

# Human rights and the social construction of sovereignty

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Abstract. Sovereignty and human rights are generally considered separate, mutually contradictory regimes in international society. This article takes issue with this conventional assumption, and argues that only by treating sovereignty and human rights as two normative elements of a single, inherently contradictory modern discourse about legitimate statehood and rightful state action can we explain key moments in the expansion of the international system during the twentieth century. After developing a constructivist argument about communicative action, norm formation and sovereignty, the article focuses on post-1945 decolonization, showing how ‘first wave’ post-colonial states played a crucial role in constructing the ‘international bill of rights’, how they invoked those rights to justify the norm of self-determination, and how this norm in turn licensed the proliferation of new sovereign states in Asia and elsewhere.

The principle of sovereignty is widely considered the *grundnorm* of international society, and evolving human rights norms are seen as a compensatory international regime, the purpose of which is limit the inhumane consequences of the sovereign order. The principle of sovereignty grants states supreme authority within their territorial borders and denies the existence of any higher authority beyond those borders. Human rights norms, in contrast, place limits on how states can treat their peoples, compromising sovereignty in the name of universal standards of legitimate state conduct. Sovereignty and human rights are thus considered two separate regimes, that stand in a zero-sum relationship—the stronger the principle of sovereignty, the weaker norms of human rights, and *vice versa*. There is a fundamental tension, Hedley Bull argues, between the principles that sustain international order—foremost among which is the mutual recognition of sovereignty—and the demands of human justice articulated in human rights norms. ‘The basic compact of coexistence between states, expressed in the exchange of recognition of sovereign jurisdictions, implies a conspiracy of silence entered into by governments about the rights and duties of their respective citizens.’<sup>1</sup> It is this silence, and the atrocities it masks and permits, that have fuelled calls for the qualifying of sovereignty, for the

\* This article is part of a larger work of historical sociology that examines the role that rights politics has played in the constitution of the modern international system since the sixteenth century. I would like to thank seminar participants at the Australian National University and La Trobe University for their thoughtful comments on early expressions of the article’s central argument, and I am immensely grateful for comments on previous drafts provided by Robyn Eckersley, Amy Gurowitz, Richard Price, Heather Rae, Henry Shue, Peter Katzenstein, Nicholas Wheeler, the anonymous referees for this journal, and the anonymous readers for the Australian Research Council.

<sup>1</sup> Hedley Bull, *The Anarchical Society*, 2nd edn. (London: Macmillan, 1995), p. 80.

building of a 'global consensus that state sovereignty is conditional upon the protection of at least basic human rights ...'<sup>2</sup>

This article takes issue with these views about the institution of sovereignty and the international human rights regime. Treating these as separate, mutually contradictory regimes obscures the justificatory role that human rights principles have performed in the constitution of the modern sovereign order. The organizing principle of sovereignty has never been a self-referential value; it has always been justified with reference to particular conceptions of legitimate statehood and rightful state action. In the twentieth century, sovereignty has been increasingly justified in terms of the state's role as guarantor of certain basic human rights and freedoms, supplanting the politically impotent legitimating principle of divine right. This is more than a conceptual nicety. Without recognizing the justificatory role that human rights have played in the constitution of the modern sovereign order, we cannot explain key moments in the expansion of that order. Emergent human rights norms provided the moral resources for the delegitimation of colonialism and the subsequent proliferation of new sovereign states in the developing world, and they have played a similar role in the growth of international society since the end of the Cold War.<sup>3</sup> While these norms have so far failed to prevent many states from systematically violating the human rights of their inhabitants, by defining the terms of legitimate statehood they have been crucial in defining the contours of international society's postwar expansion.

In what follows, I argue that the principle of sovereignty and human rights norms are best conceived as two normative elements of a single, distinctly modern discourse about legitimate statehood and rightful state action. The protection of basic human rights is integral to the moral purpose of the modern state, to the dominant rationale that licenses the organization of power and authority into territorially defined sovereign units. The tensions that exist between sovereignty and human rights stem not from their separateness, from their status as parallel and antagonistic regimes, the latter instituted to civilize the former, but from the inherently contradictory nature of the modern discourse of legitimate statehood, a discourse that seeks to justify territorial particularism on the grounds of ethical universalism. I demonstrate this discursive connection by showing how appeals to emergent human rights norms delegitimated the institution of colonialism, provided the moral foundations for the norm of self-determination, and thus licensed the proliferation of post-colonial states in Africa and Asia. Here I directly contest a prominent line of argument, articulated by Robert Jackson and others, that sees the development of the international human rights regime as a response to decolonization and the spread of 'ramshackle states' in the Third World.<sup>4</sup>

<sup>2</sup> Henry Shue, *Basic Rights*, 2nd edn. (Princeton, NJ: Princeton University Press, 1996), p. 174.

<sup>3</sup> Daniel Thomas, 'The Helsinki Accords and Political Change in Eastern Europe', in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999), pp. 205–34.

<sup>4</sup> See Robert H. Jackson and Carl G. Rosberg, 'Why Africa's Weak States Persist: The Empirical and Juridical in Statehood', *World Politics*, 35 (1982), pp. 1–24; Robert H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World* (Cambridge: Cambridge University Press, 1990); and Robert H. Jackson, 'The Weight of Ideas in Decolonization: Normative Change in International Relations', in Judith Goldstein and Robert O. Keohane (eds.), *Ideas and Foreign Policy* (Ithaca, NY: Cornell University Press, 1993), pp. 111–38.

### Sovereignty and human rights: a tale of two regimes

Sovereignty is traditionally understood in highly categorical terms. Sovereign states are said to enjoy supreme decision-making authority within their territorial boundaries, while being under no political or legal obligation to observe any overarching authority outside those boundaries. Sovereignty, F. H. Hinsley contends, is ‘the idea that there is a final and absolute political authority in the political community ... “and no final and absolute authority exists elsewhere”’.<sup>5</sup> Realists treat sovereignty as an empirical attribute of the state, an assertion that states make about their territorial authority backed by military power, economic resources and perhaps the consent of the people. Rationalists, in contrast, treat sovereignty as an institution of international society, a deeply embedded organizing principle that licenses the organization of political authority into centralized, territorially demarcated political units.<sup>6</sup> The former emphasize the role of war-fighting and military competition in the rise of the modern international system, the latter stress the emergence of norms of mutual recognition, non-intervention, and self-determination. Both, however, view sovereignty as an absolute, an empirical or institutional fact that cannot be qualified without nullification.

‘Human rights’, John Vincent argues, ‘are the rights that everyone has, and everyone equally, by virtue of their very humanity’.<sup>7</sup> In holding such rights, all humans are entitled to make claims against other individuals, national communities, and humanity as a whole for the respect and satisfaction of certain civil and political freedoms and social and economic needs. At times these rights have been grounded in reason, need, custom and contract, but in all cases they have been seen as universal and inalienable.<sup>8</sup> While the idea of universal human rights was first articulated in the seventeenth and eighteenth centuries as a defence against the excesses of monarchical rule, the systematic codification of such rights at the international level has largely, though not exclusively, been a twentieth century development. Shocked into action by the Nazi genocide of Europe’s Jewish population, and cajoled by diverse non-state actors, states have progressively ‘legislated’ an ‘international bill of rights’, comprising the Universal Declaration of Human Rights and the two International Covenants on Human Rights, augmented by a web of ‘right-specific’ treaties, conventions and declarations, spanning everything from worker’s rights to the rights of indigenous peoples.<sup>9</sup>

The emergence of the sovereign order and the development of the international human rights regime are usually seen as connected only by way of their mutual

<sup>5</sup> F. H. Hinsley, *Sovereignty*, 2nd edn. (Cambridge: Cambridge University Press, 1986), p. 26.

