

10. See Jennifer Lind, *Sorry States: Apologies in International Politics* (Ithaca, NY: Cornell University Press, 2008).

11. Karen L. Gatz, ed., *Foreign Relations of the United States, 1964–1968: Volume XXIX, Part 1, Korea* (Washington, DC: U.S. GPO, 2000). “U.S. Efforts to Encourage Normalization of Relations Between the Republic of Korea and Japan”: 745–802; See No. 349, Reischauer to Rusk, September 8, 1964, 770; and No. 353, Reischauer to Rusk, November 21, 1964, 778.

12. *Asahi Shimbun*, February 17, 1965, evening edition, 1.

13. Official translation as posted on the Japanese Ministry of Foreign Affairs website, [www.mofa.go.jp](http://www.mofa.go.jp) (accessed February 25, 2011).

14. The comment caused a domestic and international media firestorm. Beginning with the Japanese evening papers on March 1, 2007, throughout the month each paper in Japan and Korea ran daily stories on the controversy, and the *New York Times* and the *Washington Post* had extensive coverage and editorials as well.

15. *Washington Post*, June 14, 2007.

16. *Asahi Shimbun*, December 25, 2009, evening edition.

17. *Hankyoreh*, January 5, 2010.

18. *Asahi Shimbun*, December 30, 2009.

19. *Hankyoreh*, January 27, 2010.

20. Wikipedia describes Kobayashi, author or editor of more than 200 books, as “one of the most prominent conservative authors and commentators of Japan’s younger generations.” See [http://en.wikipedia.org/wiki/Yoshinori\\_Kobayashi](http://en.wikipedia.org/wiki/Yoshinori_Kobayashi) (accessed February 27, 2011).

21. Doronpa does publish in book form, although his Internet portals are the main “action”: <http://ameblo.jp/doronpa01/> (accessed February 27, 2011).

22. Membership stands now at roughly ten thousand people from throughout Japan openly describing themselves as part of the group and sending money, <http://www.zaitokukai.info/> (accessed February 27, 2011).

23. For example, <http://www.youtube.com/watch?v=WrcBLW14P8M&feature=related>.

24. For the Utoro story, see *Japan Times*, July 12, 2005.

25. By pressing a link on Doronpa’s main page, one is directed to <http://www.maruyamadanwa.com/>.

26. Quoted in *Japan Times*, February 26, 2010. Japanese original translated by author.

27. Marilyn Young, “The State and Its Victims Remembering to Forget,” in *Truth Claims: Representation and Human Rights*, ed. Mark Bradley and Patrice Petro (New York: Routledge, 2002), 11.

28. Kato Kyoko, “Fuin Sareta Shosho Soko o Yomitoku,” *Bungei Shunju*, July 2003, 94–113. Author’s translation.

29. Japanese poet Okunishi Ei recently published a collection of his works entitled *Nihon wa senso o shite iru* (*Japan Wages War*) (Tokyo: Doyobijutsusha, 2009). The title’s eponymous poem makes the case that Japan’s financing of the war on terror and assisting coalition forces is synonymous with waging war.

## 15

## APPROACHING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

MARK PHILIP BRADLEY

On the evening of Saturday, December 10, 1949, more than three thousand people packed into Carnegie Hall in New York City. They did so to celebrate the first anniversary of the adoption of the United Nations Universal Declaration of Human Rights at a concert performed by the Boston Symphony Orchestra with Leonard Bernstein at the podium. The crowd in the hall was largely made up of delegates to the United Nations General Assembly, which hours before had brought its fourth regular session to a close, as well as many figures, like Eleanor Roosevelt, who played central roles in the drafting of the Declaration. A larger listening public heard the event as it was broadcast on radio and televised live by the National Broadcasting Company.<sup>1</sup>

The program opened with a new work commissioned specifically for the event, Aaron Copland’s *Preamble for a Solemn Occasion*, a short six-minute piece for orchestra and narrator. Copland took as his text for the composition this portion of the 1945 United Nations Charter:

We the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women of all nations large and small, and . . . to promote social progress and better standards of life in larger freedom . . . have resolved to combine our efforts to accomplish these aims.<sup>2</sup>

As Sir Laurence Olivier came onto the stage, the crowd stood in silence while he read the full preamble to the Universal Declaration of Human Rights and its more specific calls for 'the respect and observance of individual human rights as the common standard of achievement for all peoples and nations. The Copland piece then began: initially in a dissonant vein aimed to evoke the scourge and sorrows of war, a mood that shifted in the *Preamble's* second section toward a more triumphant sensibility supported by the liberal use of brass and percussion. Olivier then read from the UN Charter, his voice quietly underlined by an orchestral reprise of the opening segment of the piece, after which the triumphal valences of the second section returned to bring the composition to an affirmative and ringing climax.<sup>3</sup>

Copland's *Preamble* is not especially well known. It certainly doesn't have the same presence in the classical musical canon as his *Fanfare for the Common Man*. Copland himself dismissed it as something of a "pot boiler."<sup>4</sup> While critics in 1949 were considerably kinder, it remains one of his most obscure works and goes unrecorded in its original form to this day. Yet Copland's *Preamble* and its performance in 1949—both the sweep of the ambitions it conveyed and its subsequent obscurities—are a helpful way of approaching the history of the Universal Declaration and its impact on the emergent global human rights order of the late twentieth century.

