these relations usually lack the necessary means to repress the ethnic and ideological passions taking the Enemy or the Other as their target. As for religious passions, they have often fostered violence rather than the love that religion celebrates. Hence the precariousness of philosophies that put too much trust in the possibility and durability of fundamental agreement or consensus among allegedly rational human beings, such as the theories of Rawls and Habermas. On the other hand, one should not confuse instrumental and calculating reason, which can be deployed toward any kind of objective, including genocide, conquest of territory, or forcible collectivism, and reason considered as the expression of a moral will as Kant had proposed in his Metaphysical Foundations of Ethics (a confusion between the two notions frequently afflicts the theory of rational choice). Realists who are pessimistic about human nature and about the nature of states but concerned about the survival, welfare, and freedoms or capabilities of human beings, idealists who are appalled by the huge gaps that separate ideal theory from reality, could meet around the non-metaphysical liberalism that Judith Shklar (1989) had called the liberalism of fear: a philosophy and ethics centered on the fight against and prevention of cruelty, oppression, fear, misery, and injustice, evils experienced by most human beings. The realists will continue to think that it would engender only limited and temporary gains, the idealists would continue to be tormented by all the obstacles, but they should be capable of following that same road, even if they do not know how far they will be able to go.

Such a journey requires guides and leaders. The present American Administration, with its unilateralist instincts and lack of diplomatic skills, is, alas, not wise enough to guide, and too much addicted to bullying to serve as a wise leader. Let us hope that this is just a temporary diversion, and not one more lost illusion.

Notes

This essay translated from the French, is a revised version of a contribution to a Entret Kant et Kosovo, a Festschrift for Pierre Hassner, edited by Anne-Marie Le Gloanac (Paris: Presses de Sciences Po, 2003).


Chapter 16

The United States, Human Rights, and Moral Autonomy in the Post–Cold War World

Brantly Womack

The question of accountability in human rights can too easily be reduced to those of the measurement of behavior by a general standard and the execution of appropriate sanctions. The argument of this paper is that from the time of Thomas Jefferson to the present the application of standards is locked in a dialectic with the need for moral autonomy on the part of individuals and communities. The actor is not a transparent locus of behavior, and neither is the enforcer a neutral channel of universal justice. While the universality of human rights impels responsibility to general standards, the humanity of human rights requires attention to the concrete conditions of action.

Although the problem of moral autonomy does not reduce itself to questions of power, power provides the most fundamental context of action. This is as true for the enforcers of human rights accountability as it is for suspected violators. In situations of great disparity of capacity among nations, asymmetry puts the weaker side in a situation of vulnerability that heightens the sense of risk to moral autonomy, while the stronger side is not at risk and therefore can be insensitive to the implicit threat posed by intervention. The unique situation of the United States, the lone superpower in the post–Cold War era, therefore merits special attention.

In the new era the United States has shown tendencies toward unilateral universalism, and this is understandable given its short-term interests. But in fact, the world order is relatively stable despite asymmetry, and even the United States will need to be stable and credible if it is to achieve sustainable leadership. Meanwhile, intermediate powers, Russia, the major powers of
Asia, and Europe, have an immediate interest and special role in establishing acceptable patterns of multilateral human rights accountability.

THOMAS JEFFERSON, HUMAN RIGHTS, AND INDEPENDENCE

Thomas Jefferson's immortal words from the second paragraph of the Declaration of Independence are usually, and rightly, remembered as a statement of universal human rights. The rights of "life, liberty and the pursuit of happiness" are "inalienable" and "self-evident." Although they are "endowed by their creator," there is no theology suggested that might limit that endowment. "Their creator" is the least sectarian formulation possible. The reference adds cosmic resonance to the universal message, and the claim that "all men are created equal" has a righteous and moral momentum that would be lacking in "all men are equal."

Jefferson goes on to completely subordinate government to individual rights. First, it is the purpose of government "to secure these rights." But many governments might concede this as long as they remained the judges of their own performance. Second, however, governments derive "their just powers from the consent of the governed." Democracy was required for governmental legitimacy. Third, the legitimacy of democracy too is contingent on the people's opinion of its performance, for "whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it." In short, basic human rights are universal not only in the sense that they are not a product of time and place, but they are also prior to law and the state.

But this ringing endorsement of universal human rights is not used by Jefferson as the premise of an argument for the transparency of all public authorities and an untrammeled global accountability and responsibility for enforcement. Rather, it is part of a declaration of independence. The first paragraph of the Declaration makes clear that its primary purpose is to establish the "separate and equal station" of the United States of America. The point is not to achieve a redress of abuses, but to use the long train of abuses to justify a new political and moral space. Jefferson is not asking for intervention, he is asking for support from fellow Americans, sympathy from the English, and alliance from France and Spain. The rhetorical utility of inalienable human rights is to mobilize Americans, to cause division among the English, and to assure the French that the revolution is not a narrow or ephemeral movement but is grounded on abuses that all should agree are intolerable.