<sup>6</sup> In this context, I use the term ‘rationalist’ to refer to the work associated with the ‘English School’ of international society theorists, not to American scholarship informed by rational choice theory, such as neoliberal institutionalism.

<sup>7</sup> John Vincent, *Human Rights and International Relations* (Cambridge: Cambridge University Press, 1986), p. 13.

<sup>8</sup> Vincent, *Human Rights*, pp. 7–18; Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 1989), pp. 9–27; and Shue, *Basic Rights*, pp. 13–34.

<sup>9</sup> On the history of the international human rights regime, see Thomas Buergenthal, ‘The Normative and Institutional Evolution of International Human Rights’, *Human Rights Quarterly*, 19 (1997), pp. 703–23; and Jack Donnelly, ‘The Social Construction of International Human Rights’, in Tim Dunne and Nicholas Wheeler (eds.), *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), pp. 71–103.

incompatibility. Not only are their generative dynamics thought to be distinct, with war-fighting and strategic competition driving the development of the former and liberal idealism propelling the latter, but the sovereign order is thought by sceptics to stand inviolable against the universalist challenge of the human rights regime and by optimists to be fundamentally compromised by that regime. Taking the first of these positions, Stanley Hoffmann argues that although the post-1945 development of international human rights norms ‘has questioned two sacred elements of sovereignty: the right to wage war, and the right to do what you like to your citizens’, these norms have had little impact on the realities and dynamics of international politics.<sup>10</sup> Adopting the rival position, Kathryn Sikkink claims that the ‘doctrine of internationally protected human rights offers one of the most powerful critiques of sovereignty as currently constituted, and the practices of human rights law and human rights foreign policies provide concrete examples of shifting understandings of the scope of sovereignty’.<sup>11</sup> Both of these positions view sovereignty in highly categorical terms, and differ only over the corrosive potency of the independently constituted international human rights regime.

### **The problem of explaining international societal expansion**

The tension between absolute state power and individual freedom makes this tale of two regimes intuitively plausible, yet this analytical separation is heuristically unhelpful in a number of regards. My concern here is with the obstacle this poses for understanding *international societal expansion* in the late modern era. Such expansion occurs when the basic organizing principle of international society remains constant—where sovereignty, heteronomy or suzerainty continue to structure the distribution of political authority—but where the number of recognized political units within that society increases. In the history of the modern international society, societal expansion has been an ongoing process, with postwar settlements, imperial breakdown, and state fragmentation fuelling constant, if erratic, growth in the number of sovereign states. There have, however, been several great moments of societal expansion, where there have been rapid and significant expansions in the membership of international society. In the twentieth century, three such moments stand out: the post-Versailles reconfiguration of the European political order, the decolonization of the European empires in Asia and Africa, and the post-Cold War proliferation of states, primarily in East Europe but also elsewhere, with East Timor being the most recent addition to international society.

Treating sovereignty and human rights as clearly differentiated, mutually antagonistic regimes obscures one of the crucial dynamics that have propelled late modern international societal expansion—the central role that human rights norms have played in the constitution of the dominant discourse of legitimate statehood, and the importance of this discourse in licensing the proliferation of sovereign units. The limitations of this analytical separation are clearly apparent in Robert Jackson’s

<sup>10</sup> Stanley Hoffmann, ‘Reaching for the Most Difficult: Human Rights as a Foreign Policy Goal’, *Daedalus*, 112 (1983), p. 22.

<sup>11</sup> Kathryn Sikkink, ‘Human Rights, Principled Issue-Networks, and Sovereignty in Latin America’, *International Organization*, 47 (1993), p. 411.

otherwise insightful writings on decolonization, writings that have sought more nuanced understandings of sovereignty, statehood and the expansion of international society.

Jackson advances a modified rationalist account of the institution of sovereignty, arguing that since the Second World War there has been a fundamental change in the norms governing which political entities are entitled to recognition as fully independent states. Prior to the late 1950s and early 1960s only those countries which demonstrated 'empirical sovereignty'—'the wherewithal to provide political goods for [their] citizens'<sup>12</sup>—were accorded sovereign status. The so-called 'standard of civilization' was used to determine such achievement, and the European powers ensured that membership of international society was an exclusive, jealously guarded right. This old 'positive sovereignty' game, Jackson argues, has since been supplanted by a new 'negative sovereignty' game, under which weak states have been granted 'juridical sovereignty' without exhibiting any of the trappings of empirical statehood. Only through reference to this change in the meanings attached to the sovereignty regime, Jackson concludes, can we explain the nature and speed of European decolonization. It was the triumph of the central principle underlying the new negative sovereignty regime—the right to self-determination—which spurred this dramatic expansion of international society. 'Anti-colonialism', he writes, 'looks more and more like a sea change in international legitimacy'.<sup>13</sup>

Jackson's thesis that the speed of decolonization can best be attributed to a shift in the institution of sovereignty and the salience of the new international norm of self-determination is not in question here. Three main alternative explanations of decolonization exist, but Jackson persuasively argues that each fails to explain adequately why the process took place when it did, why it happened so quickly, or why it was a system-wide phenomenon spanning all imperial powers and colonies. The first of these emphasizes how national liberation movements made stable imperial rule increasingly difficult, raising the political, military and economic costs of empire.<sup>14</sup> The problem with this argument is that the strength of these movements varied across empires and colonies, never posing a general threat to the institution of colonialism. As Holland argues, 'Western Europe's status and capacity ... was clearly on the wane for most of the twentieth century, and violently so after 1945, but whether that status fell in relation to Upper Volta or the Gold Coast/Ghana is very doubtful'.<sup>15</sup> The second explanation stresses how the war-ravaged European powers, faced with new demands for domestic social welfare expenditure, could no longer bear the economic costs of empire. Such pressures are undeniable, but it is not certain that they were the main consideration in European decisions to disengage. John Darwin argues that it 'is far from clear that ... the economic argument turned decisively against empire and global commitments in the 1940s and 1950s. Indeed, it seems likely that the economic repercussions of the Second World War encouraged a

<sup>12</sup> Jackson, *Quasi-States*, p. 29.

<sup>13</sup> *Ibid.*, p. 83.

<sup>14</sup> For works that emphasize this factor among others, see Hedley Bull, 'The Revolt Against the West', in Hedley Bull and Adam Watson (eds.), *The Expansion of International Society* (Oxford: Clarendon Press, 1985), pp. 217–29; and Geoffrey Barraclough, *An Introduction to Contemporary History* (Harmondsworth: Penguin, 1967), ch. 6.

