Efforts to establish and enforce universal human rights have often been resisted by advocates of some form of relativism. The "Asian values" argument, for example, poses a relativist challenge to any international human rights agenda that includes individual liberties and democratic institutions (see Bauer and Bell 1999). Such challenges have led many to see current controversies about human rights as rooted in a fundamental conflict between moral relativism and moral universalism. The aim of this essay is to suggest a particular resolution of this conflict, one that does not sacrifice either the universality of fundamental human rights or the respect for and tolerance of diversity sought by those who advocate relativism. It sees respect for national self-determination as interacting with respect for universal human rights to produce a doctrine of accommodation. In the final section we apply our position to the human right to democratic institutions (International Covenant on Civil and Political Rights 1996, Article 25).

Developments in the field of human rights since the end of the Cold War suggest that the idea of a relativist challenge to human rights is now out of date. As Anne Bayefsky writes, "Every UN member state is a party to one or more of the six major human rights treaties. 80% of states have ratified four or more" (Bayefsky 2001: xiii). Further, all countries now use similar political institutions (e.g., bureaucratic government, law, courts, police, prisons, taxation, public schools, military forces) and these institutions carry with them similar problems and abuses (Donnelly 1999). Beyond this, the banner of cultural relativism is often carried by states with extremely bad human rights records and this gives the idea itself a bad odor (Bayefsky 1996).

We suggest, however, that these developments have changed the nature of the relativist challenge without making it obsolete. If the challenge was once, "Is the very idea of universal human rights plausible in light of cultural and political diversity?", perhaps it is now changed to "In spite of their amazing successes in finding acceptance around the world, do lists of human rights still need to be understood and interpreted in ways that allow governments to accommodate local self-understandings, traditions, problems, and financial and institutional resources?"

---

1 We recognize that countries often have reasons other than sincere acceptance for ratifying human rights treaties. For example, they may wish to make themselves look good to the international community.
This paper addresses the second formulation of the relativist challenge. It explores and defends a view we call "modest prescriptive relativism," the idea that there are good moral and political reasons for valuing and accommodating the self-determination of peoples and countries, even when some of the accommodation must be made at the expense of human rights.

I. RELATIVISMS
There are several different relativist theses that it is important to distinguish. One, which we call "descriptive relativism," holds that as a matter of fact there are no moral norms shared by all people alive today. Although the world obviously contains considerable diversity of moral belief and practice, descriptive relativism is not obviously true--and the widespread acceptance of human rights treaties certainly challenges it. Differences over freedoms and rights are often exaggerated (Sen 2004, 253), and it is very likely that there are some universally shared moral norms. But in any case descriptive relativism is a purely descriptive claim and by itself entails no normative conclusions. To put the point differently, even if universally shared moral norms do not now exist, it could still be true that they ought to exist and that the international human rights movement is justified as a political effort to bring them into existence. Those who seek to resist the normative globalization threatened by universal human rights initiatives must argue from stronger premises than descriptive relativism.

A second relativist thesis, which we call "sceptical relativism," holds that the explanation of why our world has so much moral diversity is that there are no rational or objective cross-cultural bases for resolving moral disagreements. Without access to such grounds for assessing the truth or falsity of conflicting moral claims, there can be no good reasons for imposing our values on other countries. Defenders of sceptical relativism often maintain that tolerance is the appropriate response. It is unclear, however, how they could defend their preference for tolerance against those urging intolerance. Although there are no good grounds on this view for imposing one's values on another country, it is equally true that there are no good grounds for refraining from doing so.

Like descriptive relativism, sceptical relativism entails no normative conclusions. Or to be more precise, with the help of the ought implies can principle it implies that one ought not to try to resolve moral disagreements through appeals to rational, objective, cross-cultural methods since none exist. Whatever the normative implications of the sceptical relativism, it is unlikely we shall be driven to endorse them any time soon, for determining whether the thesis is true is a task even more Herculean than determining whether descriptive relativism is true.