It is apparent from Jefferson's record of the debates surrounding the Declaration and from the changes in its text from his original draft that the major concerns of the Continental Congress were not the evidence for abuses, but about the more practical matters of uniting the states and securing aid from France. Jefferson's condemnation of the slave trade was dropped because of Georgia and South Carolina's continuing imports and the involvement of northern states in slave transport. Rhetoric considered offensive to Englishmen was softened to avoid making unnecessary enemies. A formal declaration of independence was necessary in order "to render it consistent with European delicacy to treat with us, or even to receive an Ambassador from us."

It was not assumed by the Continental Congress that a United States of America would be free from abuses. On the contrary, the discussion of the Articles of Confederation that proceeded immediately after the adoption of the Declaration of Independence showed considerable concern about the continuing condition of individuals and about the autonomy of states within the confederation. John Adams made the observation that "in some countries the labouring poor were called freemen, in others they were called slaves; but that the difference as to the state was imaginary only." In arguing for equality between large and small states in the confederation, Dr. Witherspoon argued that "If an equal vote be refused, the smaller states will become vassals to the larger, and all experience has shown that the vassals and subjects of free states are the most enslaved." Although the abuses of the previous political order provided the justification for independence, it was not assumed that the new political order would be free from abuses, nor that it would permit the correction of abuses by external powers. Rather, it was assumed that the new political order would provide a more appropriate public space and structure for the American political community. A doctrine of universal, individual rights grounded a new claim for sovereign autonomy.

THE DIALECTIC OF UNIVERSAL STANDARDS AND MORAL AUTONOMY

The expression of universal human rights in a document arguing for sovereign autonomy might be taken as a concept before its time, like the notion of "all men are created equal" in a society that permitted slavery and the inequality of women. But the linkage between human rights and sovereign autonomy is, I would argue, neither an imperfection in the original articulation nor a contradiction. Rights and autonomy are in tension, but they are also essential to one another. There is a dialectic between them that requires constant, shifting, and unsatisfying compromises in concrete cases, and yet the absolutization of either, satisfying though it might be in terms of consistency, produces unfortunate and unintended results. The dialectic is further complicated by the existence of sovereign political units in an international context of unequal power and capacities.

The key to the dialectic is that while human rights reside ultimately in individuals, they are acknowledged and protected by communities. Rights are inherently individual because each person lives her or his own life. But the individuality of rights can be misleading. The term "rights" might seem to imply something that one either has or doesn't, and accountability might appear to be no more complicated in principle than looking for and correcting defective cases, much like quality control at a factory. But neither individuals, nor rights, nor systems of accountability exist in the abstract. Not only is life...
inextricably dependent upon others, beginning with one’s parents, but the urge to protect another’s welfare requires a fellow-feeling, an empathy, and that in turn implies a community. Thus while individual rights might be abstracted into identical and universal claims, the concrete reality of individuals and accountability for their welfare is inextricably bound with their communities. To reduce this thesis to an epigram, while the “rights” of human rights are universal, their humanity is communal.

The next step in exploring the dialectic of rights and moral autonomy is to examine the multiplicity, variety, and hierarchy of communities. Communities range from the intimacy of nuclear families to humanity in general. Clearly, any individual is simultaneously a member of a number of communities. One is usually a member of a family, a larger circle of relatives, a neighborhood, a locality, a state, and humanity, to name a few. If an individual looks up vertically at his or her communities, it might seem like an infinite and nebulous stack of memberships, some nesting inside others. However, if one looks horizontally from any of these levels, there are families to which this particular individual does not belong, localities other than this one, foreign states, and so forth. Only at the level of humanity is there one community, and that is the least tangible of the lot. Within even the most intimate communities the individual expects an acknowledgement of moral autonomy as well as of individual interests. Likewise, in a multiplicity of communities each community (whether families in a lineage organization or states in a multilateral body) expects not only that its interests will be part of the interests of the larger group, but that there will be appropriate space for its own discretion. If a larger community totally subordinates the deliberation and will of a smaller one to its own, then the smaller is no longer a community but has become at most merely an administrative subdivision of the larger. A hierarchy of communities creates a series of genus-species relationships in which each is at the same time in an inclusive relationship with the individuals and communities below it and relates as an individual to larger communities above it. “Above” and “below” do not suggest levels of power or authority, since a particular level of community can be strong and the level above it weak or even hypothetical. For reasons discussed below, in the modern world the state is usually the strongest level of community, while humanity often seems as inclusive as the sky but as far away.

The multiplicity of communities implies competition as well as hierarchy. A communal identity is defined not only by whom and what it claims for itself, but by what it regards as beyond its boundaries. The relationship with other, horizontal communities is not necessarily hostile, but it is necessarily an external relationship rather than an internal one. The two communities relate not as parts of a whole, but as self-regarding parties. Even if they are both members of a larger community and appeal to the common interest embodied in the encompassing community, to the extent that they have their own discretion and interests, they are in an implicitly competitive relationship with their fellows, because the identity of each excludes the other. In hostile competition a gain by the other is viewed as a loss. At its worst, a loss is not only a defeat, but also a weakening of one’s own capacities for future struggles. Thus the anticipation of risk can sharpen competition into conflict. Just as individuals have a right to life, communities have an urge to collective survival. The bellum aliguium contra alios, the war of some against others, can be as mortal as Hobbes’ bellum omnium contra omnes, the war of all against all, and more destructive since the greater capacity of communities compared to individuals enables their struggles to be nastier, more brutal, and longer.