On the one hand, the musical language of Copland's *Preamble for a Solemn Occasion* and its reception in Carnegie Hall capture a moment in the making of a transnational human imagination that was in fact extraordinary, if still imperfectly understood. Upon adoption in 1948 by the United Nations General Assembly, the Universal Declaration of Human Rights was the first international instrument to articulate global human rights norms and duties. Its thirty articles were hammered out over a period of two years in committees that brought together leading international figures such as Eleanor Roosevelt, René Cassin of France, Charles Malik of Lebanon, and P. C. Chang of China, along with the active participation of representatives from a variety of Latin American states, the Soviet Union, and India. The final document sought to protect not only individual civil and political rights, but economic and social rights as well. The Declaration's sweeping guarantees of their protections were as expansive as its catalog of rights. "Everyone is entitled to all the rights and freedoms set forth in the Declaration," its authors promised, "without distinction of any kind."<sup>5</sup> Nothing, seemingly not even state sovereignty, was to trump the individual rights enumerated in the document. Because of its concern with the individual, its capacious sensibility about what constituted human rights, and its global

aspirations for their protection, there had simply never before been anything quite like the Universal Declaration.

The spirit that drove the Declaration also set into motion an unprecedented series of regional and transnational rights declarations, covenants, and conventions immediately following World War II. In Latin America, delegates at several Pan-American congresses during the war adopted a regional human rights vocabulary that anticipated the Universal Declaration and culminated in the adoption of the 1948 American Declaration of the Rights and Duties of Man. At the same time, Western European states began to draft their own rights lexicon, producing the European Convention on Human Rights in 1950. In Geneva, member societies of the International Committee of the Red Cross began discussions in 1946 to craft protections for the rights of noncombatants in times of war. Meanwhile the International Military Tribunal at Nuremberg developed the concepts of "crimes against humanity" and "crimes against the peace" that would become cornerstones of the theory and practice of universal justice in international human rights law.<sup>6</sup> Finally as Copland's *Preamble* was being played in Carnegie Hall, discussions at the United Nations centered on a convention to outlaw genocide; a global freedom of information covenant; protective rights of asylum for refugees; and the drafting of legally binding guarantees of the political, economic, and social rights enshrined in the Universal Declaration.<sup>7</sup>

In the years that followed the celebration in New York City, the Universal Declaration did not fall into quite the same deep memory hole as Copland's *Preamble*, but it was often seen at the margins of an international order shaped by the Cold War and decolonization. Even at its creation in 1948, news of the drafting and adoption of the Universal Declaration vied with events such as the Berlin blockade, the establishment of the State of Israel and war with its Arab neighbors, the communist seizure of power in Czechoslovakia, and the assassination of Mahatma Gandhi. Indeed front-page headlines the day following the commemorative concert in Carnegie Hall in 1949 trumpeted imminent Indonesian independence, the introduction of Chinese communist troops into the French war in Vietnam, and the negotiations that would lead to the establishment of the North Atlantic Treaty Organization.<sup>8</sup> More than twenty years would pass before the Universal Declaration's broadest aspirations began to be concretized in international human rights law and practice.

It is telling that Jeri Laber, who founded Human Rights Watch and became one of the most visible activists in the remarkable resurgence and explosion of global human rights politics in the 1970s, writes in her

memoirs: "I did not use the words 'human rights' to describe our cause; it was not part of my everyday vocabulary and would have meant little to most people at that time . . . Back in the early 1970s the concept of human rights was mainly in the province of legal and academic specialists."<sup>9</sup> By and large historians too had forgotten the Universal Declaration and the human rights moment of the 1940s. Until 1998 the *American Historical Review* did not publish an article with the phrase "human rights" in its title, and it would be 2004 before an article appeared in the journal dealing with human rights history after 1945.<sup>10</sup> The first scholarly histories of the making of the Universal Declaration only emerged in the last decade.<sup>11</sup>