<sup>15</sup> R. F. Holland, *European Decolonization, 1918–1981* (London: Macmillan, 1985), p. 300. A similar observation is made by John Gallagher in *The Decline, Revival and Fall of the British Empire* (Cambridge: Cambridge University Press, 1982), pp. 73–4.

revival of British interest in parts of their colonial empire and in imperial economic integration generally.’<sup>16</sup> The third explanation focuses on international pressures, particularly the rise of two superpowers both strongly opposed to colonialism. Once again, though, these pressures were not decisive. As the Cold War escalated, the Americans toned down their anti-colonialist rhetoric, becoming more sympathetic to British imperial concerns than their wartime lobbying would have suggested,<sup>17</sup> and in any case there is little evidence that pressure from Washington ever significantly swayed British calculations, let alone those of other imperial powers.<sup>18</sup> Undoubtedly, these nationalist, economic, and international factors contributed to decolonization, but Jackson is correct to argue that the generalized nature and speed of European disengagement can be explained only by introducing a fourth, normative factor—the system-wide shift in the sovereignty regime governing international society.<sup>19</sup>

Jackson’s work flounders, however, when it comes to the relationship between the negative sovereignty regime and international human rights norms. Jackson claims that the construction of a comprehensive human rights regime was a direct response to the advent of the negative sovereignty game and its attendant right of self-determination. In the age of high imperialism, the gradual spread of constitutionalism limited the excesses of power within metropolitan Europe, and the imperial powers granted sovereignty to only those polities that demonstrated a dictated level of ‘civility’. The new sovereignty game changed all of this. European colonies now enjoyed a categorical right to self-determination, a right to constitutional autonomy free from external political, economic and normative constraints. In short, they were accorded ‘juridical sovereignty’ without having to demonstrate ‘empirical sovereignty’.<sup>20</sup> Jackson argues that this led to the proliferation of weak states with neither the empirical capacities to meet the needs of their peoples, nor rulers with the political will to maintain adequate constitutional brakes on the exercise of power. This has resulted in a dramatic increase in human rights violations, an increase that ‘is particularly evident outside the West where citizenship often is scarcely more than a nominal status with little or no real purchasing power.’<sup>21</sup> The construction of international human rights norms, Jackson contends, was a direct response to this change in the membership of international society and associated decline in ‘civility’. He writes that the ‘new sovereignty game is ... complicated by the emergence of a cosmopolitan regime which seeks to establish the legal status of humans in international relations against the sovereign Leviathan. *This norm is not part of the sovereignty game but is a reaction to it: human rights are intended to curb sovereign rights*’ [my emphasis].<sup>22</sup>

The idea that the right to self-determination ushered in a negative sovereignty regime that bestowed unequivocal rights to rule is widespread. In his classic work

<sup>16</sup> John Darwin, *Britain and Decolonization: The Retreat from Empire in the Post-War World* (London: Macmillan, 1988), p. 20.

<sup>17</sup> *Ibid.*, p. 21.

<sup>18</sup> In fact, the British were quite capable of shunning American calls for decolonization when they wished. Gallagher, *Decline*, p. 142.

<sup>19</sup> Jackson, ‘The Weight of Ideas’, p. 133.

<sup>20</sup> *Ibid.*, p. 23. This argument is restated in Jackson’s most recent book, *The Global Covenant: Human Conduct in World Politics* (Oxford: Oxford University Press, 2000), pp. 303–4.

<sup>21</sup> *Ibid.*, p. 140.

<sup>22</sup> *Ibid.*, p. 44.



on international law, George Schwarzenberger writes that the right to self-determination rests on 'pristine sovereignty in the form of lawlessness'.<sup>23</sup> In a similar fashion, Jack Donnelly claims that self-determination meant 'a right of colonial territories to recognition as sovereign states within colonial borders. Considerations of justice were thus banished from decisions on membership of international society.'<sup>24</sup> Few scholars go as far as Jackson in arguing that the international human rights regime was a specific response to the advent of the right to self-determination, the rise of the negative sovereignty regime, and the proliferation of weak Third World states. Yet it is commonplace for the development of the international human rights regime to be seen as a discrete process, driven largely by Western states, that evolved parallel to, and in conflict with, the politics of self-determination that transformed the meaning of sovereignty. In a clear statement of this position, Donnelly argues that the 'death of the classic standard of civilization was accompanied by the entrenchment of a Hobbesian conception of sovereignty. ... The decades following the Second World War, however, also saw the development of an extensive body of international human rights law that recaptured, in a substantially purified form, the morally appealing idea of adherence to shared standards of justice as a condition for full membership in international society.'<sup>25</sup>

Jackson's argument about the rise of negative sovereignty regime, decolonization and human rights suffers from two serious weaknesses. With regard to the first of these, although he provides a painstaking description of the apparent revolution in the rules of the sovereignty game and how this delegitimized European imperialism, he provides no explanation for this transformation. The construction of a new sovereignty regime around the right to self-determination may well have spurred the single most dramatic expansion of international society, but why did these norms emerge when they did and with such salience? This explanatory weakness is compounded by a number of crucial empirical anomalies in Jackson's account of the relationship between the new sovereignty regime and international human rights. First, he ignores the fact that the most important international human rights instruments—including the relevant provisions of the United Nations Charter, the Universal Declaration, and the two international covenants—were negotiated before or during the most intense phase of decolonization and the proliferation of 'quasi-states', not after. Second, he overlooks the crucial role that 'first wave' post-colonial states—such as India and Pakistan—played in the initiation and negotiation of these instruments, a role in which they strongly supported the importance, and at times even the primacy, of civil and political rights in addition to economic, social and cultural rights. Third, he obscures the heavy reliance that these states placed on the discourse of human rights in their formulation and advocacy of the right to self-determination.

The remainder of this article presents an alternative, constructivist account of the international societal expansion that attended decolonization, an account that treats international human rights as integral to the discourse of legitimate statehood that licensed that expansion, not simply a response to the excesses of the post-colonial

<sup>23</sup> George Schwarzenberger, *International Law*, vol. 2: *The Law of Armed Conflict* (London: Stevens and Sons, 1968), p. 207.

<sup>24</sup> Jack Donnelly, 'Human Rights: A New Standard of Civilization?', *International Affairs*, 74 (1998), p. 13.

<sup>25</sup> *Ibid.*, pp. 13–14.

states it generated. This account not only explains the phenomenon that Jackson merely describes, it accommodates the significant empirical anomalies in his historical account.