Of the various levels of community, states make the strongest claims to further the interests of their members, and their sovereignty defines the nodal point of political community. States assert exclusive control over territory and a monopoly over the means of violence within the territory, thereby assuming a privileged authoritative relationship, sovereignty, to the included individuals and communities. Clearly, as Jefferson indicates, the only reasonable justification for sovereignty is that it exists to secure the welfare of its members. On the other hand, to the extent that domestic competition requires regulation for the common good, the state’s power is ultimately decisive in internal affairs. To the extent that external competition with other states must be addressed, the state not only has the obligation to defend the individual interests of its members, but also to preserve its own moral autonomy. It can bind itself through international agreements, but only if it merges into a larger sovereignty can it abdicate sovereign responsibility.

As a prerogative, sovereignty might be considered absolute in the abstract, just as individual rights might be. However, the reality of sovereignty depends on the capacity of the state. Domestically, sovereignty is deficient to the extent that its order does not prevail. To the extent that laws and public authority do not matter and violence is not controlled, the state cannot function as the public guarantor. To the extent that the reach of the political community and public order only covers part of the population in its territory, the claim to sovereignty is incomplete. A limited state that guarantees zones of immunity to its citizens and their private organizations is quite different from a weak or incomplete state. A limited state is limited by constitutional consensus and effective in its areas of competence. A deficient public order creates a field of uncertainty, which some will experience as greater liberty, but many will experience as greater risk.

Externally there are also realities of power that shape the reality of sovereignty. In its international relations, the state must presume that it alone represents the common interests of its people, because it alone is at the apex of their political structure. However, while the statement that “all men are created equal” does not depart from the reality of the situation by more than an order of magnitude, the claim that “all states are created equal” seems strained. Not only are individuals more similar than states, they interact with a greater number of their fellows in a greater variety of situations. States are more like trees in a forest than like individuals in a marketplace: they are stuck in one place, their most important relationships are fixed by proximity,
and size varies enormously. The external realities of power, therefore, vary from one relationship to the next and from one state to the next.

Any particular sovereignty is locked by its location into a matrix of regional relations in which relative capacities will remain fixed. Locational fates differ. Compare the bicoastal globalism of the United States with the landlocked situation of Laos. Relative capacities differ. Compared to Vietnam, the population of Laos is as small as Vietnam’s population is when compared to China. Given the range of capacities among states and their inability to rearrange and sort themselves according to size, a relationship between two roughly equal states is the exception. Asymmetric relationships are the rule.

Before moving on to the adrenaline-filled topic of asymmetry, it is good to reflect on the principles of accountability implied in the dialectic of individual rights and communities. They are complementary in the sense that each requires the other, and yet by that very logic of each requiring the other, the absolutization of either universal rights or community prerogative produces an irreconcilable conflict. There is a great intellectual and moral satisfaction in consistency and rationality. Therefore it is easy to become impatient with the tension and practical compromise implied in the dialectical relationship and to seek to tilt the game permanently (preferably some else’s game) in favor of either individual or community. Just as an absolute theory of Staatsreform or of the “dictatorship of the proletariat” can warp a community’s sense of its own moral limits, so too a self-righteous “white man’s burden” to force other communities to abide by the standards of the enlightened can make the same problematic contribution to its object that religious crusades once made to the spread of religion.

Are there then any principles of accountability that could provide general guidance and yet encompass the dialectic of individual and community? It seems to me that a complementary pair of general principles could be derived from the initial Jeffersonian statement. First, that the advocacy of human rights should be premised on their self-evidence, and second, that there should be no intervention without representation.

The self-evidence of human rights is often taken as affirming that what appears to be common sense to me should be common sense to everyone. In other words, the content of human rights is assumed to be so unquestionable that any difference of opinion or action is based on willful distortion of the obvious. However, the notion of self-evidence can be transformed from being the bedrock of self-righteousness and preemptory superiority into a serious principle of respect for both rights and communities. If rights are self-evident, then the promotion of rights must be based on the common ground of humanity across communities. Like the concept of humanity in Confucian philosophy or the concept of reason in Plato’s, the content of human rights should be able to be evoked by dialogue from any community. The trans-communal domain of human rights is one of discourse rather than one of force, because the common grounds of understanding and evidence are presumed to be present. If what is alleged to be a human right is in fact self-evident, it should eventually be persuasive.

The second principle, no intervention without representation, is founded on the notion that rights are endogenous to individuals in their communities, and therefore that the moral autonomy of the community must be respected in any action regarding its members undertaken by other communities. A community can bind itself to collective norms and institutions, such as the Charter of the United Nations. If it is not a party to the institution or group contemplating intervention, then the interveners are acting on the presumption that the community in question is either illegitimate or incompetent. Intervention against the will of the existing political community presumes that the individuals concerned are not being represented by their political unit, and therefore the principle of “no intervention without representation” is not being violated. Even if such a weighty presumption is justified, intervention carries with it the risk of creating a community that is warped by its external relationships.