Of course, if descriptive relativism could be established, then sceptical relativism might be put forward as the best explanation of the fact that there are no universally shared moral norms. The trouble is that there are so many other obvious and plausible explanations of moral diversity and disagreement, and thus of the descriptive relativism (were it to turn out to be true), that it is hard to see how one would go about vindicating this sceptical relativist thesis as the best explanation of it. And if the descriptive relativist thesis is hard to vindicate then the possibility of there being--and of humans having access to--some rational, objective and cross-cultural method for
resolving moral disagreements would seem as likely an explanation as any of such moral and legal consensus as does exist. Against those who object here that humans have yet to reach any consensus on the nature or content of any such method, it is worth noting that even if this objection is true it does not entail that no such method exists, either as yet undiscovered or perhaps as latent but not yet articulated within human moral discourse and practice. Those who seek to resist the normative globalization of universal human rights initiatives must argue from more than skeptical relativism.

A third relativist thesis, which we call "prescriptive relativism," is that there are good cross-cultural reasons for claiming that tolerance ought universally to govern the relations between morally diverse peoples. On the strongest version of prescriptive relativism tolerance of moral diversity is the only value or norm for which there are good objective moral reasons of universal application. Weaker versions of prescriptive relativism allow for additional universally binding values or norms, but insist that they are few in number and sufficiently narrow or abstract that they do not undermine the commitment to tolerating a very wide range of morally diverse value systems, cultures, ways of life, and legal and institutional arrangements.

Prescriptive relativism is incompatible with both descriptive and skeptical relativism. It rejects them in favor of a substantive moral view about the content and reach of universally binding values or norms and the rational, objective, cross-cultural methods deployed in their justification. Weaker versions of prescriptive relativism embody commitments to (1) a wide but not unlimited tolerance between peoples, (2) national sovereignty and self-determination constrained only by some basic international norms (apart from those positively taken on by voluntary ratifications of human rights and other treaties) and (3) a global political order that does not stifle local cultures and traditions.

Prescriptive relativism aspires to offer a principled resolution of the conflict between those who seek, often rightly in our view, to resist the normative globalization threatened by some conceptions of universal human rights and those who reject, also rightly in our view, skeptical relativism in favor of a substantive and cosmopolitan ethic defended through appeal to rational argument and objective reasons. Prescriptive relativism may also be useful in debates over economic globalization. Those resisting economic globalization often argue for taking steps to insure that diverse cultures, peoples, ways of life, and possibilities for local self-determination are not swamped by a tidal wave of economic, cultural, and political influences. But opponents of globalization typically appeal to substantive moral values or norms alleged to be universally binding. Their defense of moral and cultural diversity and local self-determination against the forces of economic globalization stems from a commitment to neither a descriptive nor a skeptical relativism; it is rather rooted in something like prescriptive relativism.

II. Tolerance and Self-Determination at the International Level
International tolerance can be supported by appealing to the value of diversity in the world's cultures and political institutions. There is such value, no doubt, but it does not extend to deeply unjust practices or institutional arrangements. It is implausible, to
say the least, to suggest that the world would be made better because more diverse if
slavery were restored in Brazil or the U.S., apartheid rebuilt in South Africa, male-only
voting reestablished in Switzerland, or ritual religious killing practiced again in
mesoamerica. As part of any argument for international tolerance, the value of cultural
and institutional diversity will be restricted to cultural and institutional patterns judged
already to be just or acceptable to some requisite degree but threatened nonetheless
by an international order insufficiently attentive to the demands of tolerance (as
economic globalization is alleged by its critics to threaten some cultural or institutional
patterns).

There are several good grounds for international tolerance beyond any
commitment to the value of cultural and institutional diversity. One is the relationship
between tolerance and international peace and stability. Tolerance is one dimension of
civility, and as such it helps to reduce international friction and avoid war. If countries
tolerate each other's problems and misdeeds – within limits, of course – the
international political environment is likely to be safer and more stable.

Another ground for international tolerance is the fragility of our moral knowledge. It is
normal to be confident of our moral beliefs and to have strong feelings about practices
that violate them. But our moral capacities are limited, require factual knowledge that
we often lack, and are subject to distortion and bias. Trade-offs between competing
values are particularly difficult (Rawls 1996: 57). Given all this, we ought to exhibit an
appropriate humility with respect to our moral judgments. And such humility will be
expressed as tolerance for practices about which we have reason to think our views
might be hasty, biased, poorly founded, or insensitive to differences in circumstance
(Sen 2004, 250).