### **Communicative action and the constitution of sovereignty norms**

To understand processes of international societal expansion it is necessary to abandon the prevailing, highly categorical conception of sovereignty and to treat it instead as a variable, practically constituted institution. This is the view first advanced by critical theorists and taken up more recently by constructivists. In an early statement of this position, Richard Ashley argues that ‘sovereignty is a practical category whose empirical contents are not fixed but evolve in a way reflecting the active practical consensus among coreflective statesmen’.<sup>26</sup> It is above all else a set of norms concerning the legitimate organization of political authority, the content and implications of which vary from one historical and practical context to another. For those wishing to study sovereignty, therefore, the challenge is not to arrive at a universally valid definition that fixes its meaning and content, but rather, as Thomas Biersteker and Cynthia Weber observe, to explore ‘the constitutive relationship between state and sovereignty; the ways the meaning of sovereignty is negotiated out of interactions within intersubjectively identifiable communities; and the variety of ways in which practices construct, reproduce, reconstruct, and deconstruct both state and sovereignty’.<sup>27</sup>

An exploration of this sort must begin with the recognition that sovereignty is a social norm, subject to the same constitutive processes as all other norms, rules and principles. Like their domestic counterparts, international norms, rules and principles are social artifacts, the normative products of moral debate and dialogue between states (and increasingly non-state actors) about legitimate statehood and rightful domestic and international conduct, products that are reproduced through routinized communication and social practice. Norms, rules, and principles thus have histories, they emerge out of complex processes of communicative action, and they are maintained through the conscious, and at times unconscious, application of taken-for-granted canons and repertoires of appropriate state conduct.

The communicative processes that surround international norm formation vary from one issue and context to another, but they also exhibit a common dialogical structure. When seeking to establish a new norm, rule or principle, or to give an established one new meaning, states will seek to justify their moral claims. As theorists of communicative action observe, actors engaged in such projects usually try to associate their prescriptions with values that are already accepted as normative within the relevant speech community. As Agnes Heller observes, ‘[c]ontestants enter the discourse with different values, and they all try to justify their values (as right and true). They do so by resorting to values higher than those which they want

<sup>26</sup> Richard K. Ashley, ‘The Poverty of Neorealism’, *International Organization*, 38 (Spring 1984), p. 271.

<sup>27</sup> Thomas J. Biersteker and Cynthia Weber, ‘The Social Construction of State Sovereignty’, in Thomas J. Biersteker and Cynthia Weber (eds.), *State Sovereignty as a Social Construct* (Cambridge: Cambridge University Press, 1996), p. 11.



to justify, by proving that the latter are but an interpretation of higher values, or that they can be related to these higher values without logical contradiction'.<sup>28</sup> Specialists on international norm formation have termed this process 'issue-resonance', 'nesting', or 'grafting'.<sup>29</sup> In her study of the rise of developmentalism in Latin America, Kathryn Sikkink argues that '[n]ew ideas are more likely to be influential if they 'fit' well with existing ideas and ideologies in a particular historical setting.'<sup>30</sup> And in seeking to explain the recently enshrined norm against the manufacture, deployment and use of land mines, Richard Price shows how 'moral entrepreneurs' successfully 'grafted' their claims to established elements of just war doctrine, namely the dictates for civilian discrimination and against unnecessary suffering.<sup>31</sup>

In the communicative processes that generate new international norms, rules and principles, not all 'higher values' have the same justificatory power. Theorists of communicative action have shown that 'identity' values are particularly persuasive, as they define the meaning and nature of legitimate social and political agency. Such values lie at the heart of what Jürgen Habermas calls the 'lifeworld', the 'storehouse of unquestioned cultural givens from which those participating in communication draw agreed-upon patterns of interpretation for use in their interpretive efforts'.<sup>32</sup> Within domestic society, the best way to further a moral claim is to 'graft' it to prevailing views about what constitutes a fully realized human being, or to beliefs about the ideal community of such beings. At the international level, moral claims that are shown to be consistent with intersubjective beliefs about the behaviour and goals of ideal states, or to foster the development of such states, carry the greatest weight. Historically, the identity values defining ideal individuals and states have been closely linked, with the latter usually being cast in the service of the former. Furthermore, domestic and international identity values have changed over time—Renaissance Italian ideas about the ideal individual and state differed markedly from those that prevail today.

These insights into communicative action and norm formation are of crucial importance in understanding the social construction of sovereignty regimes. Sovereignty is an intersubjective organizing principle, a principle that licenses the arrangement of power and authority into territorially-demarcated, centralized and autonomous political units. As John Ruggie observes, it is a principle that specifies '*the basis on which the constituent units are separated from one another*'.<sup>33</sup> Like all social norms, the principle of sovereignty has a history, a history that has involved the same sort of communicative processes that surround the production and reproduction of other social norms. Just as the construction of issue-specific norms has entailed the grafting of new principles to pre-existing social values, so too has the principle of sovereignty. When sovereign states were constructed in ancient Greece,

<sup>28</sup> Agnes Heller, *Beyond Justice* (Oxford: Basil Blackwell, 1987), p. 239.

<sup>29</sup> Andrew Cortell and James Davis, 'How Do International Institutions Matter? The Domestic Impact of International Rules and Norms', *International Studies Quarterly*, 40 (1996), pp. 451–78; Kathryn Sikkink, *Ideas and Institutions* (Ithaca, NY: Cornell University Press, 1991), p. 26; and Richard Price, 'Reversing the Gun Sights: Transnational Civil Society Targets Land Mines', *International Organization*, 52 (1998), pp. 613–44.

<sup>30</sup> Sikkink, *Ideas and Institutions*, p. 26.

<sup>31</sup> Price, 'Reversing the Gun Sights'.

<sup>32</sup> Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge, MA: MIT University Press, 1991), p.136.

<sup>33</sup> John Gerard Ruggie, 'Continuity and Transformation,' *World Politics*, 35:2, p. 274.

when they were championed again in Renaissance Italy, when absolutist states were carved out of the declining heteronomous order of medieval Europe, and when the age of revolutions spurned the development of modern nation-states, the idea of sovereignty did not emerge in a moral vacuum; it had to be justified, and that justification has always taken the form of an appeal to higher-order values that define the identity or *raison d'être* of the state, whether they entail the pursuit of justice, the achievement of civic glory, the protection of a divinely ordained social order, or the advancement of individuals' rights and the celebration of the nation.<sup>34</sup>

Contrary to conventional wisdom, therefore, sovereignty should be viewed as a dependent or secondary principle—an historically contingent prescription about the distribution of power and authority that needs to be grounded in more fundamental existential values. It is mistakenly assumed that sovereignty is the most basic international institution, the normative bedrock of the society of states. Even constructivists have failed to understand the communicative processes that generate sovereignty regimes, often writing as though sovereignty were a self-referential value that could be upheld without reference to other social values, particularly those pertaining to the 'good' served by centralizing authority within territorially-defined bounds. Building on Aristotle's observation 'that every state is an association, and that every association is formed with a view to some good purpose',<sup>35</sup> the principle of sovereignty is best understood as but one part of larger complexes of normative values that undergird international societies, complexes that elsewhere I have termed 'constitutional structures'.<sup>36</sup> At the heart of these structures lie hegemonic beliefs about the 'moral purpose' of the state, beliefs that define 'the reasons that historical agents hold for organizing their political life into centralized, autonomous political units'.<sup>37</sup> These beliefs provide the justificatory foundations for the organizing principle of sovereignty and inform systemic norms of procedural justice. They define the *raison d'être* of the sovereign state, and specify the terms of legitimate statehood and rightful state action. Their content varies, however, from one historical context to another. Ancient Greeks tied the moral purpose of the state to the cultivation of *bios politikos*, a distinctive form of communal life; Renaissance Italians defined it in terms of the pursuit of civic glory; Europeans in the age of absolutism linked it to the preservation of a divinely ordained, rigidly hierarchical social order; and in the modern era, the rationale for the state has been increasingly tied to the protection of individuals' rights.