How do you write the history of a document that is both simultaneously without global or historical precedent and yet one whose very existence could seemingly be so quickly forgotten? Too often the Universal Declaration has gotten caught as a kind of stand-in for more general attitudes about the nature and significance of a global human rights order in the period after 1945. In one still influential accounting, states and peoples from ever-wider sectors of the globe inexorably seem to bring into being ever more capacious articulations of human rights and their protections in the local, national, and transnational spheres—all of this unfolding in a gradual, Whiggish progression toward an apparently soon to be realized Kantian perpetual peace. These views are usually expressed in narratives of the power of individuals—human rights heroes and heroines (most notably Eleanor Roosevelt, who is often given a star role in the making of the Universal Declaration) who collectively transform the ways in which local and global actors see the world around them.<sup>12</sup>

Against these evolutionary and sometimes overly celebratory narratives, others approached the very notion of global human rights with considerably more skepticism. The apparent triumphs of a human rights regime for these observers are little more than a smokescreen or illusion, what Jeremy Bentham famously called "nonsense upon stilts."<sup>13</sup> For many self-styled realists, the embrace of rights-talk in such normative statements as the Universal Declaration should not obscure the ways in which the more fundamental exercise and hierarchies of power within and between states and societies remains largely unchanged. Pointing to the prevalence of gross violations of human rights by liberal and illiberal states throughout the post-1945 period, they argue the voluntaristic ethos of the Universal Declaration are no match for power politics.<sup>14</sup> Other skeptics working in the fields of postcolonial and feminist studies have focused on how talk of universal human rights obscures its genealogies in Western imperialism and heterosocial patriarchy. Here the Universal Declaration is sometimes rendered as emblematic

of how a particular set of hegemonic Euro-American norms came, unfairly in their view, to structure the global rights order.<sup>15</sup>

These approaches to the Universal Declaration and the broader problem of understanding the emergence of global human rights politics do important interpretative work. Accounts that center on the rise of local and global human rights movements have recovered a set of people, ideas, and processes that had been marginalized or ignored in most histories of the post-1945 world. And if realist and other skeptic perspectives too quickly remarginalize or dismiss these developments, they nonetheless remind us of the contested ground on which human rights norms stand and the enduring forces that contribute to their uneven realization in practice.

But there are dangers in collapsing our understanding of the Universal Declaration and its legacies solely into these analytical categories. Most important, they elide the questions of why the global articulation of individual human rights norms came to be *believable* through the making of the Universal Declaration in the 1940s and how those sensibilities have lingered in the more than sixty years since it was ratified by the United Nations General Assembly. To do this, we need to be willing to put aside not only some of the skepticism about the project of global human rights but also the notion of linear progress that has infused more celebratory historical accounts of its unfolding.

In their place, it may be more useful to concentrate, as Lynn Hunt urged in her study of what she termed the eighteenth-century rights revolution, on moments of "jumps and discontinuities."<sup>16</sup> Moments in which global rights-talk after 1945 did, in fact, become believable in a range of geographic, cultural, and gendered contexts, offering at particular times and places what transnational publics, nonstate actors, and some states saw as a powerful—if sometimes contested and contradictory—language to more fully realize human dignity and welfare in a space that transcended the local and the national.

To unpack the human rights moment of the 1940s, it is important to appreciate the liminal contours of the global environment from which the Universal Declaration emerged. The full force of the Cold War was yet to come, and to most observers the escalating pace of the move to decolonization in the global South was an unanticipated contingency. A spirit of internationalism hovered over the postwar world, most notably in the creation of the United Nations where articulations of rights and sovereignty were both in play at the intersection of the domestic and the transnational. At the San Francisco conference that brought the United Nations into being in 1945, the American delegation, under heavy pressure from domestic groups and



actors in Western Europe and the global South that strongly favored international guarantees of human rights, proposed the provisions that put human rights at the center of the United Nations Charter. The language of the perambulatory Article 1, in which member states pledged "respect for human rights and fundamental freedoms for all," and Article 55, which guaranteed freedom from discrimination "without distinction as to race, sex, language or religion," were the product of these efforts.

Concerns about the conservative and racist backlash that these provisions might produce in the United States and fears of the European imperial powers that the Charter's human rights language could be employed against them by anticolonial movements to hasten the end of empire, however, prompted the American delegation to introduce language in what became Article 2(7) of the Charter that promised "nothing in the Charter should authorize . . . intervention in matters that are *essentially* [emphasis added] within the domestic jurisdiction of any state."<sup>17</sup> But what, in fact, would "essentially" come to mean?