A third ground for international tolerance is respect for the autonomy or
self-determination of peoples and countries. Countries able to act on the global stage
and to assert their claims there think of themselves not just as corporate agents, but as
corporate moral agents with rights and responsibilities. (Otherwise they would neither
claim nor be willing to extend to others fair treatment.) As corporate moral agents they
claim for themselves, and recognize in their peers, a right to self-determination. If we
imagine peoples or countries coming together and trying to find reasonable and
mutually acceptable terms to govern their interactions, it is not hard to see the
attractions of a principle of tolerance. As mentioned above, each has an interest in
reducing international friction and the prospects of war and this is one reason why such
a principle would be proposed and accepted. But there are deeper reasons as well.
Tolerance within limits is a reasonable policy for states to apply to each other. A
principle of toleration requiring respect, within limits marked by basic norms of
international law and fundamental human rights, for the self-determination and
territorial integrity of states is a principle all states will or should find mutually
acceptable.

Thinking about reasonable norms to govern interaction at the individual level
requires us to work up and use a conception of the human person or individual moral
agent. It is common to suggest that human persons (i.e., normal individual human
adults) are: (1) physical beings whose survival and welfare requires protection and
provision, (2) agents in the sense that they are able to act to promote their survival and
welfare and to form, revise and pursue a particular conception of their own good, and (3) moral beings in the sense that they are able to develop and act in accordance with moral standards, including standards of fair cooperation.

Like individual human persons, states are (1) physically embodied beings whose survival and welfare requires protection and provision. They are embodied in their human members, their territories, and their developed infrastructures. They are also (2) agents in that they are able to act to promote and protect their survival and welfare and in that they are able to form, revise, and pursue a conception of their national interests. And they are (3) moral beings in that they are able to identify and act in accordance with moral standards of reasonable interaction, including standards of justice.² Just as an individual human being need not possess these capacities and dispositions to any great or ideal degree to qualify as a person, so too a state or people need only possess them to some appropriate minimum and imperfect degree to qualify as a corporate artificial person.

Two problems with conceiving of states in this way should be addressed at once. First, there is greater variety in size and power between states than there is between individual human persons. The differences in size and power between China and San Marino are greater than the differences between healthy adult humans. Even from within a moral point of view shared by all states as corporate moral agents, these differences in size and power might be thought to undermine the idea that reasonable terms of interaction require equal rights for all states. A sound normative theory of international relations will ground itself in both the common moral point of view shared by all states as corporate moral agents as well in an accurate empirical account of the scope of differences that may distinguish any one state from another.

Second, there is the question of whether states are capable of becoming and acting as moral agents and so constraining themselves by reasonable principles of interaction. The realist tradition in international relations has made skepticism about

² Just as natural persons include sociopaths who are seriously deficient in their moral capacities, artificial corporate persons include states and organizations that are seriously deficient in their moral capacities because of disorganization or tyrannical leadership. Thomas Nagel has recently speculated that “the path from anarchy to justice must go through injustice” (Nagel 2005, 147).
the ability of states to become or act as moral agents in this way its defining theme. At
a minimum, the realist challenge requires us to emphasize that states, like individual
persons, often engage in criminal and self-serving behavior. A sound normative theory
of international relations will recognize the persistent moral and legal failings of states.

If countries were to think of themselves in accordance with the three-part conception sketched above and were to proceed to deliberate about reasonable terms of coexistence and interaction, some familiar principles would emerge and find acceptance. Among these would be the broad ideas of forbidding aggressive war, permitting war in self-defense, honoring international agreements, and of allowing countries to pursue their interests as long as they do not harm other countries or impose serious costs or risks on them. These principles, found in the UN Charter (United Nations 1945), require all countries to tolerate at least some practices and institutions in other countries of which they disapprove. As an independent corporate moral agent, every state may be expected to claim for itself a substantial freedom or autonomy with respect to its own internal affairs, and thus to extend that same freedom or autonomy to other states. This implies mutual affirmation of a principle of toleration. Countries say to each other: "We conceive of ourselves as moral agents, and as such we demand for ourselves and are willing to extend to one another – within reasonable limits – respect for our choices about how to organize ourselves and to conceive of and pursue our conceptions of the good." The result is a principle that gives states substantial liberty of action domestically and internationally. This principle limits what can be done, outside of treaties, to promote human rights at the international level. In this way it requires tolerance between states.