<sup>34</sup> On the values undergirding sovereignty in each of these cases, see Josiah Ober, *Mass and Elite in Democratic Athens* (Princeton, NJ: Princeton University Press, 1989); Quentin Skinner, *The Foundations of Modern Political Thought*, Vol. 1: *The Renaissance* (Cambridge: Cambridge University Press, 1978); Stephen L. Collins, *From Divine Cosmos to Sovereign State* (Oxford: Oxford University Press, 1989); and Gianfranco Poggi, *The Development of the Modern State* (Stanford, CA: Stanford University Press, 1978).

<sup>35</sup> Aristotle, *The Politics* (Harmondsworth: Penguin, 1981), Book 1, Art. 1, p. 54.

<sup>36</sup> Christian Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations* (Princeton, NJ: Princeton University Press, 1999), pp. 30–33; and Christian Reus-Smit, 'The Constitutional Structure of International Society and the Nature of Fundamental Institutions', *International Organization*, 51 (Autumn 1997), pp. 555–89.

<sup>37</sup> Reus-Smit, *Moral Purpose of the State*, p. 31.

### Human rights, the right to self-determination, and decolonization

The communicative processes outlined above are most palpable at great moments of international societal expansion, when the existing political order is challenged by new claims to sovereignty, grounded in revolutionary, reconfigured, or redeployed ideals of legitimate statehood. At such moments, the prevailing international organization of political authority is portrayed as inconsistent with existent or ascendent conceptions of the moral purpose of the state, thus demanding the dismantling of established sovereign or imperial units to permit the construction of new sovereign states. This is what occurred at Versailles, with decolonization, and after the Cold War. With regard to the second of these, with which we are concerned here, a conception of the moral purpose of the state that has been ascendent since the middle of the nineteenth century, and which ties legitimate statehood to the protection of individuals' basic human rights, was mobilized by 'first wave' post-colonial states to discredit European imperialism, establish the right to self-determination, and license wholesale decolonization.

#### *The ascendent moral purpose of the modern state*

During the seventeenth and eighteenth centuries the legitimacy of European states rested on the divine right of kings, a right that God supposedly bestowed on monarchs giving the authority to ensure the preservation of a divinely ordained, rigidly hierarchical social order.<sup>38</sup> By the latter half of the eighteenth century, the ideological foundations of this rationale were beginning to erode. Mirroring shifts in scientific thought, political and economic theorists abandoned holistic conceptions of society, championing new ideas of political and economic individualism.<sup>39</sup> The impact of these ideas was profound, with political individualism fuelling the American and French Revolutions, and economic individualism providing the ideological resources for the Industrial Revolution. In the ensuing 50 years, European politics was riven by protracted conflicts over the terms of legitimate rule, compounded by the economic dislocation of traditional patterns of social organization and affiliation. The *ancien régime* won a temporary reprieve at the end of the Napoleonic Wars, invoking the constitutional metavalues of absolutism at the Congress of Vienna to shape a new international order.<sup>40</sup> By the middle of the nineteenth century, though, the tide had turned. Justifying state power and authority

<sup>38</sup> See Richard Bonney, *The European Dynastic States: 1494–1660* (New York: Oxford University Press, 1991); Nannerl Keohane, *Philosophy and the State in France: The Renaissance to the Enlightenment* (Princeton, NJ: Princeton University Press, 1980); and Michael Kimmel, *Absolutism and Its Discontents* (New Brunswick: Transaction Books, 1988).

<sup>39</sup> See Marshall Berman, *The Politics of Authenticity: Radical Individualism and the Emergence of Modern Society* (New York: Atheneum, 1970); Albert O. Hirschman, *The Passions and the Interests* (Princeton, NJ: Princeton University Press); and Charles Taylor, *Source of the Self: The Making of the Modern Identity* (Cambridge, MA: Harvard University Press, 1989).

<sup>40</sup> See Henry Kissinger, *A World Restored* (New York: Grosset and Dunlap, 1964); Edward Gulick, *Europe's Classical Balance of Power* (Ithaca, NY: Cornell University Press, 1955); and Harold Nicolson, *The Congress of Vienna: A Study in Allied Unity 1812–1822* (London: Readers Union, 1948).

by appealing to monarchical right and the need to preserve a divinely ordained social order became more and more untenable, and legitimate statehood and rightful state action were increasingly tied to the representation of individuals' political interests and the protection of their inalienable human rights.

This new conception of legitimate statehood was not immediately expressed in the development of an international human rights regime, and the embedding of that regime is still under way. Constitutionalism and the rule of law had spread to most European states by the end of the nineteenth century, but these changes were primarily the result of domestic political processes, not the consequence of internationally legislated norms.<sup>41</sup> The 'moral purpose' of the modern state filtered into international society in two phases, structuring the external institutional practices of states first, and prescribing the internal relations between governments and their citizens second.

In the first phase, stretching from 1850 to 1945, the influence of modern principles of legitimate statehood and rightful state action on international politics was largely architectural, affecting the nature and functioning of basic institutional practices. The revolutionary principles that only those subject to the law have the right to legislate, and that laws must apply equally to all of society's members, informed the development of multilateralism and positive international law, resulting in a huge increase in the number of multilateral treaties and associated organizations.<sup>42</sup> Clearly evident in the development of universal conferences of states and the evolution of the International Court of Justice, modern ideals of self-legislation and reciprocally binding rules of conduct became the structuring norms of international governance, ultimately producing the United Nations and the growing edifice of contractual law between states.<sup>43</sup> Throughout this period, though, the moral gaze of international society was primarily external, with states celebrating the new principles of rule in their relations with one another but shying away from the articulation and codification of international norms concerning the application of such principles within states. To be sure, the state was no longer seen as the monarch's domain, but the emerging idea of the state as the political manifestation of the nation, and state policies as the political expression of the national interest, encouraged the assumption that when the principle of national self-determination is upheld, the state and society stand in a symbiotic embrace. This focus on international institutional construction, paired with a tragic faith in the pacific benefits of racially defined national self-determination, found their clearest and most problematic expression in Wilsonian internationalism and the Versailles peace settlement.

Nazism put an end to this first phase, pushing the society of states to enshrine modern ideals of legitimate statehood and rightful state conduct in a comprehensive international human rights regime. The Holocaust exposed in stark relief the pathological consequences of an international system that sanctioned a racially-defined

<sup>41</sup> David Thomson, *Europe Since Napoleon* (London: Longmans, 1962), p. 323; and David Kaiser, *Politics and War: European Conflict from Philip II to Hitler* (Cambridge: Harvard University Press, 1990), pp. 275–6.

<sup>42</sup> Reus-Smit, 'Constitutional Structure', p. 578. Also see Christopher Hill, 'Diplomacy and the Modern State', in Cornelia Navari (ed.), *The Condition of States: A Study in International Theory* (Milton Keynes: Open University Press, 1991), pp. 84–101.

