZs increased from twenty-four in 1976 to ninety-three in 2000, with women providing up to 80% of the labor force.

Another impact observed in many countries is a shift from companies hiring permanent employees with job security and benefits, to the use of contingent or temporary workers lacking health care, retirement, collective bargaining arrangements, and other security available to the permanent work force. As with other negative impacts of globalization, this one also has more severe impacts on women, minorities, and migrant workers. Women comprise the largest segment of migrant labor flows, both internally and internationally. States often do not include migrant workers in their labor standards, leaving women particularly vulnerable. Overall, only some 20% of the world’s workers have adequate social protection. In addition, some 3000 people a day die from work-related accidents or disease.

Globalization also has produced an important new type of transboundary criminal enterprise. International crimes that involve or impact human rights violations are increasing: illegal drug trade, arms trafficking, money laundering, and traffic in persons are all facilitated by the same technological advances and open markets that assist in human rights. Traffic in women for sexual purposes is estimated to involve more than $7 billion a year, but the sex trade is not the only market for humans. Coercion against agricultural workers, domestic workers, and factory workers also is evident.

Crime syndicates are rivaling multinational corporations for economic power, threatening the security and well being of large numbers of persons. The free movement of capital, which is a prior condition to the growth in foreign investment, permits money laundering in the absence of exchange controls or other appropriate regulation. The free circulation of goods can bring stolen automobiles, smuggled sex workers, and torture implements, as well as fresh fruit and vegetables. At the same time, new technologies also permit the easier pirating of intellectual property. Indigenous groups and local communities challenge the very foundations of intellectual property protection, particularly when applied to pharmaceuticals necessary to ensure the right to life and to health.

Certain human rights are particularly threatened by globalization. Respect for private life needs protection against personal data collection. Cultural and linguistic rights can also suffer under global assault, but the evidence seems contradictory. There is no doubt that globalization facilitates the transfer of cultural manifestations and cultural property. A study by the U.N. Economic and Social Council (UNESCO) indicates that commerce in cultural property tripled between 1980 and 1991 under the impulse of satellite communications, Internet, and videocassettes.[119](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F119" \t "LAW_FTN) Yet, in this field, as in others, mergers and acquisitions have concentrated ownership to the detriment of local industry. The Hollywood film industry represented 70% of the European market in 1996, more than double what it was a decade earlier, and constituted 86% of the Latin American market. In the opposite direction, traditional cultures across the world are being transmitted and revived in multiethnic states through the movement of peoples, their languages, and their beliefs.

Economic globalization has been criticized for protecting investors to the detriment of local people, arguably increasing unemployment and underemployment. To make conditions better for investors, the World Bank and IMF impose economic “reform” that may lead to human rights violations, including an increase in infant and child mortality rates. In addition, structural reform usually mandates trade liberalization, something industrialized countries have not been similarly pressured to do. States may or may not be weakened, but the weakest within states are further marginalized. Lack of accountability results from the inability to exercise rights of political participation or information about key decisions. Structural adjustment may require cutting public expenditure for health and education, social security, and housing. Labor deregulation, privatization, and export-oriented production increase income disparity and marginalization in many countries. This leaves the main function of the state to be policing and security, which may lead either to increased political repression or to violent protests and political destabilization.

According to the independent expert appointed by the U.N. to study the impact of structural adjustment programs on human rights, there are two main consequences of such programs. First, they have led to a significant erosion of the living standards of the poor and investment in the productive sectors of many countries; second, such countries have ceded their right to independently determine their country’s development priorities . According to the expert, structural adjustment shifted from being a mechanism to handle national debt into a vehicle for deregulation, trade liberalization, and privatization—all reducing the role of the state in national development. Properly structured debt relief is essential to alleviate poverty and build democratic institutions.

The formation and enhancement of transboundary religious, tribal, corporate, or associational allegiances are aspects of globalization that have both positive and negative aspects. They may challenge the nationality link and loyalty of individuals towards the territorial state. Networks of human rights activists forming an international civil society are an important component in the protection of human rights. Their formation and work is enhanced by information technology and ease of movement. Networks linked by air, telecommunications, media, and the Internet allow shared ideas and the formation of shared values. The human rights activists of the world share values with each other and a commitment to universal compliance with human rights norms that transcend nationality and particular cultural values. These activists have in turn pressured corporations to accept social responsibility in their global dealings. On the negative side, international criminal syndicates and terrorist groups form the same transboundary allegiances and threaten the security of all. The problems then become those of states that are too weak, not states that are too strong.

**III.  Are Human Rights Good for Globalization?**

The dominant view among economists and policy makers in multilateral financial institutions appears to be that any hindrances to global trade and investment are bad for development in general. Recent studies, however, suggest that business and economic indicators are better in developing countries that have more favorable civil and political rights than in repressive regimes. Mancur Olson explains that the majority in whose interests a democratic government is ruling demand smaller growth-retarding exaction from the minority and pay greater attention to the supply of growth-promoting public goods than does a dictatorship, even when the majority is acting out of pure self-interest. According to his analysis, the dispersal of political power and the emergence of representative government have often been the trigger for faster economic growth. So, prosperity is not only good for democracy, but democracy seems good for prosperity. A feature in the poorest countries is the absence or poor enforcement of contract and property rights, which are necessary for advanced markets and rapid growth.

It also seems clear that establishment of the rule of law with protection for contracts and property rights is essential to maintaining security for international investment and trade. Tourism is the world’s fastest-growing industry, generating more than 10% of total international GNP, and is particularly harmed by images of repression, acts of terrorism, and the political instability that usually result from widespread human rights abuses. Judicial reform and the establishment of the rule of law with respect for human rights should be a priority, even if only for the instrumental reason to secure investment, property, contracts, debts, and profits. As the U.N. Development Program’s *Human Development Report 2000* proclaims, “[r]ights make human beings better economic actors.”

Like human rights, economic liberalization is concerned with restraining the power of the state. At the special session of the U.N. General Assembly to review progress since the 1995 Copenhagen World Summit for Social Development, the final document, adopted on July 1, 2000, makes special reference to the role and responsibilities of the private sector to work with governments to eradicate poverty, promote full employment and universal access to social services, and ensure that everyone has equal opportunities to participate in society. In turn, democratic rule and the rule of law inspires further global business activity, generating an upward spiral in rights protection. The text encourages corporate social responsibility and promotes dialogue among government, labor, and employer groups. It also expresses a belief in the relationship between economic growth and social development. The Copenhagen Declaration and Program of Action affirmed that social development and social justice cannot be attained in the absence of respect for all human rights and fundamental freedoms. The Sub-Commission on Promotion and Protection of Human Rights finds in major human rights instruments “obligations and goals which are fundamental to the development process and to economic policy.”

None of the international human rights instruments imposes an economic model, free trade, or deregulation. Yet, as Anne Orford points out, there is a link between human rights and a liberal economic regime that may facilitate globalization. Liberal concepts of human rights identify the individual with property ownership and are linked with the emergence of capitalism. In contrast, the failure by some governments to respect core labor standards is likely to provoke trade tensions and lead to protectionist efforts. The stability of the world’s trading system may thus depend upon ensuring that an open trading system does not come at the price of human rights.

**IV.  International Responses to the Problems of   
Globalization and Human Rights**

Globalization has led to an increased concern about the responsibility of all international actors to ensure the promotion and protection of human rights. International institutions and scholars have responded with various proposals for strengthening the international regime. First, human rights activists and institutions have begun to posit the primacy of human rights law. The Committee on Economic, Social and Cultural Rights (CESCR) has emphasized that, “the realms of trade, finance and investment are in no way exempt from these general principles [on respect for human rights] and that international organizations with specific responsibilities in those areas should play a positive and constructive role in relation to human rights.” The CESCR also asserts that competitiveness, efficiency, and economic rationalism must not be permitted to become the primary or exclusive criteria against which governmental and inter-governmental policies are evaluated.

Second, state responsibility for failing to control the actions of private parties has received considerable attention in the case law of international tribunals[133](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F133" \t "LAW_FTN) and the work of the U.N. Third, international law is increasingly regulating non-state behavior directly. Fourth, private market mechanisms such as codes of conduct or consumer purchasing schemes have sought to influence corporate behavior. Finally, restructured international governance mechanisms are bringing a variety of international actors together to achieve common goals.

The first general trend, seen particularly among human rights advocates, has been to affirm the priority of human rights over other international legal regimes. According to this view, international economic policies cannot be exempt from conformity to international human rights law. States and international organizations are directly obliged to comply with those principles and obliged to ensure that private economic actors within their jurisdictions do not act in violation of those rights. In a 1998 statement on globalization and economic, social, and cultural rights, the CESCR expressed its concerns over the negative impact of globalization on the enjoyment of economic, social, and cultural rights, and called on states and multilateral institutions to pay enhanced attention to taking a rights-based approach to economic policy-making. The CESCR declared that the realms of trade, finance, and investment are in no way exempt from human rights obligations. Those concerns were raised again in the statement the CESCR addressed to the WTO Third Ministerial Conference in Seattle in November, 1999. The CESCR urged WTO members to adopt a human rights approach at the conference, recognizing the fact that, “promotion and protection of human rights is the first responsibility of Governments.” The CESCR’s language echoes that of the Vienna Declaration and Program of Action, which affirmed that, “the promotion and protection of human rights and fundamental freedoms is the first responsibility of government” and that, “the human person is the central subject of development.” Similarly, the Copenhagen Declaration and Program of Action[139](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F139" \t "LAW_FTN) recommended to states the need to intervene in markets to prevent or counteract market failure, promote stability and long-term investment, ensure fair competition and ethical conduct, and harmonize economic and social development. The Sub-Commission on Promotion and Protection of Human Rights has expressly asserted the “centrality and primacy” of human rights obligations in all areas of governance and development, including international and regional trade, investment and financial policies, agreements, and practices.[140](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F140" \t "LAW_FTN) The Commission on Human Rights, for its part, has affirmed that, “the exercise of the basic rights of the people of debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to the implementation of structural adjustment policies and economic reforms arising from the debt.” The special rapporteurs on globalization and its impact on the full enjoyment of human rights flatly assert that, “the primacy of human rights law over all other regimes of international law is a basic and fundamental principle that should not be departed from.”