If international interest in human rights should be founded on discourse rather than force and if intervention in states that are functioning as political communities should be based on representation, then there should be a presumption against unilateral sanctions such as trade sanctions in support of human rights causes. These may appear to add to the persuasiveness of discourse or to demonstrate sincerity, but in effect they are a poke in the ribs of the other political community. Compliance would be based on threat rather than on conviction, and the credibility of threat is based on relative power.

ASYMMETRY AND ACCOUNTABILITY

The relative capacities of states do not directly affect their competence as political communities; after all, larger states have more people to take care of, and their leaders can make grander mistakes. However, disparity in relative capacity creates a permanent situation of asymmetry in the opportunities and risks presented in international relations. To the extent that states are competitive, conflict and negotiation will occur not between equals, but between one confident of its strength and another aware of its vulnerability. Asymmetry in individual relationships is often counterbalanced by the general matrix of relations, since most states are larger than some but smaller than others. However, at the smaller end of the spectrum there will be states that almost always negotiate from a position of inferior relative capacity, while at the other end the United States, especially in the post–Cold War era, is in a peculiarly dominant position in its international relations. Such differences affect not only bilateral relations, but also attitudes toward multilateral constraints.

Let us consider the pair of states, large A and small B. Even if we assume that the quantity of their interactions (trade and so forth) is equal, B presents proportionally a much smaller set of risks and opportunities to A than vice versa, and therefore normally occupies a smaller share of A’s attention. By contrast, A pays close attention to B because of its vulnerability perhaps too close attention, since A is not behaving toward B with a comparable intensity of interest. The possibilities for misperception that exist in any relationship
are multiplied by asymmetry. A will tend to be sporadic in its attention to B, and impatience might induce it to push B with its superior power. B might well become paranoiac because of its vulnerability and interpret A’s behavior as coordinated malevolence. Such tendencies are less evident in long-standing and peaceful asymmetric relationships, but they easily lead to crises in novel situations such as the dismemberment of Yugoslavia.

The most obvious and direct effect of asymmetry on accountability and moral autonomy is that in fact the moral autonomy of only one side is vulnerable, and therefore that side is likely to be sensitive to infringements on its sovereign prerogatives. With regard to intervention, A and B do not stand equally behind a veil of ignorance awaiting justice. Intervention requires a stronger hand entering a weaker territory, and each knows how it stands with regard to relative strength. A can infringe on B’s moral autonomy, but not vice versa. The principle of reciprocity rings hollow. It is hardly surprising that B would have a “victim mentality,” since, if there is going to be a victim, it is clear who it will be. While A looks for wrongs to be righted, B waits to be wronged.

An indirect but equally interesting consequence of asymmetry is that A will be less interested in multilateral agreements and commitments regarding accountability. Multilateral constraints appear to be equally binding on all parties, but in fact they press hardest on those states that would otherwise have the greatest real discretion. Only if the constraint and its enforcement are in fact in the hands of the strongest does a multilateral commitment appear to its advantage, and this is more likely in the case of an alliance focused on a particular shared goal than it is in the case of a multilateral institution with a broad mandate. American indifference toward the UN in general and in particular toward such bodies as the World Court illustrates this point.

This rather stark picture of bilateral asymmetry is modulated in many instances by circumstances. When one or both of the parties involved are intermediate powers, their general pattern of international relationships is mixed, and it is less likely that their self-perception and diplomatic habits in a particular case will be driven solely by the bilateral disparity. For instance, Mexico deals with Guatemala as a strong state with a weaker one, but it knows well what it is like to have a strong state on its border. Likewise, many relationships exist within a matrix of regional relations that usually buffers and stabilizes the bilateral relations embedded within it. The exceptions—Iraq’s invasion of Kuwait, for example—often prove the rule. To return to Mexico and Guatemala, both parties must consider the attitudes of the other Central American states and of the United States in determining their bilateral relationship. Lastly, international organizations such as the United Nations, the World Bank, and the World Trade Organization (WTO) lay down regimes of expected behaviors, arbitration, and official inquiry that set a context of general expectations for some bilateral differences. The two sides may be imbalanced and playing their own game, but they are doing so in a world gaming-hall with its rules, officials and invigilators. All of these factors reduce the effect of bilateral asymmetry in many instances to insignificance.

For the United States, however, asymmetry is a major factor shaping its bilateral relationships and, more generally, its global hegemony. With a massive military superiority vis-à-vis any combination of other states, the world’s largest economy and the world’s third-largest population, the United States is in a unique situation. It is in the A position in all of its bilateral relations, and therefore it is uniquely tempted to generalize the perspective of the more powerful into a worldview of the most powerful. Its own moral autonomy is invulnerable, and its interest in human rights in other countries seems to be a matter of its own discretion. This creates the possibility of what I would call “unilateral universalism,” the pursuit of one’s own interests and preferences as if they were universally valid and applicable.