III. Limits on Self-Determination and Tolerance
The appeal to reasonable terms of interaction between countries both supports the principle of self-determination and limits it. If reasonable terms of interaction between countries include a principle requiring respect for human rights then tolerance will be limited, or at least balanced, by human rights. But in what way is a country's respect for the human rights of its citizens a requirement of its interacting reasonably with other countries? These seem to be different matters.

One answer, emerging from the experience of Hitler's human rights violations and found in the Universal Declaration of Human Rights (United Nations 1948), is that large-scale human rights violations are serious threats to international peace and accordingly can warrant--depending on their severity--international concern, scrutiny, diplomacy, pressure, and intervention. The Preamble of the Universal Declaration asserts that recognition of the dignity and rights of all people is the foundation of international peace. Respect for human rights eliminates many of the conditions likely to generate armed rebellion. Large-scale human rights violations within a country impose on other countries risks of instability and war.

Another answer appeals to the human rights treaties that most countries have accepted. In the last half-century, most of the world's states have agreed to be bound by the UN Charter and by human rights treaties, thereby voluntarily accepting limits on their freedom to order their domestic affairs as they wish. Commitment to the UN Charter and to human rights has become a prerequisite to good standing in the
community of nations. States that repudiate human rights are outlaw states. A third way of explaining how human rights justifiably limit the tolerance principle draws on the demands of consistency in moral reasoning. As artificial corporate moral agents, countries or states seek to identify and make operative reasonable terms of interaction between themselves. Consistency then demands that they treat reasonably the individual human agents that constitute their membership and govern them in accordance with a reasonable conception of justice. Once reasonableness is introduced as a governing idea for relations between persons as moral agents it cannot be restricted simply to the relations between states as artificial corporate moral agents; it must be extended also to the relations of states with individual human persons. Indeed, respect for the most basic demands of reasonableness with regard to its treatment of its own citizens or residents is a condition each state must meet to merit respect from other states. Every state must respect and protect the fundamental interests of its members. And since every state has an interest in seeing all states honor this obligation, they are likely to be willing to see it enforced internationally. Furthermore, as secondary participants in the international debate over the terms of reasonable international relations, the individual human persons populating each of the world’s states would affirm this reasoning, since it is crucial to their most fundamental interests being secured. Thus, the deliberations that deliver the rights of also deliver the idea of human rights as limits on the sovereignty or self-determination of states. Of course the main requirements of reasonableness in how states treat their residents need to be identified and formulated, and that is what theorists of human rights as well as the authors of the Universal Declaration and subsequent treaties have attempted to do.

Rawls recognizes the apparent inconsistency in decent peoples demanding fair treatment from other peoples while being unwilling to extend fair treatment to their own members, but holds that the inconsistency is only apparent: “[S]ome may object that treating the representatives of peoples equally when equality does not hold within their domestic societies is inconsistent, or unfair.” (Rawls, 1999: 69). He rejects this objection as follows:

[=E]quality holds between reasonable or decent, and rational, individuals and collectives of various sorts when the relation of equality between them is appropriate for the case at hand. An example: in certain matters, churches may be treated equally and are to be consulted as equals on policy questions – the Catholic and Congregational churches, for instance. This can be sound practice, it seems, even though the first is hierarchically organized, while the second is not. A second example: universities may also be organized in many ways. Some may choose their presidents by a kind of consultation hierarchy including all recognized groups, others by elections in which their members, including undergraduates, have a vote... But the fact that universities' internal arrangements differ doesn't rule out the propriety of treating them as equals in certain circumstances.” (Rawls, 1999: 69-70).

---

3 The idea of reasonableness used here is similar to that of Scanlon 1998: 191f, and Rawls 1996: 50f.
Rawls's analogy here is weak for three reasons. First, churches and universities are effectively constrained in how their treat their members by the domestic law of liberal societies, but decent nonliberal countries are not constrained by (international) laws that are as effective and comprehensive. Second, churches and universities in liberal societies typically have less impact on a person's prospects than do a country's basic political institutions and practices. Third, people can typically leave abusive churches and universities with less cost than is involved in leaving one's country. It remains far from obvious why the injustice of the domestic institutions of decent societies does not undermine their claims to full equality at the international level.4