Can the primacy of human rights be justified in international law? An argument can be posited on the basis of treaty law. The U.N. Charter refers to human rights in its second preamble paragraph and lists human rights as the third of its purposes in Article 1, after maintenance of peace and security, and the development of friendly relations among nations based on equal rights and self-determination of peoples. The Charter not only makes human rights an aim of the organization, it obligates all member states to take joint and separate action with the U.N. to achieve universal respect for and observance of human rights and fundamental freedoms, as in Articles 55 and 56. Article 103 of the Charter provides that, “in the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.” This “supremacy clause” has been invoked to suggest that the aims and purposes of the U.N., maintenance of peace and security, and the promotion and protection of human rights, constitute an international public order to which other treaty regimes must conform. It may be argued, however, that there is no conflict between human rights and the international trade and financial regime because they regulate separate areas of human activity. In addition, some may point to the “later in time” rule of the Vienna Convention on the Law of Treaties. However, the Vienna Convention is not retroactive and, in any case, the provisions of Article 30 expressly provide that the later in time rule is “without prejudiced to [A]rticle 103 of the United Nations Charter.” As with domestic bills of rights, international human rights law may limit the implementation of other social goals to means and methods compatible with its contents. In practice, states and international organizations are taking action to increase the responsibility of state and non-state actors when their economic activities impact on human rights.

The second response to globalization is found in efforts to insist on state responsibility for the behavior of non-state actors. As far as human rights are concerned, this means the state is responsible for its acts and its omissions. The Restatement of U.S. Foreign Relations Law makes it clear that a state violates international law if it commits, encourages, or condones genocide, slavery, torture, or inhuman or degrading treatment. Complicity in human rights violations between state and non-state actors is a growing subject of interest and litigation.

The next question posed is whether or not a state is responsible for the acts of international organizations in which it participates. The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 2(1), provides that each state party will “take steps, individually and through international assistance and cooperation” to achieve the rights in the Covenant. This means that voting in the World Bank or IMF for programs or policies that will lead to human rights regression in one or more states could be deemed to violate the voter’s obligations under the Covenant.

Traditional interpretations of the ICESCR, Article 2, permit states to determine how and when they allocate resources for the realization of economic, social, and cultural rights. However, in its General Comment No. 3 on the nature of the states parties’ obligations under the ICESCR, the CESCR declared that concrete legal obligations are imposed by the Covenant under Article 2. State parties are obliged to realize minimum standards relating to each of the rights utilizing available resources in an effective manner. Violations can occur either through commission or omission.

The jurisprudence of the CESCR also recognizes “minimum core obligations” on the part of state parties that have to be fulfilled irrespective of resource or other constraints. In determining whether a state party has utilized the “maximum of its available resources,” attention shall be paid to the equitable and effective use of and access to available resources. States also may be responsible if they fail to exercise due diligence in controlling the behavior of non-state actors, such as transnational corporations, over which they exercise jurisdiction, when such behavior deprives individuals of their economic, social, and cultural rights.

The CESCR has consulted with multilateral institutions, specialized agencies, and non-governmental organizations (NGOs) in developing its approach to the issue of globalization. Other treaty-based human rights mechanisms have also shown concern over rising economic disparities that impact on their individual mandates. For example, the Committee examining periodic country reports under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), has shown great concern over the evidence of the feminization of poverty and the impact of economic policies on the rights of women. The Human Rights Committee, in General Comment No. 28 dealing with equality of rights between men and women, gives some consideration to issues such as the feminization of poverty, declining social indicators, and gender inequity in employment within the framework of globalization.

A number of U.N. specialized agencies have also addressed the question of globalization. The ILO has long tackled the phenomenon. From the Copenhagen Social Summit in 1995 to the 1998 Declaration on Fundamental Principles and Rights at Work, the ILO has pressed for an international consensus on the content of the core labor standards that provide a social floor to the global economy. In 1998, the ILO adopted the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182). It also adopted its Declaration on Fundamental Principles and Rights at Work together with a follow-up procedure based upon technical cooperation and reporting. The principles have been incorporated into codes of conduct by the private sector and also used as a basis for action by various regional communities, such as the Southern African Development Community, MERCOSUR, and the Caribbean Community. U.N. bodies and specialized agencies, such as the U.N. Children’s Fund (UNICEF), the U.N. Educational, Scientific and Cultural Organization (UNESCO), the Office of the U.N. High Commissioner for Refugees (UNHCR), and the U.N. Environment Programme (UNEP), have all carried out work that has implications for the overall response by the U.N. to the phenomenon of globalization. On the regional level, the European Union, in the context of negotiations for the fourth Lom Agreement with countries of Africa, the Caribbean, and the Pacific (ACP states), sought to include good governance in public affairs, democracy, respect for human rights, and respect for the rule of law, essential in the elements of the accord, with the termination of assistance for non-respect of any of the elements.

Finally, it may be asserted that both the home and the host states have obligations to regulate the conduct of multinational companies. The *Trail Smelter Arbitration,* the *Corfu Channel Case,* and the U.N. Survey of International Law all state the same principle: every state’s obligation not to allow knowingly its territory to be used contrary to the rights of other states. The *Trail Smelter Arbitration* involved a privately owned Canadian company that caused harm through its activities to farmers in the United States. Corporate decisions in one state to undertake activities in another state that involve human rights violations could similarly lead to recognition that both states have a duty to control the conduct of the multinational company.

In a third approach, the international community has been moving towards greater ascription of individual responsibility for human rights violations, both by state and by non-state actors. While states remain primarily responsible for ensuring the promotion and protection of human rights, increasing attention is being given to the responsibility under international law of inter-governmental organizations, business enterprises, and individuals. In this regard, the international legal system can no longer be described as one governing states alone. The Universal Declaration of Human Rights opened the door to this development by providing, in Article 30, that, “[n]othing in this Declaration may be interpreted as implying for any [s]tate, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.” Conceptually linked to this, the preceding article stipulates that, “everyone has duties to the community in which alone the free and full development of his personality is possible.”

The special rapporteur on the relationship between the enjoyment of human rights, in particular economic, social, and cultural rights, and income distribution, views economic, social, and cultural rights as “the set of basic rights which determines the limits of globalization.” In Bengoa’s view, “lack of education, early school leaving and structural poverty are not only general ethical issues but also violations of the human rights proclaimed by international law.” He concludes that the great legal, political, and ethical challenge for the coming century will be the codification and enforceability of human rights in an internationalized market. Such an action requires taking into consideration the fact that the state is neither the sole agent nor the sole economic actor, despite its central responsibility, for the realization of economic, social, and cultural rights. Other important actors are transnational corporations, international organizations, trading and financial enterprises, and even such groups as private agencies providing assistance to the poor and needy. He suggests further development of codes of conduct for these non-state actors and in particular the formation of a “Social Forum” with the participation of all such actors. It is somewhat surprising that the suggestion is this modest, given his characterization of the globalized world as one where:

There is not only the enormous wealth of a few thousand, but also the corruption of many [s]tate authorities, the failure of [s]tate mechanisms and services to discharge their functions, the unregulated and uncontrolled presence of transnational corporations and companies, the authoritarian and unconsidered operation of international financial institutions, and the frequently futile action of organizations and institutions which are well-intentioned but which do not coordinate their activities in a stable and sustained manner.

Another special rapporteur has remarked upon the lack of effective mechanisms to enforce the accountability of non-state actors. He asserts that enforcing respect for codes of conduct, trade union laws, and rights of association and expression may prove difficult, citing the example of the code on marketing breast milk substitutes.

In respect to intergovernmental organizations, the theoretical basis for insisting that they adhere to human rights standards in their programs derives from their international legal personality. International organizations are entities created by states delegating power to achieve certain goals and perform specified functions. While not states, and not having the full rights and duties of states, international organizations take on rights and duties under international law. It would be surprising if states could perform actions collectively through international organizations that the states could not lawfully do individually. In other words, if states cannot confer more power on international organizations than they themselves possess, international organizations are bound to respect human rights because all the states that create them are legally required to respect human rights pursuant to the U.N. Charter and customary international law.

The Commission on Human Rights has begun to suggest, albeit very cautiously, that multilateral institutions must conform their policies and practices to human rights norms. In its Resolution 2001/32, the Commission recognized:

That multilateral mechanisms have a unique role to play in meeting the challenges and opportunities presented by globalization and that the process of globalization must not be used to weaken or reinterpret the principles enshrined in the Charter of the U.N., which continues to be the foundation for friendly relations among states, as well as for the creation of a more just and equitable international economic system.

The resolution affirms not only the individual responsibility of states for human rights but “also recognizes that, in addition to [s]tates’ separate responsibilities to their individual societies, they have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level.” Subsequent to this, and in the most recent statement of the human rights bodies on the issue, the Sub-Commission adopted a resolution in which it considers that, “attention to the human rights obligations of governments participating in international economic policy formulation will help to ensure socially just outcomes in the formulation, interpretation and implementation of those policies.” The Sub-Commission expresses its gratitude for discussions with the WTO, the IMF, and the World Bank, and attempts to walk a difficult line in reaffirming “the importance and relevance of human rights obligations in all areas of governance and development, including international and regional trade, investment and financial policies and practices, while confirming that this in no way implies the imposition of conditionalities upon aid to development.” It urges all governments and “international economic policy forums” to take international human rights obligations fully into account in international economic policy formulation.