Although the United States has not always been the most powerful country in the world, its size and history have combined to deny it the experience of the B position. Since 1815 it has not fought a war with a more powerful nation. It has been isolated from European affairs by the Atlantic, and it quickly became the dominant player in hemispheric affairs. Geographic good fortune is amplified by a wealth of natural resources and a self-confidence of political and moral superiority and exceptionalism. The world wars reduced American isolation but confirmed its sense of superiority. In the Cold War, the rivalry with the Soviet Union was not with an equal but rather with a nemesis, an “evil empire.” The major hot wars of the Cold War, Korea and Vietnam, were fought with smaller powers, and the frustration of the war in Vietnam is still an indigestible contradiction in the American self-image.

Despite the continuity of the American world role into the post–Cold War era, the situation of being the world’s only superpower is novel. There is not even the shadow of a nemesis for negative guidance, and the plan for national missile defense would remove the ultimate sanction of mutually assured destruction. Despite the absence of a major enemy, the United States spent 36 percent of the world military budget in 1999, and after September 11 the military budget increased further. September 11 proved that the United States was vulnerable to terrorist attacks, but the war against terrorism in Afghanistan is being waged as a war of righteous annihilation more reminiscent of campaigns against American Indians in the late nineteenth century than of Cold War hostilities. Although the United States remains interested in international cooperation and alliances, policy is set by domestic perceptions and priorities rather than negotiated with other states. As the embargo of Cuba, the landmine treaty negotiations, and the Kyoto Protocol on global warming have illustrated, there are no other states or combination of states that can constrain American international policy, and, given the central role of the “hyperpower,” its policy sets the global agenda. This is the essence of unilateral universalism.

If we apply our earlier discussion of the effects of asymmetry on human rights and moral autonomy to the current situation of the United States, it is clear that any other political community would feel vulnerable to the power of the United States and thus tend to be sensitive about preserving its moral autonomy in a problematic situation. On the other side of the coin, the United
States is in a position where it can easily ignore external opinion on its handling of human rights (the most obvious cases being the death penalty in general and in various individual executions), while the global reach of its influence creates an opportunity for it to influence other states by means of official policy, NGOs, and world media attention. In many cases American influence is welcomed by third parties as a latter-day mission civilisatrice, and the failure of the United States government to intervene is deemed as a failure of virtuous policy-making. However, from the point of view of the targets or potential targets of such attention, American intervention in human rights results from the relative weakness of their state rather than simply from their faults, and it expresses the arrogance of power rather than the sincerity of conscience.

Accountability American style can be resisted not because there is a defense in principle of the wrongs alleged, but because the official attention of the United States, with its hand gently tapping on an array of sanctions, is considered a threat to the autonomy of any other political community and a preemptory denial of its integrity and legitimacy. If one compares, for instance, the Chinese white paper on human rights to the annual U.S. State Department report on Chinese human rights, China presents its accomplishments in human rights and challenges the appropriateness of American official interest. China does not respond to the abuses alleged in the American report, and this makes its white paper unconvincing to an American audience. However, to respond to charges within the framework of an official position paper (rather than, for instance, within the framework of nonpublic diplomatic inquiries or a joint human rights commission) would first of all acknowledge the legitimacy of American unilateral interest and second require it to admit, dispute or defend whatever charges the American annual reports contained. The Chinese government would not condone torture than the American government would, nor would it be more able to prevent it absolutely—or to prevent allegations—than the American government. But the State Department report is taken as expressing a self-righteous superiority that implies a violation of China's moral autonomy. In the broader case of “Asian values” that was raised in the mid-1990s, the crux of the matter was not the actual differences in values between Asia and “the West” (mostly the United States), but the devaluing of Asia itself that was implied in official interference.

The reciprocal question would be that of the accountability of the United States itself in the post-Cold War era. Since the heady days of the establishment of the UN the United States has been reluctant to sign agreements that might restrict its domestic options or license international oversight of its activities. The most recent example is the establishment of an International Criminal Court that was formally proposed by the Rome Statute of 1998. The United States signed the Statute in December 2000, but has not yet ratified it, and is unlikely to do so in the foreseeable future. Moreover, the United States does not recognize the compulsory jurisdiction of the International Court of Justice, although it is a recognized practice to have an American justice on the Court. Besides balking at such institutional constraints, the war on terrorism has led to situations that caused international alarm at the possible abuse of rights by the United States, most prominently in the case of incarceration of prisoners from Afghanistan at Guantanamo Bay in Cuba. The American response to such pressures is often to investigate its own actions, but never to submit to an external review.

To end this section with the starkest possible formulation of the problem, unilateral universalism is pseudo-universal. To the extent that its will is determined by a single political community, the American reach into other political communities expresses the asymmetry of its power rather than a commonality of interests. To the extent that it is concerned with human rights, the superpower will find it more convenient to emphasize the prescription of behavior that will bring other states more in line with its own idealized domestic standards than to participate in multilateral institutions. In the dialectic of universal content of human rights and moral autonomy, universal content is reduced to unilateral identification of transgressions, and moral autonomy is simply ignored. On the other side of the coin, the challenge to moral autonomy that asymmetry necessarily presents to the weaker party is amplified by the arbitrariness of the superpower’s unilateral behavior. Even if compliance with a demand is both feasible and reasonable, a weaker state (and every other state is weaker) must consider whether it is compromising its moral autonomy by acceding to the demand. Asymmetry has never been more important in world affairs.