<sup>43</sup> Reus-Smit, 'Constitutional Structure', pp. 576–83.

principle of national self-determination, and since 1945 the international community has championed, if not adequately defended, the ideal of the ethnically and racially neutral democracy, a democracy in which the civil and political and economic and social rights of citizens and non-citizens are protected and promoted. While the society of states had moved to protect human rights in the past, with tentative steps made in the areas of minority rights, workers rights, and the rights of women, after the Second World War legitimate statehood was more explicitly tied to the protection of basic human rights. This connection has been articulated in an ever expanding battery of international human rights instruments. These instruments are elaborations on the principles laid down in Articles 55 and 56 of the Charter of the United Nations, which commit member states 'to take joint and separate action' to provide 'higher standards of living, full employment, and conditions of economic and social progress and development', and to cultivate 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'.<sup>44</sup> Further articulating these principles, the 1948 Universal Declaration of Human Rights defines the simultaneous satisfaction of individuals' economic rights (such as the rights to work and to social security) and civil and political rights (such as the right to vote, to free speech, and to due process) 'as a common standard of achievement for all peoples and all nations ...'.<sup>45</sup> These obligations were given formal legal status by the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights signed in 1966 and brought into force ten years later. The progressive development of these human rights instruments has formally enshrined modern ideals of legitimate statehood in the normative fabric of international society, extending the influence of such values from the constitution of basic institutional practices to the prescription of state-society relations.

### *'First wave' post-colonial states and the international human rights regime*

It is widely assumed that the development of the international human rights regime was a Western project, and that developing countries have consistently and vigorously defended their domestic jurisdictions against such norms. In Donnelly's words, 'these newly independent states (understandably) emphasized their sovereign equality, understood in radical legal positivist terms, and met efforts to hold them to minimum standards of humane behavior towards their own citizens with charges of neo-colonialism'.<sup>46</sup> While this view correctly captures the general attitude of developing states once decolonization had been achieved, it seriously misrepresents the position of newly independent states in the early stages of the international campaign against colonialism. Though small in numbers, developing states from Asia and Latin America played a prominent role in the drafting of both the Universal Declaration and the two International Covenants. In fact, states such as India,

<sup>44</sup> 'The Charter of the United Nations', in Ian Brownlie (ed.), *Basic Documents in International Law* (Oxford: Clarendon Press, 1983), pp. 18–19.

<sup>45</sup> 'The Universal Declaration of Human Rights', in Ian Brownlie (ed.), *Basic Documents in International Law* (Oxford: Clarendon Press, 1983), pp. 250–6.

<sup>46</sup> Donnelly, 'Human Rights: A New Standard of Civilization?', p. 13.

Pakistan, Brazil, the Philippines, Chile, and Columbia represented an important force in the alliance with several Western states that successfully thwarted attempts by South Africa and Soviet bloc countries to derail international human rights initiatives.<sup>47</sup>

It is also common wisdom that developing states have consistently favoured economic and social rights over civil and political rights. The satisfaction of economic entitlements has certainly become a prominent, if not predominant, feature of the developing world's diplomatic agenda, but this has not always been the case. It was initially intended that there would be only one international covenant, but states disagreed about whether it should include economic as well as civil and political rights. The Soviet Union and its clients argued that the proposed covenant should not only include economic rights, but that these rights should have priority. While other states generally accepted these rights,<sup>48</sup> they vigorously opposed their inclusion in a single covenant along with civil and political rights. This was partly on the grounds that different categories of rights demanded different implementation mechanisms, but some states—including the leading developing countries—argued that civil and political rights should have priority. In 1951, India and Lebanon argued that 'the two groups of rights were not of equal importance, the full enjoyment of economic, social and cultural rights being ... dependent on the assurance of civil and political rights.'<sup>49</sup> Together with leading Western states, they managed to overturn a former UN decision and force the drafting of two separate covenants.<sup>50</sup>

Throughout the negotiations on the Universal Declaration and the two International Covenants, leading developing countries consistently argued that the protection of human rights was an international concern which circumscribed the state's domestic jurisdiction. In the debate by the Third Committee of the General Assembly on the draft Universal Declaration, the Pakistani representative stated that 'it was imperative that the peoples of the world should recognize the existence of a code of civilized behavior which would apply not only in international relations but also in domestic affairs'.<sup>51</sup> In a prophetic statement, the Chilean representative told the General Assembly that 'no one could infringe upon the rights proclaimed in it [the Universal Declaration] without becoming an outcast from the community of states'.<sup>52</sup> These attitudes were reflected in the position that developing states took on the question of implementation and enforcement, an issue that focused on whether

<sup>47</sup> See the record of the debate surrounding the adoption of the Universal Declaration of Human Rights in the *Yearbook of the United Nations: 1948–49* (New York: United Nations Department of Information, 1949), pp. 524–37.

<sup>48</sup> General Assembly Resolution 421 (V), passed on 4 December 1950 by 38 votes to 7 with 12 abstentions, declares that 'the enjoyment of civic and political freedoms and economic, social and cultural rights are interconnected and interdependent.'

<sup>49</sup> This quotation comes from the summary of the Indian and Lebanese statements provided in the *Yearbook of the United Nations: 1951* (New York: United Nations Department of Information, 1951), p. 483.

<sup>50</sup> The former decision, which provided for only one covenant encompassing both civil and political and economic and social rights, was contained in General Assembly Resolution 421 (V), 4 December 1950. This was overturned by General Assembly Resolution 543 (VI) on 5 February 1951.

<sup>51</sup> Quotation taken from the summary of the Pakistani statement contained in the record of the debate in the *Yearbook of the United Nations: 1948–49*, p. 527.

<sup>52</sup> Quotation taken from the summary of the Chilean statement contained in the record of debate, *Ibid.*, p. 530.



individuals and non-governmental organizations should have the right to petition the United Nations directly on human rights violations by their states. While Soviet-bloc countries opposed all implementation measures on the grounds that they violated the state's domestic jurisdiction, and the United States and Britain argued that only states should have the right to petition, leading developing states insisted that individuals and NGOs must have direct access to the United Nations. After unsuccessfully trying to have the right to petition enshrined in the Universal Declaration,<sup>53</sup> a coalition of Western and developing states (including Denmark, India, and Mexico) pushed to have the International Covenant on Civil and Political Rights recognize such a right.<sup>54</sup> Whatever their subsequent human rights records, if it were not for the early efforts of these states, the Covenant's Optional Protocol—the compromise instrument which allows individuals experiencing human rights violations in signatory states to petition the United Nations Human Rights Committee directly—would probably not exist.

### *Grafting the right to self-determination to human rights norms*

Until the late 1950s and early 1960s the world was divided into a hierarchy of political forms, with the system of sovereign states at the pinnacle surrounded by a range of dependent colonies, protectorates, and mandates. In addition to the economic and military gulf separating these entities, the division was based on the European application of a standard of civilization which distinguished between civilized, barbarian, and savage peoples. This standard consisted of two principal criteria: one political, the other economic, scientific and technological. As we have seen, the former ranked peoples according to their perceived capacities for civil government. Several British Colonies, wrote John Stuart Mill, 'are composed of people of similar civilization to the ruling country; capable of, and ripe for, representative government: such as the British possessions in America and Australia. Others, like India, are still at a great distance from that state.'<sup>55</sup> This ranking was reinforced by the idea that European states surpassed all others in material achievement, a prejudice apparently vindicated by the glories of the industrial revolution.<sup>56</sup> Having placed themselves at the top of the civilizational hierarchy, European states assumed a paternalistic attitude toward other peoples, shrouding their domination in a veil of moral responsibility. This civilizing mission is still apparent in the Charter of the United Nations which reaffirms the colonial powers' 'sacred trust' to cultivate

<sup>53</sup> A draft article was proposed which would have read: 'Everyone has the right, either individually or in association with others, to petition or to communicate with the public authorities of the state of which he is a national or in which he resides, or with the United Nations.' *Yearbook of the United Nations: 1948–49*, pp. 539–42.