In its 1998 comment on globalization, the CESCR called for a renewed commitment to respect economic, social, and cultural rights, emphasizing that international organizations, as well as governments that have created and managed them, have a strong and continuous responsibility to take whatever measures they can to assist governments to act in ways that are compatible with their human rights obligations, and to seek to devise policies and programs that promote respect for those rights. The CESCR addressed itself in particular to the IMF and the World Bank, calling upon them to pay enhanced attention to human rights, including “through encouraging explicit recognition of these rights, assisting in the identification of country-specific benchmarks to facilitate their promotion, and facilitating the development of appropriate remedies for responding to violations.” The WTO also should “devise appropriate methods to facilitate more systematic consideration of the impact upon human rights of particular trade and investment policies.” The CESCR’s recent General Comment on the right to food concerns food security within the context of globalization. It draws attention to the responsibilities of private actors, aside from the obligation of states parties to regulate appropriately their conduct, in the realization of the right to adequate food. The comment goes on to stipulate that, “[t]he private business sector—national and transnational—should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society”. Furthermore, it calls upon the IMF and the World Bank to pay attention to the protection of the right to food in drawing up lending policies, credit, and structural adjustment programs. This approach by a treaty-based mechanism, focusing on the responsibilities of multilateral organizations as well as private actors in protecting human rights, is a significant step in international law.

International conferences also have called on international financial institutions to pay greater attention to human rights, through promotion and through assisting in the development of benchmarks to monitor compliance and remedies to respond to violations. In particular, “social safety nets should be defined by reference to these rights and enhanced attention should be accorded to such methods to protect the poor and vulnerable in the context of structural adjustment programs.” Social monitoring and impact assessments, similar to that done for the environment, are recommended to international financial institutions and to the WTO. Labor unions have called for including core labor standards in the future WTO work program.

For individuals, international responsibility is also increasing. The U.N. Development Program *Human Development Report 2000* calls for greater accountability of non-state actors, pointing out that, “global corporations can have enormous impact on human rights—in their employment practices, in their environmental impact, in their support for corrupt regimes or in their advocacy for policy changes.”[188](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F188" \t "LAW_FTN) The most egregious acts are proscribed as international crimes. The Nuremberg Military Tribunal[189](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F189" \t "LAW_FTN) and subsequent principles prepared by the U.N. International Law Commission[190](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F190" \t "LAW_FTN) made clear that neither government position nor government orders will free an individual from responsibility for the commission of an international crime. As was said in the Nuremberg judgment: “crimes against international law are committed by men and not by abstract entities and it is only by punishing individuals who commit such crimes” that international law can be upheld. The U.N. Security Council also has made clear the international liability of non-state as well as state actors who commit war crimes and other international crimes

The list of international crimes at Nuremberg were war crimes, crimes against peace, and crimes against humanity. The Convention on the Prevention and Punishment of the Crime of Genocide affirms that genocide, whether committed in peacetime or wartime, is a crime under international law and that, “[p]ersons committing genocide . . . shall be punished, whether they are constitutionally responsible [rulers], public officials, or private individuals.” In 1973, the U.N. similarly declared apartheid a crime against humanity and broadly imposed responsibility on “individuals, members of organizations, institutions and State representatives.” The International Law Commission’s Draft Code of Crimes against the Peace and Security of Mankind holds that systematic or widespread violations of human rights constitute international crimes for which non-state as well as state actors may be responsible. Article 21 of the Draft Code of Crimes imposes individual responsibility for the commission of “murder; torture; establishing or maintaining over persons a status of slavery, servitude, or forced labor; persecution on social, political, racial, religious, or cultural grounds in a systematic manner or on a mass scale; and deportation or forcible transfer of the population.”

Recently, member states of international organizations have sought to reach misconduct that is transnational in character, but not specifically designated as an international crime. The Inter-American Convention on Violence against Women calls on state parties thereto to take action against state and non-state actors that commit violence against women in the public and private spheres, including family violence. On November 15, 2000, the U.N. General Assembly adopted a Convention against Transnational Organized Crime and a Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. This Convention calls on states to criminalize listed offenses, including money laundering and corruption, and to cooperate to combat transnational crime and to protect victims of crime. The Protocol on Trafficking expressly refers to the human rights of victims and to various human rights abuses such as forced labor, slavery, or practices similar to slavery. Natural and legal persons may be liable, and the proceeds of crimes confiscated and seized are to be used for the benefit of victims.

International organizations have taken up several problems where trade and human rights are linked, in the process enhancing global governance by bringing together state and non-state actors. The U.N. Security Council has expressed its concern about the role of the illicit diamond trade supporting the conflict in Sierra Leone and called upon the international diamond industry to cooperate on a ban on all rough diamonds from Sierra Leone. The Council requested the U.N. Secretary-General to appoint a panel of experts to monitor implementation of the ban. In addition, the resolution calls upon states, international organizations, the diamond industry, and other relevant entities to assist the government of Sierra Leone to develop a well-structured and well-regulated diamond industry. The World Diamond Congress, meeting in 2000 in Antwerp, proposed the creation of an international diamond council made up of producers, manufacturers, traders, governments, and international organizations to oversee a new system to verify the provenance of rough diamonds.

If the behavior of non-state actors violates international norms directly applicable to their conduct, they may be held responsible to their victims. Efforts to hold corporations accountable for conduct occurring in overseas operations have recently become prevalent in U.S. courts. Using the Alien Tort Claims Act, plaintiffs have sought to hold multinational companies liable for customary human rights violations and environmental harm in Burma, Nigeria, Ecuador, and India. In England as well, the House of Lords has upheld an action brought against an English-based multinational company by South African mineworkers suffering from asbestos related diseases. The use of international human rights law in presenting claims directly against industry is a relatively recent phenomenon and reflects the growing attention being paid to non-state actors in international law and the expectations that their behavior will be tested by norms previously directed at states and state agents. The draft Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters refers to human rights in Article 18, in reference to war crimes and grave violations of fundamental rights.

Further action is being taken by human rights bodies. In 1998, the U.N. Sub-commission for the Prevention of Discrimination and Protection of Minorities voted to establish a Working Group to examine over three years the effects of the working methods and activities of transnational corporations on human rights. The mandate of the Working Group is extensive and includes identification and examination of the effects of the activities of transnational corporations on the enjoyment of civil, cultural, economic, political, and social rights, the right to development, the right to a healthy environment, and the right to peace. It is to gather and examine information and reports, and prepare an annual list of transnational corporations to provide examples of the positive and negative impacts on human rights of their activities in the countries in which they operate. In addition, the Working Group is to assess how existing human rights standards apply to transnational corporations, including private initiatives and codes of conduct, and collect for study international, regional, and bilateral investment agreements.

The Working Group has prepared a draft code of principles relating to the human rights conduct of companies, based upon relevant language from the codes of conduct by the U.N., the Organization for Economic Co-Operation and Development (OECD), the ILO, corporations, unions, and non-governmental organizations. The principles address a wide range of human rights issues, including non-discrimination, and freedom from harassment and abuse, slavery, forced labor and child labor, healthy and safe working environments, fair and equal remuneration, hours of work, freedom of association, and the right to collective bargaining, as well as war crimes and other international crimes. The fundamental rationale for the draft principles was to impose responsibility on companies commensurate with their increased power. During the meetings of the Working Group leading up to the principles, many non-governmental organizations argued in favor of drafting a legally binding instrument, on the basis that another voluntary code of conduct would be insufficient.

The ILO remains the key institution concerned with the rights of workers throughout the world. To the extent that other organizations have become involved, the ILO seeks to determine whether or not their standards conform to those of the ILO and adopt a similar human rights approach. The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy addresses the obligations of four groups: the enterprises themselves; workers’ groups; employers’ organizations; and governments. Its aims are to encourage the positive contributions of multinational companies to economic and social progress and to minimize the negative consequences that might accompany their activities. The Declaration provides that all four groups should respect the Universal Declaration of Human Rights and the two U.N. Covenants on Human Rights. The ILO also surveys the positive and negative effects of multinational activities based on information from workers, employers, and governments.

The OECD became a focus of controversy during its unsuccessful efforts to draft a Multilateral Agreement on Investment (MAI), a process that ended in December, 1998.[214](http://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bciclr/25_2/06_FTN.htm" \l "F214" \t "LAW_FTN) Strikingly, both the investors pressing the MAI and those opposed to it were part of the globalized community and, according to one view, “compromise the concept of national sovereignty and local control.” Many of the issues raised concerned human rights, including some related to the negotiating process itself and its lack of transparency. In addition, NGOs were concerned about several substantive areas that seemed to seriously limit the sovereignty of states in favor of foreign investors.

Before and after the MAI negotiations, the OECD addressed issues of human rights. First, in 1995, it published guidelines on participatory development and good governance in which the members reiterated their adherence to international human rights norms. In 1996, OECD studied trade and labor standards, looking at core worker rights. Later, it adopted revised Guidelines for Multinational Enterprises on June 27, 2000, supported by follow-up procedures in the twenty-nine member states and four non-member states participating in the process. The Guidelines concern multinational enterprises operating in or from the thirty-three countries and apply to all operations worldwide. The revision added a human rights obligation, stating that, “enterprises should . . . [r]espect the human rights of those affected by their activities consistent with the host government’s obligations and commitments.” It is significant that the Guidelines do not refer to policies or practices, but rather to the legal obligations of the host state. Every state has such obligations under the U.N. Charter, customary international law, and such human rights treaties as the state has ratified. The Guidelines impose a duty upon businesses to inform themselves of the relevant obligations and conform their conduct to them. The follow-up foresees a series of procedures involving consultations, good offices, conciliation, and mediation.