**BEYOND UNILATERAL UNIVERSALISM**

In 2002, world news has been dominated by the continuing warfare in Afghanistan, the “axis of evil,” prospects of an American invasion of Iraq, American nuclear strategy, and struggles between Israelis and Palestinians. All of these involve asymmetry, and they create a dark and swirling picture. Human rights have taken a back seat to more primal issues of security and the war on terrorism. One might shrink from extrapolating the future based on the first year of the millennium. Despite current anxieties, however, I would argue that unilateral universalism is just as likely to be an immature stage of a more stable world order as it is to be the beginning of its own destruction, and that intermediate powers and multilateral institutions might play a decisive role in the maturation process.

In contrast to the previous section, which concentrated on the differences created by asymmetry and the resulting structural misperceptions, the thesis of this section is that asymmetry is a normal condition. A preponderance of power does not necessarily create the ability to dominate others, and the long-term interests of even a superpower require broad cooperation. Intermediate powers have a special interest and a special role in stabilizing and institutionalizing asymmetry, thereby moving the current world order beyond its initial phase of unilateral universalism.

The disparity of capacity between A and B does indeed mean that A can do things to B that B cannot do to A, but one should not leap too quickly to
the conclusion that the strong dominate and the weak submit. If asymmetry equaled control, then Vietnam would have been defeated first by the French, then by the Americans, and finally by the Chinese. Of course Vietnam was in no position to invade its opponents, and it won by counterposing the moral concerns of an outraged community to the limited interests of its more powerful opponents. Nevertheless, Vietnam's fundamental contribution to contemporary world history is that it demonstrated that the powerful can be exhausted and frustrated by the weak. Relative power is not absolute power.

If we consider the likely American invasion of Iraq, which is a smaller, weaker and more isolated state than Vietnam, and one ruled by a much less popular and solid regime, the result is not clear. If the United States does not secure the cooperation of states in the region and beyond, then not only will its logistics be hampered, but all the non-cooperators would rather see it fail than succeed. Even if Saddam Hussein is easily overthrown, the problems of policing Iraq and creating a new regime would be tedious and difficult. Moreover, a commitment of this sort virtually precludes a major commitment elsewhere. By showing its strength unilaterally, the United States could lose its capacity to threaten others. And the alternative of coalition-building involves negotiating common purposes.

If even the world's only superpower is wise to have second thoughts about eliminating its most disliked opponent, the structure of the world order, asymmetric as it is, is rather stable. It is not an order of equals, but it presents a matrix of regional and global relationships in which each relationship is usually unequal but cannot simply be forced by the stronger side. If the matrix is stable, then it is to the interests of all that it is not misunderstood. Weaker powers would not want to be unnecessarily anxious about their vulnerability, and stronger powers normally would not want to have weaker powers unduly alarmed about their intentions, because alarm would lead to greater resistance rather than to greater compliance. Therefore, not only is there a normalcy to the worldwide web of asymmetric relations, but all have an interest in the proper understanding and management of these relations.

Even if both sides would prefer normalcy, the management of asymmetric relations is not easy. Because the relationship between A and B is not reciprocal, interaction has a different existential reality for each side. If both want to control misunderstanding and prevent unnecessary crises two techniques are available. First, specific issues and problems can be neutralized by being assigned to specialist commissions. If, for instance, a bilateral border commission is established to manage a common border, then the routinization of this arena for what otherwise could be hot disagreements lessens the likelihood of crisis. In the case of human rights, a bilateral commission is likely to be less incendiary and more effective than occasional confrontations or unilateral judgments of the behavior of the other. Second, a multilateral framework in which bilateral differences can be situated buffers the asymmetry of the bilateral relationship and deflects attention away from bilateral confrontation. For example, one of the basic functions of the WTO is to serve as a neutral venue for trade disputes. Clearly the UNHRC and other bodies serve this purpose in human rights. To the extent that bilateral relations can be neutralized by routinization and contained by mutual multilateral commitments, the tension inherent in asymmetric relations should be reduced.

Even though all sides have an interest in the proper management of asymmetry, the interests and possible contributions differ between the superpower and intermediate powers. For the United States, sustainable leadership requires a broad confidence that the order that it heads serves common purposes. For intermediate states, that is, for most states throughout the world but particularly for Russia, Europe, and the major Asian countries, there is a more immediate interest in predictable American behavior and effective multilateral institutions.

Clearly the United States is and will remain the central state of the current world order. If it slips from that position history's page will have turned, regardless of how the change occurred. It is in the strongest position of any Western power since the high point of the Roman empire. Yet it did not achieve this stature by conquest, but rather by the possession of a preponderance of national capacity and by leadership of like-minded states.

The fact of centrality and its advantageous position in all bilateral relationships creates a tremendous temptation for the United States to maximize its gains and to minimize binding precommitments. If the United States pursues its best possible bargain in transactions with other states, using issue linkage, its influence on third parties, and its strength in multilateral institutions, it may appear to be acting rationally by market standards. After all, the other side is pursuing its best possible outcome, and merely lacks the advantages of being the central player. However, such behavior in the long term sacrifices the relationship to the transaction. Because the center serves no interest greater than its own, it gives everyone else an incentive to reduce the power and discretion of the center. The center commands, but it does not lead. The rest comply, but they do not cooperate. A shift in relative capacity occurs because the center expends resources in sustaining compliance and the others sequester their resources or even combine against the center. Unilateral universalism is self-isolating and thereby undermines its own position.