<sup>54</sup> They argued that the covenants would be meaningless if individuals and nongovernmental organizations were not able to petition the United Nations directly. For a summary of their arguments see *Yearbook of the United Nations: 1953* (New York: United Nations Department of Information), p. 386.

<sup>55</sup> John Stuart Mill, *Three Essays: On Liberty, Representative Government, The Subjection of Women* (Oxford: Oxford University Press, 1975), p. 402.

<sup>56</sup> Michael Adas, *Machines as the Measure of Men: Science and Technology, and Ideologies of Western Domination* (Ithaca, NY: Cornell University Press, 1989).

their dependencies' 'political, and educational development' and 'to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement'.<sup>57</sup>

Within the space of two decades this hierarchy was levelled into a radically expanded system of juridically equal sovereign states. As we have seen, neither the speed nor the generalized nature of this revolution can be explained solely through changes in the balance of material power between the colonizer and colonized—a shift in the norms governing the membership of international society also played a crucial role. The old sovereignty game, and its associated moral defence of hierarchy, were systematically discredited and supplanted by a new principle that '[a]ll peoples have the right to self-determination' irrespective of their levels of political, economic, and social development.<sup>58</sup> Jackson thoroughly documents this normative revolution, but he fails to recognize that the right to self-determination only triumphed because developing states skilfully grafted it to pre-existing international human rights norms. While the Charter of the United Nations upholds 'the principle of equal rights and self-determination of peoples', this principle only became a serious threat to the institution of colonialism after it had been mobilized by newly independent states in early negotiations over the two International Covenants. As we have seen, these countries strongly supported the development of the human rights regime, and their campaign for full decolonization explicitly portrayed self-determination as a prerequisite for the satisfaction of such rights.

The right to self-determination is plagued by a central ambiguity: it is unclear which communities are entitled to claim or exercise such a right. In the history of modern international society there have been two resolutions to this problem. As noted above, the first—embodied in the Versailles settlement—emphasized the rights of racially and ethnically defined nations. As Rupert Emerson observes, 'the peoples involved in the Wilsonian period were ethnic communities, nations or nationalities primarily defined by language and culture ...'.<sup>59</sup> Like Mill, Wilson believed that democracy could function properly only where the population of a state was bound together by linguistic and cultural affinities. Believing that communities with such affinities could be determined by measuring their 'objective' ethnic characteristics, he and his fellow Americans argued at Versailles that 'their team of experts could provide better evidence of the lines of national divisions and affiliations than could be obtained from plebiscites of the populations concerned'.<sup>60</sup> This cultural understanding of 'peoples' and 'nations' informed the standard of civilization that the colonial powers invoked to justify their tutelage. The division of the world into civilized, barbarian, and savage peoples was at heart a racial categorization. Western dominance rested on the supposed superiority of European culture, and the primacy of Britain, France, and Germany was attributed to their extraordinary racial qualities. At the bottom of the hierarchy were the 'dark races' of Africa who were seen as lacking all civilizational achievement and potential, a condition that licensed ongoing European oversight and control. Somewhere in the middle fell the

<sup>57</sup> 'The Charter of the United Nations', Article 73, p. 23.

<sup>58</sup> 'Declaration on the Granting of Independence to Colonial Countries and Peoples', General Assembly Resolution 1514 (XV), 14 December 1960.

<sup>59</sup> Rupert Emerson, 'Self-Determination', *American Journal of International Law*, 65 (1971), p. 463.

<sup>60</sup> Alfred Cobban, *The Nation State and National Self-Determination* (London: Collins, 1969), p. 71.

barbarian peoples of Asia, who were considered educable, long-term candidates for political and economic achievement.<sup>61</sup>

By the end of the Second World War two factors had undermined this initial resolution. As explained above, Nazism made world leaders fearful of encouraging a resurgence of ethnic nationalism and provided the single most important impetus for the development of international human rights norms. Second, most of the parties interested in claiming self-determination after 1945—the European colonies of Africa and Asia—had multi-ethnic or multi-racial populations. For these reasons, anti-colonialist movements and their allies in the United Nations made little reference to the integrity of ethnically defined nations in their campaign for decolonization. As Emerson observes, ‘in the era of decolonization, ethnic identity [was] essentially irrelevant ...’.<sup>62</sup> Instead, self-determination was portrayed as a necessary prerequisite for the satisfaction of individuals’ basic political and economic rights.

This connection between the right to self-determination and human rights was first articulated in 1950 by Afghanistan and Saudi Arabia in the United Nations negotiations that eventually produced the two International Covenants. Laying the groundwork for the eventual inclusion of the right to self-determination in Article 1 of both Covenants, they successfully moved a motion calling on the Human Rights Commission to study ‘the right of peoples and nations to self-determination’.<sup>63</sup> Frustrated with the Commission’s failure to launch such a study, in 1951 the representatives of Afghanistan, Burma, Egypt, India, Indonesia, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen, among others, called for the General Assembly to insert an article on the right to self-determination into the draft Covenants. They argued that this inclusion ‘would give moral and legal support to peoples aspiring to political and social independence and would be a valuable contribution to international peace and security. *No basic human rights could be ensured unless this right were ensured ...*’ (my emphasis).<sup>64</sup> This call was reiterated in a February 1952 General Assembly resolution, which explicitly placed self-determination in the service of two higher order values: the need ‘to save present and succeeding generations from the scourge of war’ (which prefaced virtually all United Nations resolutions), and the need ‘to reaffirm faith in fundamental human rights’.<sup>65</sup> Later that year developing states escalated their claims, passing a General Assembly resolution that not only asserted the right to self-determination, but also the obligation of European states to decolonize. ‘The right of peoples and nations to self-determination’, it clearly states, ‘is a prerequisite to the full enjoyment of all fundamental human rights’.<sup>66</sup>

These efforts culminated in two victories: the enshrining of the right to self-determination in the opening articles of both International Covenants, and the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples.

<sup>61</sup> See Samir Amin, *Eurocentrism* (New York: Monthly Review Press, 1989); Edward Said, *Orientalism* (New York: Vintage, 1979); and Edward Said, *Culture and Imperialism* (New York: Knopf, 1993).

<sup>62</sup> Emerson, ‘Self-Determination’, p. 463.

<sup>63</sup> United Nations, *Yearbook of the United Nations: 1950* (New York: United Nations Department of Information), p. 529.

<sup>64</sup> United Nations, *Yearbook of the United Nations: 1951* (New York: United Nations Department of Information), p. 485.