Decisions made by national governments sometimes go against human rights principles. Should we give any weight to these decisions even when they are incompatible with human rights? We think the answer is affirmative, that some weight should be given even in these cases. This weight will rarely if ever be sufficient to justify respect or tolerance for a governmental decision that runs roughshod over the core of a fundamental human right. But it may sometimes be sufficient to justify at least partial respect or tolerance for good faith decisions about how to understand the core of a right, about which institutions are essential to implementing this or that right, about how to deal with scarcity of resources, and about how to make the transition to fuller compliance with the full range of human rights. Societies that use slavery or apartheid or that purposefully deny subsistence or security or the rule of law to some or all of their citizens or residents ought not be tolerated since they violate systematically the cores of fundamental human rights. But peaceful and internally stable indigenous societies living in traditional ways marked by some illiberal customs and practices, or states that decide, not unreasonably in light of their own local conditions and challenges, to make limited provision for democratic participation, perhaps ought to be tolerated.

There are several reasons for thinking that particular human rights should sometimes yield to an exercise of sovereignty or self-determination. One possible reason is that the moral standing of states is of sufficient weight to preclude any hard and fast rule giving priority to each and every human right over the right of states to determine for themselves how to act both domestically and internationally. Another is that the only way to decentralize and disperse political power is to empower various national and subnational agencies to exercise their own judgment. These agencies will not be able to fulfill their assigned roles unless we give them considerable latitude.

IV. Clarifying Prescriptive Relativism
We are now in position to define more clearly the position we call "Modest Prescriptive Relativism." Strong prescriptive relativism, which endorses only the principle of toleration and thereby gives unlimited scope to self-determination, is not plausible. Many things are required of countries, and of the international community, besides toleration. The strong claim that tolerance is the only objective and universally binding moral value is too close to abdication of our capacities for moral judgment and responsibility to pass any test of moral justification in which reflective equilibrium

---

4 For a sympathetic reconstruction and defense of Rawls's view, see Reidy: 2004.
figures prominently (Rawls 2001: 29). Further, it is not plausible to imagine that one could provide normative grounds that would support a requirement of tolerance and nothing more. For example, if one grounds tolerance in a principle of respect for persons and their cultures and religions, this principle will also support protecting people against violence and respecting their liberties to pursue and develop their cultures and religions. Solid grounds for tolerance are sure to provide grounds for some human rights as well.

Our proposed version of modest prescriptive relativism urges tolerance within limits as a way of respecting the self-determination of countries. We endorse the familiar view that the lists of human rights found in today's human rights treaties help set the outer limits of self-determination. Just as the criminal law limits self-determination at the individual level, human rights — along with some other basic principles of international morality and law — specify the areas where national self-determination runs out, or at least loses much of its power. Let's describe this as giving human rights a limiting role in relation to the self-determination of peoples and countries. Human rights clearly play this limiting role, but we think that there should be room for considerable flexibility and compromise at the margins, at the points where conflicts between self-determination and human rights permit more than one reasonable resolution.

Tolerance is a complicated idea. Suppose that Canada tolerates Burma's lack of democracy. To understand this relationship between the two countries there are a number of questions that need to be answered. First, what does Canada find bad about Burma's lack of democracy? Why does Canada dislike or disapprove of it? Does it go against Canada's interests? Does Canada believe as a matter of principle that it is bad or wrong? Second, what are the reasons or grounds for Canada's policy of tolerance? Is it that doing anything about the lack of democracy in Burma is too costly or dangerous, or is it that Canada has reasons of principle for toleration? And third, which specific actions fall under tolerance? Does tolerating Burma's lack of democracy mean not invading or sanctioning Burma over this, not criticizing it about this publicly or privately, or not dissociating fully or partially from it?