By contrast, sustainable leadership builds loyalty and cooperation by maximizing the interests of the world order of which it is the apex rather than maximizing its own private interests as top dog. This does not require denying ones own interests. It does require self-control, however. The center would enter transactions with its handful of situational advantages tied behind it, and thus would be on an equal footing. The center would thus be credible as the representative of an impartial and inclusive order, and this would encourage loyalty and cooperation. The order, and the center's position, would be maintained by the quality of leadership and the cooperation that it induces rather than by the expenditure of resources.

With regard to human rights accountability, unilateral universalism preserves its own unaccountability and threatens the moral autonomy of the
states that it targets. Sustainable leadership, by contrast, does not emphasize its own privileged position, and its efforts on behalf of human rights are cooperative and multilateral, thereby reducing the challenge to moral autonomy.

The prescription for sustainable leadership, like a recommendation for a healthy diet, is in principle neither impractical nor irrational nor self-denying. However, it requires the subordination of immediate gratification, and to a certain extent, of domestic political preferences, to long-term interests. It can operate only as an explicit ethical and strategic norm against the impulse to seize the apparent advantage. However, for intermediate powers, predictable and order-regarding behavior on the part of the central power is of both immediate and long-term interest. Indeed, the more that the central power acts like a hyperpower, the greater the general desire for sustainable leadership. In other words, precisely when the United States is least likely to control itself the rest of the world experiences the greatest desire to see it under control.

It might be said that Europe, the major powers of Asia, and Russia have a particular “civilizing mission” in the post-Cold War world, namely, to encourage the United States to move beyond unilateral universalism. As with all healthy regimens, the arguments most persuasive to the United States will be the effects of its own excesses rather than the advice of others. However, especially in the case of human rights accountability, the rational solutions are necessarily multilateral, and therefore initiatives can be taken by others.

The main advantage of the participation of intermediate powers in human rights accountability is that they are not the superpower. They have reason to be interested both in the moral autonomy of states as well as in the universality of human rights because they themselves are potentially at risk to unilateralism. The implicit challenge of their power to the moral autonomy of the state in question is less direct, and most of their mechanisms of accountability will be multilateral. Moreover, their own national experiences are varied, and thus cooperation requires movement away from a notion of self-evidence as “my common sense” to self-evidence as a common ground across national experiences. Discourse between former imperial powers like the United Kingdom and France and a former colony like India or a communist regime like China is likely to produce a notion of human rights that is less satisfying to reformers, but one that does not raise the confounding issue of external imposition. The war on terrorism will increasingly raise questions about human rights and the moral autonomy of states that will be more vivid to non-central actors because they are potentially at risk. The moral limits of the war on terrorism are likely to be less obvious to the United States than to other states.

What I am suggesting is not a confrontation between the United States and the intermediate powers and multilateral institutions, but rather their active and confident playing of a specific role in the matrix of asymmetric relationships. If the intermediate powers promote whenever possible the routinization of human rights issues in specialist commissions and the continued multilateralization of human rights institutions, they will be ahead of and possibly in tension with American short-term preferences, but in line with sustainable leadership. The recent loss and regaining of an American seat on the UNHRC is illustrative of the relationship. In 2001 the United States lost its seat on the Commission to Austria, due in part to inadequate preparation for the vote and in part to general alienation from American unilateralism. In 2002, the United States refused to run for a contested seat, and so Spain and Italy graciously abandoned their campaigns. Such deference is necessary to acknowledge the central position of the United States and to keep it invested in multilateral efforts. But the original defeat of the American candidate in 2001 was good as well, because it showed the autonomy of the Commission from American control. This is not only a useful lesson to the United States, it also strengthens the multilateral character of the Commission’s actions.

In many respects the intermediate powers are already ahead of the United States. European foreign aid will soon be approximately four times that of the United States in terms of the percentage of GDP, and multilateral pressure is clearly involved in President Bush’s recent initiatives in this area. The Kyoto Protocol on global warming and the Third UN Conference Against Racism are recent examples of massive efforts in which the United States played a less than leading role. Great Britain and Spain dealt with important issues of international liability for human rights abuses in the case of General Pinochet. China’s efforts at domestic poverty reduction have been amazingly successful, and perhaps its methods could be applied more generally. Fortunately for the world, not everything that happens starts in Washington.

The point of this chapter is not for an American to tell others to do what they are doing already. Rather, its purpose is to suggest a theoretical framing of problems of human rights accountability at three levels. At the most basic level, rights are dialectically related to moral autonomy, and so the tension between the universality of human rights and national sovereignty must be managed, it cannot be eliminated. Community is the concrete humanity of human rights. Second, asymmetry creates a network of international relations in which the stronger and weaker parties are in radically different situations. The weaker side experiences more acutely the opportunities and risks of an asymmetric relationship, and may easily perceive it as more threatening than it is. The ultimate asymmetric relationship of the present era is that between the United States and everyone else, and it leads to the tendency toward American unilateral universalism.