<sup>65</sup> General Assembly Resolution 545 (VI), 5 December 1952.

<sup>66</sup> General Assembly Resolution 637 A (VII), 16 December 1952.

The positioning of the right to self-determination at the very beginning of the Covenants clearly signalled its status as a prerequisite for the realization of basic human rights. 'All peoples', Article 1 of both Covenants declares, 'have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.<sup>67</sup> The 1960 Declaration is generally considered the crucial United Nations resolution on decolonization. It not only begins by reaffirming 'faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small', its opening declaration states that the 'subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights'.<sup>68</sup> By linking self-determination to the basic rights and freedoms of all individuals, developing states successfully undermined the paternalism of the European colonial powers. 'Inadequacy of political, economic, social or educational preparedness', the Declaration asserts, 'should never serve as a pretext for delaying independence'.<sup>69</sup>

Far from being a categorical right with no strings attached, therefore, the post-1945 right to self-determination was deliberately and explicitly tied to the satisfaction of basic human rights. What is more, it was 'first wave' post-colonial states, as well as nationalist elites in colonial territories, who bound the two together, quite deliberately placing the former in the service of the latter. Given prevailing ideals of legitimate statehood and rightful state action, and the international community's new-found interest in applying these to internal state-society relations, this was an immensely rational strategy, a strategy that artfully appealed to higher order values of political legitimacy to discredit colonialism and establish a right to immediate independence. The so-called 'third generation' or 'solidarity' right of self-determination was self-consciously constructed upon the normative foundations of prior 'first' and 'second' generation political and economic rights of individuals.<sup>70</sup> As Jackson observes, juridical sovereignty became the right of all colonies, producing and protecting an array of empirically weak states, but this right was granted on the grounds that it was a necessary precondition for the satisfaction of basic human rights. That many developing states have since sought to separate their right to independence from the observance of human rights, or to invoke non-Western values to deny the universality of liberal civil and political rights, does not alter the fact that the campaign against colonialism championed such rights and used them to justify the right to self-determination.

## Conclusion

In contrast to the prevailing assumption that sovereignty and human rights constitute separate, mutually antagonistic international regimes, this article has argued

<sup>67</sup> 'International Covenant on Civil and Political Rights', in Burns H. Weston, Richard A. Falk, and Anthony D'Amato (eds.), *Basic Documents in International Law and World Order* (St. Paul, MI: West Publishing, 1990), p. 376.

<sup>68</sup> 'Declaration on the Granting of Independence'.

<sup>69</sup> *Ibid.*

<sup>70</sup> This common categorization of various types of human rights dates back to Karel Vasak's article 'A Thirty Year Struggle', *Unesco Courier* (November 1977), pp. 29–32.

that they are better understood as two normative elements of the inherently contradictory modern discourse of legitimate statehood. Lying at the heart of prevailing ideals about the moral purpose of the state, human rights have increasingly provided the justificatory foundations for sovereignty. This connection is clearly apparent in the communicative processes that have surrounded key moments of late modern international societal expansion. And as the case of decolonization indicates, such expansion is inexplicable without reference to the grafting of the right to self-determination, and in turn sovereignty, to emergent international human rights norms. In advancing and demonstrating this argument, two other widespread assumptions have been challenged. Where it is generally assumed that the construction of the international human rights regime was a Western project, we have seen that 'first wave' post-colonial states played a prominent role in the negotiation of both the Universal Declaration and the two International Covenants, a role in which they frequently gave priority to civil and political rights over social and economic rights, and in which they backed stronger rather than weaker mechanisms of accountability and enforcement. All of this challenges the assumption made by Jackson and others that the international human rights regime was a reaction to the proliferation of 'ramshackle states' in the Third World. While the excesses of these states have certainly fuelled the development of the regime, especially since the 1970s, their very existence as recognized, independent polities can only be attributed to the successful mobilization of emergent human rights norms.

In contrast to the constructivist argument advanced here, realist and rationalist approaches struggle to explain late modern international societal expansion. For realists, expansions or contractions in the number of sovereign states are driven by the material capacities that states can marshal to defend or expand their sovereign jurisdiction, territorial integrity, and overseas holdings. Increases or decreases in the number of states are attributed to the struggle for power, usually expressed in violent conquest, armed secession and major wars. Without denying the potential of such dynamics to produce changes in the membership of international society, they cannot account for the type of large scale expansion that attended decolonization. The type of generalized, militarily potent, armed struggle that would have been necessary to dismantle all of the European empires in the space of twenty-odd years simply did not exist, and Jackson is correct to argue that this transformation could only have come about through the wholesale delegitimation of colonialism as an institution. Rationalists fare no better in explaining international societal expansion of this magnitude. Despite the considerable effort that Bull and others devoted to describing the expansion of modern international society,<sup>71</sup> and despite Jackson's focus on decolonization, rationalists lack the conceptual and theoretical resources to explain such expansions. Like constructivists, Bull considers sovereignty to be an institution, but he assumes that its meaning is fixed, which makes his conceptual framework ill-suited to explaining the type of changes in the sovereignty regime that accompanied decolonization. More than this, though, because rationalists treat sovereignty as a discrete institution, not embedded in other constitutive norms and values, they have no way of comprehending the communicative processes that produce transformations in the sovereignty regime. This is where Jackson's argument fails. Although he departs from other rationalists in seeing change in the meaning of

<sup>71</sup> Bull and Watson, *Expansion of International Society*.

sovereignty, by failing to see how sovereignty and human rights are bound together within a single discourse of legitimate statehood, he can only describe, not explain, the direction of that change.

The perspective on sovereignty and human rights advanced here differs from that adopted by other constructivists, but it is by no means incompatible with their positions. While others have not gone so far as to conceive of sovereignty and human rights as components of a single discourse of legitimate statehood, many of their arguments imply such a move. As we have seen, constructivists view sovereignty as a variable, practically constituted institution, its precise content and political implications varying with time and context. Constructivists concerned with human rights often attribute some of this variance in the meaning of sovereignty to the articulation and institutionalization of international human rights norms, suggesting that the discourses of political authority and rights are in dialogue, a dialogue about legitimate statehood. Perhaps the most significant difference, then, between the perspective advanced here and most constructivist work on human rights concerns analytical focus. Where I have focused on the connection between human rights and international societal expansion, others have focused on the impact of international rights norms on domestic state practices.<sup>72</sup> The first of these projects illuminates the normative dynamics configuring the membership of international society, the second exposes the complex connections between international human rights norms, international organizations, non-states actors, and state compliance. The obvious challenge is for constructivists to bring these two analytical foci together, to produce an holistic and complete understanding of the relationship between international human rights norms and sovereignty.<sup>73</sup>

<sup>72</sup> See Thomas Risse, Stephen C Ropp, and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999), and Audie Klotz, *Norms in International Relations: The Struggle Against Apartheid* (Ithaca, NY: Cornell University Press, 1995).

<sup>73</sup> Daniel Thomas's work on Helsinki norms and the end of the Cold War goes some way to merging these two projects. See 'The Helsinki Accords and Political Change in Eastern Europe', in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink (eds.), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999), pp. 205–33.