The U.N. Declaration Against Corruption and Bribery in International Commercial Transactions encourages social responsibility and ethical behavior, calling on partners to international transactions to observe the laws of the host countries, and take into account the impact of their activities on economic and social development and protection of the environment and human rights.

Yet another response to the intersecting issues of globalization and human rights has been to utilize market mechanisms and other forms of private regulation to impact corporate behavior. Pressure from international and national groups, as well as perceived long-term interests, have led many companies to take up the issue of human rights. A survey by the Ashridge Centre for Business and Society found that human rights issues caused more than one in three of the 500 largest companies to abandon a proposed investment project and nearly one in five to divest its operations in a country. Nearly half have codes of conduct that refer to human rights. The record is not clear, however, on implementation. The U.N. Development Program *Human Development Report 2000* calls for better implementation of corporate codes of conduct, stating that, “many fail to meet human rights standards, or lack implementation measures and independent audits.” It suggests that the use of human rights indicators be extended to include the role of corporations.

Codes of conduct for human rights often result from pressure on companies to divest from countries with widespread and systematic human rights violations. Consumer boycotts and labeling initiatives such as “Rugmark” provide a means for persons concerned with labor conditions and human rights to use their purchasing power to influence corporate policy. Effective mobilization of international consumer pressure can substitute for regulation. A writer in the *Economist* has observed that, “a multinational’s failure to look like a good global citizen is increasingly expensive in a world where consumers and pressure groups can be quickly mobilised behind a cause.” Such marketplace regulation has been criticized as lacking in the accountability and transparency that normally accompany the formation of laws.

The final approach concerned with enhancing human rights in a globalized world is one that has broad implications for global governance generally. It seeks to enhance non-state participation in international organizations and other fora concerned with international regulation. While international organizations other than the ILO have limited participation for non-governmental entities, efforts are being made to develop more collaborative efforts between state and non-state actors within the framework of international organizations.

The U.N. Millennium Declaration resolves to give greater opportunities to the private sector, NGOs, and civil society in general “to contribute to the realization of the Organization’s goals and programs.” The U.N. Global Compact Initiative aims to develop policy networks of international institutions, civil society, private sector organizations, and national governments to further human rights. The Initiative has taken up such issues as trade in diamonds in zones of conflict, corporate social responsibility generally, the inclusion of corporate behavior in the studies conducted by U.N. special rappor teurs on various human rights issues, and the impact of national litigation on corporate liability for human rights abuses in countries where the companies have operations. It is also concerned with the work of international financial institutions like the World Bank and regional organizations, such as the OECD.

U.N. special rapporteurs have held discussions with private actors in exercising their mandates. The special rapporteurs on Sudan and on Afghanistan held dialogues with oil companies conducting activities in these countries; the special rapporteur on toxic waste met with a pharmaceutical company. The special rapporteur on the sale of children has worked with the International Chamber of Commerce requesting information about company initiatives benefitting children that could be proposed for action in various parts of the world.

Multinational companies also have been important in conflict resolution, especially in mobilizing information and communications technology. This was the case with the U.N. High Commissioner for Refugees in, for example, Kosovo. Successful partnership will require companies to shun corrupt leaders and work to build viable states that respect human rights. The joint U.N.-World Bank effort in East Timor demonstrates a broad engagement in rebuilding, including the development of judicial institutions and processes. Given the insecurity in many conflict and post-conflict areas, the cooperation of the U.N. and the World Bank with private enterprise will be necessary to ensure that the risks are properly shared, perhaps through more favorable terms for political-risk insurance. Humanitarian and human rights NGOs also must be part of the coalition, with the aim of overcoming the mutual distrust with which the business sector and NGOs view each other. To fully work, such a coalition may require restructuring international institutions to allow more effective participation by non-state actors.

Several multinational agreements have been concluded between international industry associations and workers’ organizations. These include the collective agreement between the International Transport Workers Federation and the International Maritime Employers’ Committee, an agreement that covers wages, minimum standards, and other terms and conditions of work, including maternity protection. In January, 2001 the two partners agreed upon the future development of labor standards in the international shipping industry to permit such standards to become the third pillar of the shipping industry, alongside maritime environmental and safety standards. The Spanish-based telecommunications company Telefonica and the Union Network International (UNI) similarly signed an agreement that covers some 120,000 workers represented by eighteen labor unions affiliated to UNI. Both sides agreed to respect ILO core labor standards covering freedom of association and the right to collective bargaining, non-discrimination, and freedom from forced labor and child labor. In all, the agreement referred to some fifteen ILO conventions and recommendations.

The question of whether or not non-economic, e.g., human rights values, are or should be incorporated in the trade regime remains debated. Richard Shell has proposed a “stakeholder model” of international government in which “private commercial parties, indigent citizens in developing countries with weak governments, environmentalists, labor interests, . . . consumer groups,” and others affected by trade would have a role in economic policy-making and dispute settlement in order to integrate non-economic values with economic ones. Human rights interest groups and other NGOs having consultative status have been prominent in various U.N. human rights meetings and in other international fora, but have had far less success in participating in the WTO. In general, more transparency and participation are needed.

***The Historical Origins of Human Rights***

Human rights are a product of a philosophical debate that has raged for over two thousand years within the European societies and their colonial descendants. This argument has focused on a search for moral standards of political organization and behaviour that is independent of the contemporary society. In other words, many people have been unsatisfied with the notion that what is right or good is simply what a particular society or ruling elite feels is right or good at any given time. This unease has led to a quest for enduring moral imperatives that bind societies and their rulers over time and from place to place. Fierce debates raged among political philosophers as these issue were argued through. While a path was paved by successive thinkers that lead to contemporary human rights, a second lane was laid down at the same time by those who resisted this direction. The emergence of human rights from the natural rights tradition did not come without opposition, as some argued that rights could only from the law of a particular society and could not come from any natural or inherent source. The essence of this debate continues today from seeds sown by previous generations of philosophers.

The earliest direct precursor to human rights might be found in the notions of `natural right' developed by classical Greek philosophers, such as Aristotle, but this concept was more fully developed by Thomas Aquinas in his *Summa Theologica*. For several centuries Aquinas' conception held sway: there were goods or behaviours that were naturally right (or wrong) because God ordained it so. What was naturally right could be ascertained by humans by `right reason' - thinking properly. Hugo Grotius further expanded on this notion in *De jure belli et paci*, where he propounded the immutability of what is naturally right and wrong:   
  Now the Law of Nature is so unalterable, that it cannot be changed even by God himself. For although the power of God is infinite, yet there are some things, to which it does not extend. ...Thus two and two must make four, nor is it possible otherwise; nor, again, can what is really evil not be evil.

The moral authority of natural right was assured because it had divine authorship. In effect, God decided what limits should be placed on the human political activity. But the long-term difficulty for this train of political thought lay precisely in its religious foundations.

As the reformation caught on and ecclesiastical authority was shaken and challenged by rationalism, political philosophers argued for new bases of natural right. Thomas Hobbes posed the first major assault in 1651 on the divine basis of natural right by describing a State of Nature in which God did not seem to play any role. Perhaps more importantly, however, Hobbes also made a crucial leap from `natural right' to `a natural right'. In other words, there was no longer just a list of behaviour that was naturally right or wrong; Hobbes added that there could be some claim or entitlement which was derived from nature. In Hobbes' view, this natural right was one of self-preservation.

Further reinforcement of natural rights came with Immanuel Kant's writings later in the 17th century that reacted to Hobbes' work. In his view, the congregation of humans into a state-structured society resulted from a rational need for protection from each other's violence that would be found in a state of nature. However, the fundamental requirements of morality required that each treat another according to universal principles. Kant's political doctrine was derived from his moral philosophy, and as such he argued that a state had to be organized through the imposition of, and obedience to, laws that applied universally; nevertheless, these laws should respect the equality, freedom, and autonomy of the citizens. In this way Kant, prescribed that basic rights were necessary for civil society:    
A true system of politics cannot therefore take a single step without first paying tribute to morality. ...The rights of man must be held sacred, however great a sacrifice the ruling power must make.

However, the divine basis of natural right was still pursued for more than a century after Hobbes published his *Leviathan*. John Locke wrote a strong defence of natural rights in the late 17th century with the publication of his *Two Treatises on Government*, but his arguments were filled with references to what God had ordained or given to mankind. Locke had a lasting influence on political discourse that was reflected in both the American Declaration of Independence and France's Declaration of the Rights of Man and the Citizen, passed by the Republican Assembly after the revolution in 1789. The French declaration proclaimed 17 rights as "the natural, inalienable and sacred rights of man".

The French Declaration of Rights immediately galvanized political writers in England and provoked two scathing attacks on its notion of natural rights. Jeremy Bentham's clause-by-clause critique of the Declaration, entitled *Anarchical Fallacies*, argued vehemently that there can be no natural rights, since rights are created by the law of a society:

*Right*, the substantive *right*, is the child of law: from *real* laws come *real* rights; but from laws of nature, fancied and invented by poets, rhetoriticians, and dealers in moral and intellectual poisons come *imaginary* rights, a bastard brood of monsters, `gorgons and chimeras dire'. [(3)](http://www.sfu.ca/%7Eaheard/intro.html#N_3_)

*Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, - nonsense upon stilts.

Edmund Burke also wrote a stinging attack on the French Declaration's assertion of natural rights, in which he argued that rights were those benefits won within each society.The rights held by the English and French were different, since they were the product of different political struggles through history.