Finally, despite asymmetry, the world order is more stable than it appears to be. Relative power does not equal absolute power, and the long-term interests of the superpower in sustainable leadership coincide with the short-term and long-term interests of everyone else in less arbitrary and more multilateral world politics. With regards to human rights in particular, the intermediate powers are in a particularly good position to formulate and advance initiatives because they are more sensitive to the problem of moral autonomy and less threatening in their activities, especially multilateral activities.

If Jefferson returned today, the appearance of the world would be novel to him, but its problems would seem familiar. When he declared certain
rights to be self-evident, he knew that he was neither stating the obvious nor resolving the issue. Rather, he was setting a challenge with constantly shifting grounds and venues, one in which rights and independence would play roles that at times appear complementary, and at other times contradictory. He may have wished for the success that the American experiment has enjoyed, but he would not be surprised that challenges remain.

Notes

2. Ibid., 18.
3. Ibid., 16.
4. Ibid., 25.
5. Ibid., 29.
6. Of course, this paragraph cannot do justice to the complex realities of sovereignty, as the example of the European Union might illustrate. Nevertheless, I would argue (but not here) that most of the ambiguities could be located in conceptual space demarcated by scales of capacity and contractual limitation.
7. Roughly 1:16 in both cases. Of course, Laos also borders China.
8. The reader may well ask, “larger in what sense and by how much?” But I would like to postpone the distracting problem of measuring asymmetry. There are many cases where the disparity is so large and multi-dimensional that the question of measurement is peripheral, and one such case, the United States after the Cold War, is our ultimate focus here.
9. The term “hyperpower” was coined by French Foreign Minister Hubert Védrine (with Dominique Moïse) in Las Cartes de la France a l'Heure de la Mondialisation [The assets of France in the era of globalization] (Paris: Fayard, 2000).
13. As of March 9, 2002, there were 55 ratifications and 139 signatories. Almost all European countries have already ratified. Sixty ratifications are necessary to establish the Court. See http://untreaty.un.org/ENGLISH/bible/englishinternetbible/part1/chapterXVIII/treaty10.asp#Notes.
14. In fact all of the five permanent members of the Security Council have been represented on the Court continuously, with the exception of China (from 1967 to 1984).

Chapter 17

Human Rights, Peace, and Power

John Owen

Introduction

Thomas Jefferson was both a cosmopolitan and an American patriot. His assertions that “all men,” that is, not only Englishmen or Americans, “are created equal” and “endowed by their Creator with certain inalienable rights,” and his passionate support for the French Revolution, suggest that he felt linked on some political level with people around the world. Jefferson, however, was also an American patriot. He felt a special obligation to help the citizens of his own country enjoy their natural rights to life, liberty, and the pursuit of happiness.

In practice Jefferson reconciled his cosmopolitanism and his patriotism in the usual way: by assuming that if his own free country were secure and prosperous, liberty around the world would benefit. Robert W. Tucker and David C. Hendrickson title their book about President Jefferson’s statecraft Empire of Liberty,1 and that is precisely how the sage of Monticello thought of the United States. For him there was no contradiction in the expansion of political liberty and of U.S. power.

Like most statesmen, Jefferson fought too successfully against cognitive dissonance. In the real world, good things do not always go together. Expanding U.S. territory in the early nineteenth century meant treating with Napoleon Bonaparte, a dangerous despot (unrecognized as such by Jefferson), and also waging aggressive war upon Indian tribes. Jefferson turned out to be correct, however, that the territorial expansion of political liberty generally yields two political results: an increase in international peace, and an increase in the influence and power of the United States.

Human rights, that is to say, have political effects, by which I mean consequences for the distribution and uses of power within and among
THE FUTURE OF LIBERAL
DEMOCRACY
THOMAS JEFFERSON AND THE
CONTEMPORARY WORLD

Edited by
Robert Fatton Jr.
and
R.K. Ramazani
CONTENTS

List of Contributors vii
Preface ix

Introduction 1
Robert Fatton Jr. and R.K. Ramazani

PART I
HUMAN RIGHTS, THOMAS JEFFERSON, AND THE LOCKEAN MOMENT

1 Thomas Jefferson, John Adams, and the Déclaration des Droits de L'Homme et du Citoyen 13
Iain McLean

2 Liberal Imperialism 31
Alan Ryan

3 Jefferson, Rights, and the Priority of Freedom of Conscience 49
Jack N. Rakove

4 An Appeal to Heaven: The Language of Rights on the Eve of American Independence 65
T.H. Breen

5 Jefferson and Jinnah: Humanist Ideals and the Mythology of Nation-Building 85
Akbar Ahmed

PART II
RIGHTS AND THE CRAFTING OF CONSTITUTIONS

6 Need for a Credible Mechanism to Secure Accountability 101
Justice J.S. Verma

7 Rights and Human Rights in the Modern World: The Experience of Working the Bill of Rights in the Indian Constitution 115
Soli J. Sorabjee