In the present context we will be concerned entirely with tolerance of a country's behavior that (1) is based on the belief that the behavior is wrong, unjust, or in violation of human rights, but is nevertheless the behavior of a state capable of considering seriously and binding itself to the demands of reasonableness with respect to its domestic order, (2) is grounded in principle rather than (or in addition to) a desire to avoid the costs of intolerance, and (3) excludes ie trying to stop the country from the action or policy, except through diplomatic criticism and persuasion as well as viewing the country as an outlaw state that does not deserve full membership in the community of nations. Tolerance is compatible with criticizing the country about the action or policy and using diplomacy to try to persuade it to change. And it is compatible with refusing to promote or undertake certain interactions with the country being tolerated, even when this distancing imposes some costs on that country. It is not compatible
with treating the tolerated country as if it were an outlaw state or otherwise fully outside the international community.\(^5\)

The connection between tolerance and self-determination or autonomy is not hard to explain. If Canada and all other countries tolerate Burma's lack of democracy in the way described above, Burma is not forced to become democratic. Burma remains free, autonomous, and self-governing in regard to the use of democratic institutions. Still, as a member of an international moral community, it cannot escape moral criticism or other forms of informal censure.

We now need to specify which human rights we have in mind and offer a view of how we see decisions about the priority, interpretation, and implementation of these rights being made.

A. Which Rights?

Possible views of which human rights are important enough fully and always to limit the self-determination of states range from minimal to grand. At the minimal end a plausible view might use the Rome Statute of the International Criminal Court (United Nations 1998) to identify a short list of fundamental human rights. Setting aside war crimes and aggression, the human rights in the Rome Statute fall into two categories, the first dealing with genocide and the second with crimes against humanity. Genocide is directed against a national, ethnic, racial or religious group actions such as killing, harming, preventing births, and transferring children with the intent of destroying the group (Article 6). Crimes against humanity are defined both by their scale—they involve a "widespread or systematic attack"—and by their content. They involve actions such as murder, torture, rape, enslavement, deportation or forcible transfer of a population, and imprisonment in violation of the fundamental rules of international law (Article 7).

At the maximal end of the continuum a plausible view might include as fundamental all of the rights found in the Rome Statute of the International Criminal Court.

\(^5\) John Rawls, in *The Law of Peoples*, defines tolerance as follows: "...to tolerate means not only to refrain from exercising political sanctions--military, economic, or diplomatic--to make a people change its ways. To tolerate also means to recognize these nonliberal societies as equal participating members in good standing of the Society of Peoples." (Rawls 1999: 52).
Court and in the International Covenant on Civil and Political Rights (United Nations 1966), and a few of the rights (particularly subsistence, minimal health services, and education) found in the International Covenant on Economic, Social, and Cultural Rights (United Nations 1966). Taking this approach would yield the six families of human rights: (1) security rights including rights against genocide and crimes against humanity; (2) due process rights such as the right to a fair trial; (3) rights to fundamental freedoms such as belief, expression, and association; (4) rights to political participation and democratic institutions; (5) equality rights such as equal citizenship, equality before the law, and nondiscrimination; and (6) economic and social rights such as subsistence, minimal health care, and education.

Our position lies at this maximal end of the continuum. But we do not hold the view that each and every right belonging to any one of these six families fully and always limits the self-determination of states. Thinking about tolerance and self-determination cannot be conducted entirely at the level of what sort of tolerance between countries or peoples is most reasonable, most respectful, or best. As soon as we recognize that toleration has substantive limits we will have to examine the reasons or justifications for the particular principles or rights that are taken to provide those limits. To know whether a particular democratic or due process right should limit tolerance we have to consider the strength and generality of the justifications for that right. Because of this, the extent to which any particular right limits tolerance cannot be determined without working up an account of the justification and weight of the right in question.

That job is beyond the scope of this paper. Our tentative view, however, is that once such justifications are tendered we will find that there are good reasons to preserve the main items in all six families and to treat them as fundamental limits on the international norm of tolerance. Thus, we do not favor attempts to eliminate any of the six families of human rights listed above. Such wholesale cuts are neither necessary nor useful. The conception of human rights suggested by these six families and derived from the Universal Declaration of Human Rights is now so well entrenched in treaties and in international organizations that the time for completely rethinking it as a blueprint for human rights has passed.

B. Priority, Interpretation, and Implementation.

Human rights norms are formulated in broad language that gives countries considerable latitude to decide what they mean, what their weight is in relation to other considerations, and how they are to be implemented. This latitude is reduced, of course, when there is an international court that is authorized to issue binding interpretations of human rights norms. Within the European human rights system there is the European Court of Human Rights that has such authority and uses it to adjudicate complaints that member countries are not living up to their commitments (Council of Europe 1950). Even there, however, the Court gives considerable deference to the longstanding practices of governments under the "margin of appreciation" doctrine (Steiner and Alston 2002: 554f). Human rights treaties within the United Nations do not have courts but rather have quasi-judicial committees whose job it is to receive reports from participating countries, discuss and evaluate those reports, make
interpretive suggestions, and – in some cases – receive and attempt to mediate complaints.