Soon after the attacks on the French Declaration, Thomas Paine wrote a defence of the conception of natural rights and their connection to the rights of a particular society. In *The Rights of Man*, published in two parts in 1791 and 1792, Paine made a distinction between *natural* rights and *civil* rights, but he continued to see a necessary connection:

Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of being a member of society. Every civil right has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.

This passage reflects another, earlier inspiration for human rights from the social contract views of writers such as Jean-Jacques Rousseau, who argued that people agree to live in common if society protects them. Indeed, the purpose of the state is to protect those rights that individuals cannot defend on their own. Rousseau had set the ground for Paine decades earlier with his *Social Contract*, in which he not only lambasted attempts to tie religion to the foundations of political order but disentangled the rights of a society from natural rights. In Rousseau's view, the rights in a civil society are hallowed: "But the social order is a scared right which serves as a basis for other rights. And as it is not a natural right, it must be one founded on covenants." Rousseau then eleaborated a number of rights of citizens and limits on the sovereign's power.

The debate in the late eighteenth century has left telling traces. Controversy continues to swirl over the question whether rights are creations of particular societies or independent of them.

Modern theorists have developed a notion of natural rights that does not draw its source or inspiration from a divine ordering. The ground work for this secular natural rights trend was laid by Paine and even Rousseau. In its place has arisen a variety of theories that are humanist and rationalist; the `natural' element is determined from the prerequisites of human society which are said to be rationally ascertainable. Thus there are constant criteria which can be identified for peaceful governance and the development of human society. But problems can develop for this school of thought when notions of a social contract are said to underlie the society from which rights are deduced.

Contemporary notions of human rights draw very deeply from this natural rights tradition. In a further extension of the natural rights tradition, human rights are now often viewed as arising essentially from the nature of humankind itself. The idea that all humans possess human rights simply by existing and that these rights cannot be taken away from them are direct descendants of natural rights.

However, a persistent opposition to this view builds on the criticisms of Burke and Bentham, and even from the contractarian views of Rousseau's image of civil society. In this perspective rights do not exist independently of human endeavour; they can only be created by human action. Rights are viewed as the product a particular society and its legal system.

In this vein, Karl Marx also left a legacy of opposition to rights that hindered socialist thinkers from accommodating rights within their theories of society. Marx denounced rights as a fabrication of bourgeois society, in which the individual was divorced from his or her society; rights were needed in capitalist states in order to provide protection from the state. In the marxist view of society, an individual is essentially a product of society and, ideally, should not be seen in an antagonistic relationship where rights are needed. However, many socialists have come to accept certain conceptions of rights in the late twentieth century.

Thus, the history of political philosophy has been one of several centuries of debate. The child of natural rights philosophers, human rights, has come to hold a powerful place in contemporary political consciousness. However, neither preponderant belief in, nor even a consensus of support for human rights do not answer the concerns raised by the earlier thinkers - are rights truly the product of a particular vision and laws of a society? Or, are human rights so inherent in humanness that their origins and foundations are incontestable?

A further difficulty, with profound implications, that human rights theories have to overcome is their emergence from these Western political traditions. Not only are they a product of European natural rights, but the particular rights that are viewed as `natural' have been profoundly shaped by the liberalism that emerged in the 19th and 20th centuries. With human rights, the rhetorical framework of the natural rights tradition has come to serve as a vehicle for the values of Western liberalism.

An easy and powerful criticism is that human rights cannot be universal. In their basic concept they are a Western creation, based on the European tradition that individuals are separable from their society. But one may question whether these rights can apply to collectivist or communitarian societies that view the individual as an indivisible element of the whole society. Westerners, and many others, have come to place a high value on each individual human, but this is not a value judgment that is universal. There is substantive disagreement on the extent of, or even the need for, any protection of individuals against their society.

In addition to this problem with the concept itself, there are strong objections to the

manner in which human rights have been conceptualized. Many lists of human rights read like specifications for liberal democracy. A variety of traditional societies can be found in the world that operate harmoniously, but are not based on equality let alone universal suffrage.

A question that will recur in later discussions is whether the `human rights' advocated today are really *civil* rights that pertain to a particular - liberal - conception of society. To a large extent, the resolution of this issue depends upon the ultimate goal of human rights. If human rights are really surrogate liberalism, then it will be next to impossible to argue their inherent authority over competing political values. In order for human rights to enjoy universal legitimacy they must have a basis that survives charges of ideological imperialism. Human rights must have a universally acceptable basis in order for there to be any substantial measure of compliance.   
***The Motivation for Human Rights***   
Some understanding about the nature of human rights can be gleaned from the various reasons that can be advanced for holding them. A prime concern is to offer protection from tyrannical and authoritarian calculations. Capricious or repressive measures of an autocratic government may be constrained with the recognition of supreme moral limits on any government's freedom of action. But even among governments that are genuinely limited by moral considerations, there may still be a need to shield the populace from utilitarian decision-making. The greater good of the whole society may lead to sacrifice or exploitation of minority interests. Or, the provision of important benefits within the society may be limited by calculations that public resources should be spent on other enterprises.

The attraction of human rights is that they are often thought to exist beyond the determination of specific societies. Thus, they set a universal standard that can be used to judge any society. Human rights provide an acceptable bench mark with which individuals or governments from one part of the world may criticize the norms followed by other governments or cultures. With an acceptance of human rights, Moslems, Hindus, Christians, capitalists, socialists, democracies, or tribal oligarchies may all legitimately censure each other. This criticism across religious, political, and economic divides gains its legitimacy because human rights are said to enshrine universal moral standards. Without fully universal human rights, one is left simply trying to assert that one's own way of thinking is better than somebody else's.

The prime rhetorical benefit of human rights is that they are viewed as being so basic and so fundamental to human existence that they should trump any other consideration. Just as Dworkin has argued that any conception of `rights' trumps other claims within a society, human rights may be of a higher order that supersedes even other rights claims within a society.

Other motivations for human rights may stem from a fear of the consequences of denying their existence. Because of the currency given human rights in contemporary political debate, there is a danger that such a denial will provide support for brutal regimes who defend their repression on the grounds that international human rights norms are simply a fanciful creation that has no universal authority. The United Nations conference on human rights held in Vienna in 1993 saw some of the world's most repressive governments making precisely this argument, and few people would wish to provide further justification for this position. In addition, a great deal of political advocacy relies on human rights rhetoric to provide a legitimating moral force. Without the appeal to human rights, democratic champions would have to argue the desirability of values such as equality and freedom of speech across the often incomparable circumstances of the world's societies, rather than asserting that such benefits just inherently flow from human existence. [(11)](http://www.sfu.ca/%7Eaheard/intro.html#N_11_)   
***Challenges to the Universality and Inalienability of Human Rights***   
Unfortunately, the very motivations and benefits of human rights pose direct challenges to their existence. Human rights are *universal* since they are said to belong to all humans in every society. Human rights are also supposed to be *inalienable*; because they flow from and protect human existence, they cannot be taken away without endangering the value of that existence. However, these universal and inalienable qualities of human rights are disputable in both their conception and operation.

To some extent, the universality of human rights depends upon their genesis. Moral standards, such as human rights, can come into being in two manners. They may simply be invented by people, or they may only need to be revealed to, or discovered by, humans. If human rights are simply an invention, then it is rather difficult to argue that every society and government should be bound by something they disagree with. If human rights have some existence independent of human creation, however, then it is easier to assert their universality. But such independent moral standards may arise in only two ways: if they are created by God, or if they are inherent in the nature of humankind or human society. Unfortunately, both these routes pose substantive pitfalls. No divine origin for universal human rights would be acceptable, nor is it often advanced, since there is no one God that is recognized universally; just because Christians or Moslems claim that their divinity has ordained and proscribed certain treatment of humans does not provide the legitimacy needed for that moral code to bind devotees of another religion. The alternative origin that could justify universality would be the acceptance of human rights as natural rights that anyone could deduce from the nature of humankind or human society. However, an atheistic critique of divine moral standards is just as telling when applied to rights derived from human nature. The God or human nature that is said to be the source of human rights may be nothing more than an invention of the human mind, an invention that may vary according to whoever is reflecting on the issue. A less astringent argument is still just as damning. Even if one accepts that there is a God or a core human nature, there is no definitive way to sort out differing visions that people have of God or human nature. The universal authority of any particular view is initially endorsed only by the adherents of that view. Nevertheless it is possible for human rights to have their genesis in religion or the prerequisites of human society. Even if human rights start within a specific religious or societal tradition, they could acquire universality as other people come to agree. It is also possible for human rights to become globally recognized because several different approaches may reach the same conclusion. For instance, atheistic natural rights theorists, Christians, and Muslims, may all eventually agree for quite different reasons on a number of ways in which people should be treated; these then can form the basis of human rights standards. However, the different paths to that agreement only lead to an agreement on the benefits, not necessarily on their origin, justification, or application. The differences become important when one moves from a focus on the benefits identified as "human rights" to their practical operation; there is, as will be discussed below, a great difference between a duty-based and claim-based fulfillment of the benefits.

Another set of problems arise if human rights are creations, pure and simple, of the human intellect. Human rights standards could be created in a variety of ways. In one method, a gradual growth of consensus builds around norms of behaviour that eventually acquire an obligatory character. It may be difficult to trace the epistemological origins of this consensus, but the end result is a broad base of agreement that human beings should be treated in certain ways. In another method, there may be a conscious attempt to create binding rules of behaviour in a more contractarian manner. A certain group of individuals or state governments may lead the development of international agreements on human rights. And, as more states join in these agreements, the moral and legal force of the international accords become stronger and stronger. Essentially this is the course that has been followed in the development of the human rights documents created by the United Nations and other regional international organizations.