The interpretive principles we set forth below are ones that apply apart from the requirements of particular treaties. But they also describe, we suspect, the position that countries are in after they have ratified the International Covenants (United Nations 1966). We propose that:

1. The self-determination of countries and peoples should be viewed as a norm that extends into the area of human rights. This means that conflicts between self-determination and human rights will sometimes have to be resolved by balancing each against the other.

2. Countries should be permitted to develop interpretations and justifications of human rights that fit their cultures and circumstances. These national understandings of human rights will have implications for both the priority and content of particular rights.

3. Countries acting in good faith should have space to develop their own views about which part of a right is the core, which the margin, and which parts are useful but lower-priority prophylactic measures and supporting institutions. For example, a country would reject due process rights if it rejected the principle in the International Covenant on Civil and Political Rights that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person (Article 10:1)," but it might reasonably decide to view as a lower-priority prophylactic measure the principle, immediately following, that "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons... (Article 10:2(a))." If the principle were rejected, it would reason that the lower-priority prophylactic measure should also be rejected.

4. Countries acting in good faith should have latitude to formulate their own plans for the implementation of human rights, even if this means that some rights will not be adequately realized in the near term. This principle is made explicit in the clause of the International Covenant on Economic, Social, and Cultural Rights that permits progressive implementation (Article 2:1). But for poorer countries, at least, a similar view of the implementation of some civil and political rights is appropriate. This would not extend, however, to the rights found in the Statute of the International Criminal Court since there are no reasonable grounds for any state not to honor these rights fully and immediately.

5. Countries acting in good faith should be free to trim specific rights within any of the several families of human rights (e.g., liberty rights, due process rights, economic rights, etc.) so long as the most central rights in each family are retained. For example, a country could permissibly trim its view of economic and social rights to the most basic ones--namely rights to subsistence, minimal health care, and basic education.

V. The Case for Rights to Political Liberties and to Democratic Institutions.
To illustrate these principles we consider a case in which a country without democratic institutions decides to delay its transition to democracy. In thinking about this issue it is useful to distinguish rights to political liberties and rights to democratic institutions. We distinguish these two categories because we suspect they have different degrees of
importance. The International Covenant on Civil and Political Rights addresses rights to political liberty in three articles:

Article 19. (1.) Everyone shall have the right to hold opinions without interference. (2.) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 21. The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22. (1.) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. (2.) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

These fundamental liberties are individual rights, justified at least in part by their importance to the ability of individuals to have and lead lives of their own. These liberties extend to the political realm, and indeed have particular importance there. To deny these rights is to wrong particular individuals. Rights to democratic institutions are addressed in Article 25:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country.

Wholesale suppression of fundamental freedoms in the political area creates an authoritarian and unaccountable state. It is possible, however, for a country to allow considerable scope to these freedoms in the political sphere without having democratic institutions in the sense of genuine periodic elections in which political leaders are chosen. There are two possible scenarios to consider:
Scenario 1. A-land engages in wholesale suppression of the liberties of thought, expression, association, and assembly in the political sphere and refuses to adopt democratic institutions.

Scenario 2. B-land does not engage in wholesale suppression of the liberties of thought, expression, association, and assembly in the political sphere but does refuse to adopt democratic institutions in the sense of periodic elections of political leaders. B-land allows considerable freedom in the political area and hence citizens are free to engage in political thought, communication, and meetings. Through these permitted actions residents can influence government officials and leaders in various ways, and there are some established channels for doing this.

It is easy to reach the conclusion that B-land is a better candidate for international toleration than A-land. But we still need to explain why wholesale rejection of democratic institutions (article 25) is a less serious violation of human rights than rejection of liberties of thought, expression, association, and assembly in the political sphere. It should be said, however, that it is not easy for a country to respect fundamental freedoms in the political area without moving in the direction of democracy. If people are free to speak and write publicly about political issues, to associate for political purposes (such as the formation of political parties and movements), and to assemble peaceably in political rallies and protests, they will be able to put a lot of pressure on the government. Unless a government responds to such pressure with suppression of these fundamental freedoms, it will likely be pushed in the direction of democratic institutions. A great advantage of democratic institutions is that they provide a facility or platform for the exercise of fundamental political freedoms. Indeed, we could think of democratic institutions as making positive provision for the largely negative political liberties.