In both these approaches to the creation of human rights, the motivation may be principled or consequentialist. If principled, human rights are necessary because they reflect certain moral standards of how humans should be treated. If consequentialist, human rights are needed because they standards may prevent the awful repercussions of having no limits on the manner in which governments or groups may treat other human beings.

Beyond the genesis of human rights, wherever they come from, lies a fundamental challenge to their universality, regardless of their origin. With any inception of human rights, one is faced with having to acquire acceptance of their authority. There is a problem in that not everyone will share the same motivation or inspiration for human rights. Not everyone will agree that everything asserted as a human right is indeed one. At a very basic level, the proclamation and acceptance of human rights norms inherently involves majoritarian morality. Human rights are agreed to exist because a majority says they do. Specific goods and benefits are treated as human rights because a majority says they do. But, what of the minorities who object to the concept of universal human rights, or disagree with the particular entitlements to be included in lists of human rights? Why should they be bound by what others believe? What happens when a minority sincerely believe that some benefit being deliberately denied them by the majority is a matter that they view as a human right? In many specific human rights contexts, a problem of moral majoritarianism assumes central importance.

With either an invented or natural genesis, human rights are meant to protect some aspect of humanity. Human rights may be those entitlements that we have by virtue of being human, but there are real difficulties in determining which attributes of human life require protection under human rights standards.

Basic human traits are determined by both physical attributes and the activities undertaken by a human. The most obvious physical qualities encompass gender, race, size, shape, and health - including disabilities. Among human activities, one can distinguish between those necessary for sustaining life and those which fill that life. The requirements for sustaining life include nourishment, shelter, clothing, and sleep. Proper health care is needed for human life to be sustained in the long term. And the human species can only survive with procreation. But most humans do not merely exist, they fill their lives with myriad activities. Perhaps the most important activity is that which is usually referred to in order to distinguish humans from all other animals: humans have a creative imagination that provides higher forms of thought that lead to intellectual inquiry and spirituality. Humans also communicate constantly the results of their thinking. Physical movement from one place to another is another continuous activity of all but the most disabled humans. Human beings are in essence very social animals and much of our activities take place through associating with other humans. In some instances this association is the special intimacy of kinship or close friendships. In others, humans act gregariously with acquaintances and many perfect strangers.

The consequences of this gregariousness furnish the underlying problems of establishing universality in the human attributes described above. Most humans live within readily identifiable social units, such as family, tribal, or national groups, that fundamentally shape the manner in which an individual's most basic characteristics are manifested. These social groupings determine what languages one learns to speak, the style of dress, acceptable foods, religion, form of communication and etiquette, sense of physical beauty and ugliness, the kind of shelter, and the notion of division of roles within one's social groupings. These are not simply superficial differences. While some individuals willingly adopt new life styles, many believe that their lives can only be satisfying by maintaining their traditional ways. For some, indeed, styles of dress, food, and behaviour are inextricably linked to deep religious beliefs. One group's delicacies or even staples may be quite unacceptable to others. There may be just disdain or revulsion, such as the reaction of many people to eating raw fish, or there may be a strong, religious offence taken to certain foods, such as offering pork to Moslems or beef to Hindus.

Thus, many profound differences emerge among human beings that are the product of where they were born and with whom they grew up. While one could identify various qualities of human life that are universal, there is tremendous variation in the manner in which those qualities are realized.

These acquired societal values pose difficulties when they define, or even conflict with, the basic attributes of human life listed earlier. Individual societies develop particular conceptions of what constitutes a dignified life, the essential needs of humans, as well as the relationship between individuals and their community. Particularly complex issues arise when there is a clash between conflicting spiritual and temporal values within or between societies. These difficulties come to the forefront when one tries to ascertain whether global standards can be set by human rights on the treatment that must be given to all human beings.   
***The Theoretical Foundation of Human Rights***   
Several competing bases have been asserted for universal human rights. It is essential to understand these various foundations, since they can result in quite different understandings of the specific benefits protected by human rights. As well, each approach to human rights has different strengths and vulnerabilities in facing the challenges posed by relativism and utilitarianism.

Many have argued that human rights exist in order to protect the basic dignity of human life. Indeed, the United Nations Declaration on Human Rights embodies this goal by declaring that human rights flow from "the inherent dignity of the human person". Strong arguments have been made, especially by western liberals, that human rights must be directed to protecting and promoting human dignity. As Jack Donnelly has written, "We have human rights not to the requisites for health but to those things `needed' for a life of dignity, for a life *worthy* of a human being, a life that cannot be enjoyed without these rights" (original emphasis). This view is perhaps the most pervasively held, especially among human rights activists; the rhetoric of human-rights disputes most frequently invokes this notion of striving for the dignity that makes human life worth living. The idea of promoting human dignity has considerable appeal, since human life is given a distinctive weight over other animals in most societies precisely because we are capable of cultivating the quality of our lives.

Unfortunately, the promotion of dignity may well provide an unstable foundation for the construction of universal moral standards. The inherent weakness of this approach lies in trying to identify the nature of this dignity. Donnelly unwittingly reveals this shortcoming in expanding upon the deliberate human action that creates human rights. "Human rights represent a social choice of a particular moral vision of human potentiality, which rests on a particular substantive account of the minimum requirements of a life of dignity".

Dignity is a very elastic concept and the substance given to it is very much a moral *choice*, and a particular conception of dignity becomes paramount. But, who makes this choice and why should one conception prevail over other views of dignity? Even general rejection of outlandish assertions of dignity may not indicate agreement on a core substance. There might be widespread derision of my assertion that I can only lead a truly dignified life if I am surrounded by 100 doting love-slaves. But a disapproval of the lack of equality in my vision of dignity does not necessarily demonstrate that equality is a universal component of dignity. While one of the most basic liberal beliefs about human dignity is that all humans are equal, social division and hierarchy play important roles in aspects of Hindu, Confucian, Muslim, and Roman Catholic views of human life. Indeed, `dignity' is often achieved in these views by striving to fulfill one's particular vocation within an ordered set of roles. But, if human rights are meant to be universal standards, the inherent dignity that is supposed to be protected should be a common vision. Without sufficient commonality, dignity cannot suffice as the ultimate goal of human rights.

An alternative basis for human rights draws from the requisites for human well-being. One advocate of this approach, Allan Gewirth, would agree with Donnelly that human rights are drawn in essence from humankind's moral nature, but Gewirth does not follow Donnelly's conclusion that human rights are a moral vision of human dignity. Rather, Gewirth argues that "agency or action is the common subject of all morality and practice". Human rights are not just a product of morality but protect the basic freedom and well-being necessary for human agency. Gewirth distinguished between three types of rights that address different levels of well-being. Basic rights safeguard one's subsistence or basic well-being. Nonsubtractive rights maintain the capacity for fulfilling purposive agency, while additive rights provide the requisites for developing one's capabilities - such as education. Gewirth differentiates between these rights because he accepts that humans vary tremendously in their capacity for purposive agency. Through what he calls the principle of proportionality, humans are entitled to those rights that are proportionate to their capacity for agency. Thus, individuals who are comatose only have basic rights to subsistence, since they are incapable of any purposive action.

Gewirth's approach, however, has been strongly criticized by those who argue that human rights cannot be universal if they are derived from one's capacity for agency. Indeed Douglas Husak has used Gewirth's theories to argue that there can be no rights that extend to all human beings. [(15)](http://www.sfu.ca/%7Eaheard/intro.html#N_15_) Husak makes the crucial distinction between humans and persons, and he points out that some humans may be considered non-persons because they are incapable of ever performing any purposive agency. Even if one accepts Gewirth's rebuttal that all humans are entitled to at least basic rights because they are either prospective or former purposive agents, there still remains in his theory the notion some will find unsettling: not all humans possess all human rights to the same degree (or at all).

Another basis for human rights has been put forward by John O'Manique that is based on evolution and human development. O'Manique was motivated by the desire to find a truly universal basis for human rights theories that are not as susceptible, as is dignity, to controversial interpretations or denial by others. Thus, human rights should be founded upon something inherent to humans rather than some moral vision that is created by human action. O'Manique argues that a satisfactory basis may lie in the following set of propositions:   
P1 I ought to survive

P2 X is necessary for my survival

P3 Therefore, I ought to do/have X.

The real hurdle in this set of propositions lies in finding agreement in P1. The requisites for survival are fairly easily ascertained by scientific inquiry. Thus if there is concordance on the notion *I ought to survive*, then the logical construction of this model produces the conclusion that one ought to have X if it is necessary to survival. O'Manique is on fairly firm ground when he asserts that, "The belief that survival is good is virtually universal". He does concede that there are religious beliefs that hold that a person's life can be sacrificed, but usually this sacrifice is done to further the survival of others. So O'Manique determines, "The exceptions do not `prove' the rule, but they do point to the strong probability that the belief that survival is good is found, explicitly or implicitly, in almost all human beings". One might add that some value in human survival may be found in any society, since no culture comes to mind that has tolerated unrestricted, recreational homicide. O'Manique also draws from theories of evolution to establish that the goal of humans has to be the survival of the species. So, there would be universal agreement with the statement, "Humans ought to survive". But survival of the group, community, or human species is very different from the survival of each and every particular individual.

O'Manique develops his theory much beyond the notion of survival. Indeed, he explicitly dismisses the idea that the source of human rights lies in the needs for human subsistence. O'Manique wishes to propel human rights into a further plane, by basing human survival upon the full development of human potential. The initial proposition P1 in the model above really becomes "I ought to develop". As O'Manique says, "Human aspirations are not to the maintenance of existence but to the fulfilment of life... If we believe that one ought to survive, it is because we believe that one ought to develop". In O'Manique's vision, human rights would include rights to things needed for subsistence but also go on to cover all aspects of intellectual and emotional development. He tries to limit in some way the range by insisting that the needs for development can be ascertained through research. However, he also reveals the broad sweep of matters that could be included when he addresses this issue: "The existence of such needs for human development - the need for association with other human beings, for self expression, for some control over one's destiny, and even the need for love and for beauty - can be observed and even empirically confirmed within the social sciences and psychology". O'Manique may well lose some support with this incredibly vast range of issues that he would include within the human rights rubric.

A fundamental difficulty with using the fulfillment of human development as a basis for human rights is that it can have a meaning that is relative to each culture and individual. This relativism even creeps into O'Manique's discussion when he concludes, "A community and its members will develop to the extent that the members of the community support the development needs of others in the community, *in ways that are appropriate to that community*" (emphasis added). [(22)](http://www.sfu.ca/%7Eaheard/intro.html#N_22_)Just what is needed for fulfillment in expression, love, or autonomy will be given profoundly different interpretations in Bedouin, German, or Japanese societies. O'Manique tries to address this aspect of his theory by conceding that the specific entitlements necessary to human development may vary over space and time, but the general grounds for those claims will remain constant.

The final alternative basis for human rights would provide the needs for human existence. Human rights may be limited to providing all humans with the needs for their physical subsistence. But, this subsistence would involve a certain degree of minimal comfort beyond merely keeping one's organs working, because human subsistence also consists of being able to function. Advocates of the other approaches to human rights have dismissed needs to subsistence as too narrow a foundation, but this criticism may not account for the ramifications that flow from the range of human needs. Human rights would guarantee the provision of the food, clothing, and shelter without which anyone would perish. In addition, basic health care assures human survival; my grandmother died in 1924 from appendicitis, while I am alive today because an operation was available for my own attack of appendicitis in 1968. Since most households are not simply provided with the requisites to life but buy them with the wages of their labour, one can easily extend the range of human rights into other benefits relating to the work force. This extension is particularly true if the satisfaction of needs is accomplished not by directly supplying the specific goods needed, but in providing the capacity for individuals to provide for themselves. In a broad socialist view, work should be guaranteed to all that are capable. In a more restricted view, the education necessary to obtaining the work needed to sustain oneself is a human right. Thus, human rights can cover a large, and very expensive, array of social-welfare programs. Quite a fundamental reformation of most political systems would occur if governments seriously addressed welfare programs as essential human rights.

There are some distinct advantages in basing human rights on the needs of subsistence. The prime benefit lies in a universality possible with this foundation that eludes the other approaches to human rights that have been outlined above. One might possibly find a similar consensus on the propositions "Humans should survive", "Humans should develop", "Humans should lead a life of dignity (or well being)". However, there will be much less disagreement over what is meant by, or needed for, `survival' than one will find for `dignity', `well-being', or `development'. Human rights based on subsistence can be much more readily applied as global standards.

Nevertheless, there is still some concern with variations that will result from different societies' views of the specific ways in which needs should be satisfied. As noted earlier, different cultures have quite diverse notions of what food, dress, or shelter are acceptable. There are even profound differences in approaches to health care, with some societies rejecting `western' medicine in favour of spiritually-based theories of ailments and therapies.

There is also a concern that it is just not practical to translate the proposition that humans in general should survive into concrete action to ensure that each and every human being survives. There is a point at which no society can afford to devote the resources needed to keep every individual alive as long as possible.

These four approaches to human rights reflect quite different inspirations and ultimate goals, but there is common ground among them. Theories of human rights based on dignity, well-being, or development all are motivated by a desire to protect and cultivate some quality of life; because one is alive, one should lead a life filled with dignity, well-being, or continuing development. A view of human rights based on subsistence is ultimately concerned with simply preserving life itself. But this distinction should not ignore an overlap, as a common ground among all theories of human rights is the assumption that human rights include subsistence rights. Approaches based on dignity, well-being, and development add protections for these qualities of life onto the right to existence, although subsistence rights often seem to be forgotten.

However, the recognition of these common aspects of the four theories of human rights should not lead one to conclude that their differences are simply ones of emphasis. The distinctive focus of each theory results in significant variations in their lists of specific human rights or the kind of activities humans may indulge in. Human rights based on subsistence would not include the range of democratic rights that most liberals argue are an essential element of human rights based on dignity. Some liberals would argue that a life without dignity may not be a life worth living; so disenfranchised, repressed people - such as Iraqi Kurds - may be justified in an armed rebellion involving deaths but which ultimately brought liberty to the whole population. However, a human rights approach based on subsistence may require on a non-violent strategy for political change since the preservation of life is the ultimate goal.

In the end, the choice of foundation for human rights may depend upon what one wishes to protect. One may be alarmed that democratic rights or equality may not be included in a human rights approach based on subsistence, in which case a theory based on liberal dignity would be adopted. But consequentialist motivations will not serve as a firm basis upon which to promote human rights among those who do not share one's concerns.

These discussions illustrate that the foundation for human rights may be neither self-evident nor universally accepted. One chooses, explicitly or implicitly a particular justification or basis for human rights, and that choice will have important consequences upon the range of benefits that fall within human rights. Choice pervades human rights from their conception to their delivery, and those choices may well undermine the very foundation of human rights' moral authority.   
***Who Holds Human Rights?***   
Even if there were agreement upon a foundation for human rights, there remains another fundamental question: who can possess human rights? One may simply assert that all humans hold all human rights; after all, human rights are said to be those benefits to which we are entitled simply by being human. But what is meant by being `human' is vague since the life cycle of homo sapiens ranges from conception to death and decay. There is profound controversy over how and when a human acquires and then loses human rights between those two periods. Even before conception, sperm and eggs exist that contain human genetic material. One may decide easily that these are human cells but not `human beings', because they contain incomplete sets of human genes. After conception, however, controversies arise about the status of the developing foetus. From a mass of undifferentiated cells, the embryo quickly grows into a recognizably human entity. Many distinguish foetuses from babies that have emerged from their mothers and say that separate human life only begins with `birth'. This can be an arbitrary distinction since a very premature baby is at much the same stage of development whether inside or outside the womb; the differences centre on how a baby receives nutrition and oxygen. One can specify an arbitrary point for the acquisition of rights, such as conception, neural development, viability, or emergence from the womb. But this approach is bound to erupt in controversy, because not everyone will agree on a given point. Abortion is such a divisive issue precisely because various groups hold different beliefs about when human life starts.

Alternatively, one can argue that there is some special quality of human life that provides a basis for possessing rights; when that quality is acquired, so are rights. This approach is favoured by many, since it allows for the distinction between humans and other animals. Human rights are rights particular to human beings, thus the basis of the claim to rights should be something that differentiates humans from other animals. With a sharing of an enormous proportion of genetic material between humans and primates, the distinction is usually drawn on the basis of some quality of human life not shared by other animals rather than physiological characteristics. Specifically human qualities are usually identified from our capacity for intellectual, moral, or spiritual development.

The difficulty with trying to assign rights on the basis of some quality of human life is that not all human beings may possess such an attribute. Douglas Husak has written a poignant critique of the notion of *human* rights based on his objection that some human beings merely exist. [(24)](http://www.sfu.ca/%7Eaheard/intro.html#N_24_) Some mentally-ill patients lack any basis for purposive agency; they are seemingly unaware of their surroundings, incapable of rationale thought, or unable to distinguish right from wrong. But, his most telling arguments arise from comatose patients, notably those with no known chance for recovery. Husak distinguishes between humans and persons, and he points out that some humans, such as the comatose, are non-persons. Persons are human beings with capacities beyond mere existence that produce a quality of life. Non-persons simply lack the qualities of life that one wishes either to protect or use as the key to acquiring rights. The distinction between humans and persons is often used to justify aborting foetuses, because the human foetus is not considered by many to be a person. In the end, Husak argues that the phenomena called human rights are really rights of persons: "There are no *human* rights".

This debate over the qualification of a human creature to possess human rights is fundamental to a number of topics. The rights of children and the mentally ill may depend greatly upon what foundation one adopts for the possession of rights. Similarly, the existence of rights to life in abortion, infanticide, and euthanasia are directly related to what status one accords to undeveloped foetuses, mutant newborns, or terminally-comatose adults.

If human rights are justified on some characteristics of the human species, can those rights be held by individual humans who lack these species traits? Some answer this question by distinguishing between possessing rights and exercising them. Thus a healthy child may possess the full range of human rights, but be unable to exercise them, particularly rights of an intellectual nature. Others may find this distinction too convenient an answer and contest the very existence of rights that cannot by exercised by their holders.

Another controversy over the possession of human rights relates to whether they are benefits intended for individual humans, or whether they can also be collective benefits for groups of humans. Some, such as Donnelly, argue that human rights are properly held by only individuals. [(26)](http://www.sfu.ca/%7Eaheard/intro.html#N_26_) Others contend that human lives are lived within group settings and the full enjoyment of human life can only be realized when those groups are able to flourish. Whether human rights can include collective rights is a particularly crucial issue in analyzing whether the human rights regime protects a group's culture and language, or a group's right to self-determination.   
***What are the `Rights' in Human Rights?***   
The nature of human rights is complicated even beyond the controversy over their source or who may hold them. A critical debate continues over what is meant by human *rights*. The universality and inalienability of a human right depends to a large extent on the character of the `right' involved.

It is necessary first of all to distinguish between the adjectival use of the word `right', which means good or proper, from the substantive `a right', which is a special, possessable benefit. Not everything which is right (good) is a right, although many people mistakenly inflate the concept of a right by asserting benefits they believe are `right' to be `rights'. This confusion has become evident in the assertion of what are known as `second-generation human rights' - such as the right to economic development and prosperity - and `third generation human rights' - which cover the rights to world peace and a clean environment. While some human rights advocates accept the inclusion of these benefits as rights, others argue that prosperity and peace are `right' but not substantive rights.