There are at least four reasons for tolerating countries like B-land. First, movement away from nondemocratic forms of government and to democracy is usually gradual and may take decades. Countries may reasonably introduce democracy by starting with elections of local officials and then extending electoral politics to top leadership positions.

Second, democratic institutions do not work in some situations. Perhaps the country has too low a level of education or is too ethnically divided for democratic institutions to be effective. Because judgments of this sort are so frequently self-serving, governments who make them should not go unchallenged internationally (and the systems of implementation that go with United Nations human rights treaties provide good opportunities for making such challenges). But self-serving judgments are sometimes correct nonetheless.

Third, refusing democratic institutions does not directly harm individuals (unlike violations of fundamental political freedoms). At most the absence of democratic

---

6 What we propose here is reasonably close in spirit, although very different in how it is described, to the view proposed by Rawls in The Law of Peoples (1999).
institutions may increase the likelihood that other rights are violated. But as suggested earlier it is helpful to distinguish the core of a right, its margins, and institutions and prophylactic measures needed or likely to protect it. Institutions and prophylactic measures are generally the parts of a right that are most appropriately sacrificed in order to accommodate other rights and other values. To the extent that democratic rights function as institutional means for making good on more fundamental political liberties, they may have less weight than the rights to the more central political liberties and in the end insufficient weight in some cases to outweigh the moral demands of tolerance and respect for the self-determination of states.

A fourth reason, of a somewhat different character, for thinking that the rights to democratic institutions might sometimes justifiably yield to respect for the self-determination of states or peoples pertains to tribal and indigenous peoples that have authoritarian and hierarchical forms of governance deeply embedded in their cultural traditions. Here the question is not merely what works best; it is also one of what form fits the culture and helps preserve some of its key features or at least does not constitute a radical and immediate threat. Rejection of standard forms of democratic institutions, at least for some period of time, can sometimes be defended on these grounds. All human beings have a fundamental interest in a cultural order sufficiently secure and stable to permit a meaningful life. And within some groups, an immediate transition to democracy would be so culturally disruptive that it would be at odds with that fundamental interest (Kymlicka 1989). It should be said, however, that once a people has adopted all of the institutions of the modern state, it also needs the protections developed to make states safer for citizens to live with. It needs rule of law, due process rights, and eventually democratic institutions in one form or another. Appeals to traditional forms of governance are often anachronistic and politically naive. States refusing democratic institutions sometimes have a claim to tolerance. They can plausibly argue that the reasons for adopting democratic institutions are not so strong and universal that they require every country to immediately adopt such institutions. With that we agree. Even justified tolerance, however, should not be uncritical. Tolerating a country's decisions to stick with nondemocratic political institutions does not mean that criticism is out of order. Diplomatic pressure from other countries and from NGOs to promote democratic institutions is not excluded.

The sort of analysis of political liberties and democratic institutions that we have offered can be extended to other rights in any of the six families of human rights. In each case, the limits of tolerance can be marked only after a careful analysis of the rights and values in question. There is no moral algorithm to be used to mechanically resolve such issues in any routine fashion. There is only the general idea that each of the six families of rights contains one or more core rights that mark a fundamental limit on international tolerance and on the self-determination of states. It is important to remember here that human rights generally, and the core human rights most especially, function not as a morality of aspiration but rather as a morality of minimum requirements. (Nickel, 1987; Shue, 1996) Thus affirming some human rights as fundamental limits on international tolerance and the self-determination of states ought
not be viewed as encroaching substantially on the values of either tolerance or self-
determination.

VI. Conclusion.
Modest prescriptive relativism offers an attractive way of harmonizing universal human
rights with the right to self-determination and with respect for cultural diversity.
Tolerance within limits set by human rights is a very defensible and widely accepted
principle. Our approach to characterizing those limits proposes preserving the core
civil rights in all of the six families of human rights while allowing considerable scope for
balancing and trimming within them. There is room, we think, for accommodation and
self-determination within a human rights agenda that takes universality seriously.

References