Even with the substantive term `a right', however, there are several different meanings. In 1919, Wesley Hohfeld laid down a useful set of four distinctive connotations that can be given to the phrase "A has a right to X". Perhaps the most common meaning given to this phrase conveys the notion of a *claim-right*. It is a claim that A has against a correlative duty of another, B; A has a right to X, and B has a duty to let A have or do X. The duty B has may be positive, in the sense that action is required on B's part to allow A to enjoy X; if A has a right to health care, B has a duty to provide it. There may also be a negative duty, in the sense of B having to refrain from interfering in A's possession of benefit X; if A has a right to privacy, B must refrain from prying in A's affairs. It is important to note that the duty may be owed by a particular person or official, or the duty may generally lie in the whole community. The essential characteristic of a claim-right is the inherent connection between A's claim to a benefit and B's duty - A can make a claim that B must perform the duty.

However, there are other connotations of the phrase `A has a right to X' that do not involve a corresponding duty on another's part. The term may mean that A has a *liberty* with respect to X. In this view, A has no obligation not to do or have X, which may be different from the status of other people. Also, A can make no claim against another, because no-one else as a duty with respect to A's enjoyment of X. A liberty may be enjoyed by all, such as the right to wear what one pleases while doing household chores. A subset of liberty is *privilege*, because A may have no duty not to do X but others do. For instance, in some English colleges the dons have a right to walk across the grass in the quadrangle, although others must use the pathways instead. In any liberty there is no duty on anyone to provide the X involved; i.e., no-one has a duty to provide the lawns simply for the dons to walk upon.

To say that `A has a right to X' may also indicate that A has a *power* to effect changes in X. Thus an owner of a bicycle has the right to sell it, and a customs officer has the right to confiscate property or detain people at the border.

Hohfeld's fourth interpretation of `A has a right to X' conveys the notion that A has an *immunity* that B is unable to change. Thus, MP's have a right to free speech that protects them from prosecution for speeches given in the House of Commons, and it is a right which cannot be changed by the executive, police, or courts.

There are other uses of `having a right' that should be added to those identified by Hohfeld, because these other uses refer to ideals, needs, or wants that are simply expressed as rights. The confusion between adjectival and substantive right has led to the frequent use of rights to describe ideals. Thus, the rights to prosperity and peace are ideals or goals to strive for that some express as rights. Another confusion arises when people assert a right to a benefit because it fills a need. But, not all needs are rights; I may need a car to drive to work in, but few would agree that I have a right to a car. Finally, many confuse benefits they want with benefits they have a right to; free, post-secondary education and complete bursaries may be desirable, but are not viewed as rights by many.

These uses of rights also involve a confusion between making a claim and having a right. [(28)](http://www.sfu.ca/%7Eaheard/intro.html#N_28_) One does not hold a right simply because one claims so, neither is it necessary to make claims in order to possess rights. It is not the act of claiming that creates rights. Thus, the claim to a right to prosperity or world peace does not establish that those benefits exist as rights. Neither does the fact that someone satisfies another's claim confirm a right's existence; a beggar may claim a right to $5 from a businessman, who may give the money, but that does not establish the beggar's right to it.

It is important also to note that one may benefit from another's duty, without having a right to that benefit. Christians may believe that they have a duty to give money to charity, but that does not mean that charities have a right to Christians' money.

These different notions of `right' are important to bear in mind when discussing human rights. The most common interpretation given to the `right' in human rights is that of claim-rights. There is a defined benefit to which individuals are entitled, and there is a correlative duty on others in relation to that benefit. This tendency may be partly due to the increasing codification of human rights into legal documents. It is far more efficacious if human rights are conceived of as claim-rights, because those who are deprived of their rights may argue that others (usually their government) must be compelled to fulfill a duty to provide the benefit. Since much human rights activism centres on the respect for rights contained in international agreements, it is natural for attention to centre on governments as duty-holders since they are the entities directly bound by the human rights documents.

If human rights are claim-rights with a correlative duty on some body to provide or safeguard the benefit, however, a major problem arises in identifying that duty-holder. Most often it is assumed that if an individual is being denied some human right, the duty falls on their government to rectify the situation.

A serious difficulty emerges if the correlative duty lies only with an individual's government, however, because the abuse of human rights may occur by private individuals or corporations. For example, tremendous injustices result from the caste system in India because of the way people treat others who belong to a lower caste. In this instance, the actual infringement of human rights is largely perpetrated by individuals rather than the government. While the government has accepted a responsibility to try and end the practise, caste is so deeply entrenched in Indian society that it has so far proved impossible to stamp out.

A further complication arises when a government either is incapable of providing a benefit protected by human rights - such as the Ethiopian government's inability to provide food during the worst of the famines - or when a government simply fails to respect human rights. If an individual's government is the central duty-holder, then the rest of the world can shake their heads saying 'tut-tut' without feeling any sense of duty to intervene. Other governments may feel bound to act, but that feeling of obligation may simply come from their own sense of altruism rather than a belief that human rights bind all governments to help if the government most directly responsible fails to fulfill its duties. Another scenario may arise when government leaders believe that a duty to help lies directly with its citizens rather than the government. Former Premier Van der Zalm of British Columbia argued in the 1980s that it was not his government's responsibility to provide resources to food banks that were struggling with soaring numbers of impoverished individuals. His view was that such acts of charity are best left to private individuals. One could develop this notion by asserting that every individual owes a duty to help others in their community, and that the government would be eroding this private duty if it intervened; indeed a government should not support food banks, in order to foster a relief effort by the members of the community. Another difficulty arises in those parts of the world where the state structure has dissolved into anarchy, such as occurred in Somalia and Lebanon; where there are no governments, are there no duty-holders? There is also a strong feminist critique of the idea that governments are the sole duty holders; Gayle Binion argues that non-government actors may be absolved of responsibility or left unimpeded in their ill-treatment of women.

Complex problems arise because there are many possible duty-holders. If human rights set moral standards for the treatment of all humans, those standards should bind anyone who is capable of infringing those rights - be they corporations, governments, or other human beings. Thus, the correlative duties involved in human rights as claim-rights are duties that do not necessarily reside solely with an individual's government. The violation of some human right may be perpetrated by one individual against others, such as an employer who discriminates against a racial group in hiring. Or, a duty to respect human rights may be held by a group within society, such as a religious majority's obligation to tolerate other religious practices. There may be a general duty on the community to act collectively, as with the example of community efforts to run food banks. An individual's own government often has a direct duty, for example, to refrain from arbitrary detention and torture. On some occasions, many will argue that foreign governments have a duty to intervene; for instance, the Front Line States in southern Africa believed they had some duty to help liberate the black majority from apartheid in South Africa. Finally, there may be a duty that lies with all humanity; such an obligation is often expressed in private, international relief movements to alleviate suffering among famine victims. Governments may only be intermediary duty-holders who should try and intervene to safeguard human rights from actions by their citizens, but those citizens bear the direct duty to respect the human rights of others.

With any form of rights, but particularly with claim-rights, there are problems that arise with their definition, exercise, and enforcement. There may be conflicting views even on the existence of a particular right. For example, some islamic governments have denied that there can be freedom of religion because the Koran proclaims that one of the greatest sins for a muslim is to forsake Islam for another religion. Even if there is agreement in principle on the existence of a particular right, there may be conflicts over what activities or goods are specifically protected by that right. In Canada, for instance, judges have been divided over whether the freedom of expression includes communications between prostitutes and their clients. There can also be profound debate when two or more rights conflict in a given situation. A continuing problem is posed for women's rights by several religions that stipulate particular roles for women that are subservient to men; in these instances the right to equality conflicts with the freedom of religion. Another difficulty may arise over whether a benefit is really a claim-right, with correlative duties, or some other type of right or claim without corresponding obligations. For instance, academic freedom may be viewed as either a privilege or a claim-right. If a claim-right is involved, there may still be many questions about who in particular holds a correlative duty, and what type of action is required to satisfy that duty. For example, if there is a right to health care, must it be provided by the government or charities; and, must the health care be provided free of charge?

A central dilemma revolves around how to settle these questions of enforcement. If human rights operate uniquely in a moral plane, then the definition, acceptance, and respect for rights can involve a controversial, tortuous route. In the end, fulfillment of human rights will depend upon a spirit of consensus and the effect of community opprobrium. Disputes that involve profoundly different value systems, however, may go unresolved. With the codification of human rights into legal documents, one may limit some of the range of debate, but only with institutional structures for adjudicating can there be authoritative resolutions. Controversial interpretations of human rights are not eliminated with the creation of agencies to enforce human rights. The record of national courts reveal that judges within the same society can be deeply divided over the definition and enforcement of human rights; for example, almost 31 percent of the Supreme Court of Canada's Charter of Rights decisions between 1983 and 1989 involved dissenting opinions, where one or more judges disagreed completely with their colleagues on the resolution of the rights issues at stake. Within many societies there are patterns of deference to the judiciary that allows their court's majority view to settle authoritatively most disputes over human rights. However, some societies are so divided that deference is not voluntarily given, such as enforced black acquiescence to the white judiciary in South Africa during the apartheid regime, and the discretionary choices made by judges will not be accepted as final resolutions of rights disputes. There is an even deeper problem if international institutions are to adjudicate rights disputes that involve societies with very different cultural norms; losing parties may simply not recognize the adjudicators' authority to impose what are seen as alien values. In these circumstances, codified human rights will end up operating on much the same plane as purely moral standards.