At the close of World War II, the relationship between the emergent global rights order outlined in the Charter, particularly its insistence that member states protect the individual rights of all their citizens, and its domestic jurisdiction clause remained open. The Charter's articulation of global rights norms, some contemporary observers believed, offered at least the possibility of remaking the bounds of sovereignty. The articulation of global rights norms in the Charter and later in the Universal Declaration appeared to these observers to offer at least the possibility of a revolutionary transformation in the relationships among the individual, the state, and the international.

This new thinking allowed the Indian delegation at the United Nations in 1946 to win the support of the General Assembly for a resolution that criticized the South African government's passage that year of the Asiatic Land Tenure and Indian Representation Act for its discriminatory treatment of the country's Indian population. The ironies here ran especially deep. South African Premier Field Marshal Jan Smuts, who had, in fact, drafted the human rights language in the preamble of the United Nations Charter—apparently never dreaming it would have any implications for his own government (or, for that matter, any substantive implications at all)—insisted that the domestic jurisdiction clause prevented discussion of or action on the treatment of Indians in South Africa at the United Nations. But after tense and sustained debate, India's argument that the General Assembly could hear and rule on cases like this one that violated the Charter's human rights language won the day by a two-thirds majority of Assembly members.<sup>18</sup>

Pushing on the expansive conditions of possibility in the early postwar period took place not only in the top-down elite sphere of the United Nations but emerged in more quotidian, bottom-up and local spaces as well. Daniel Cohen and Atina Grossmann's essays on the micropolitics of refugee relief policies in the aftermath of World War II in this volume can be read as instances of these more on-the-ground efforts to harness the fluidities of the postwar moment.<sup>19</sup> So too were a series of cases that made their way through the American courts in the late 1940s and early 1950s, which employed the then novel legal argument that the controlling authority of international human rights norms across national borders in the United Nations Charter and Universal Declaration trumped existing U.S. federal and state laws and claims of national sovereignty. Brought by Japanese American, African American, and Native American plaintiffs, these cases used a transnational frame to approach a variety of instances of domestic racial discrimination in housing, in land and fishing rights, in public accommodation, in education, and in marriage.<sup>20</sup>

To give just one illustrative example, *Rice v. Sioux City Memorial Park Cemetery, Inc.*, emerged in 1953 in the wake of the death of Sergeant John Rice in the Korean War. Rice's widow had entered into a contract with the Sioux City cemetery for his burial. At the graveside services, several cemetery officials noted a number of Native American mourners and suspected Rice might have been Native American. They visited his widow who told them their assumption was correct. The cemetery, with a "Caucasians only" burial policy, ordered her husband's body removed. The action drew immediate and national attention, prompting President Truman's intervention; Truman arranged for Rice to be buried at Arlington National Cemetery. Not placated by the president's symbolic gesture, Rice's widow sued in Iowa courts in part on global human rights grounds.<sup>21</sup> When the Iowa Supreme Court dismissed the case, she took it to the U.S. Supreme Court. In their brief for the Supreme Court, Rice and her lawyers dwelt at some length on Charter-inspired claims arguing that the Iowa court had "violated the basic and very fundamental concepts of equality not only announced but also pledged by the United Nations Charter and all of the member nations of which the United States is one."<sup>22</sup>

The petitioners in the Rice case and the other global rights cases in this period, along with the judges that heard them favorably, acted to harness the potentialities of international human rights guarantees and more relaxed conceptions of national sovereignty to combat racial discrimination in the United States. For them, the Universal Declaration was believable. It would, for instance, allow a California court in a Japanese land-rights case to argue in a 1950 opinion:

Discrimination against a people of one race is contrary to both the letter and to the spirit of the [UN] Charter which, as a treaty, is paramount to every law of every state in conflict with it. [California] law must therefore yield to the treaty as the superior authority.<sup>23</sup>

The California court provided perhaps the most muscular assertion of the domestic reach of global rights norms in the American context. Nonetheless, a substantial number of state and federal courts, and in one case several Supreme Court justices, proved receptive to these claims. Their responses, like those of the UN General Assembly in 1946 to the Indian case against South Africa, reveal the horizons of possibility unleashed by the Universal Declaration for the global protection of individual human rights.

These moves to explore the denser textures of the human rights moment of the 1940s should not obscure its internal contradictions and limits. If the universalizing vocabulary of the Declaration could be powerfully employed to address local violations of human rights, it could also operate to erase the particularities of the rights claims made in its name. In the early postwar period, for instance, the Nazi genocide against European Jewry was drained of its specificities and a particular Jewish fate came to be represented as universal human suffering. Not only was this so at the Nuremberg Trials, where the murder of Jews was subsumed under the label of "crimes against humanity," the universalizing impulse resonated even more broadly at the level of popular culture. As several scholars recently noted, the presentation and reception of Anne Frank's diary in the 1950s, when it first became an international best seller as well as a popular stage play and film, downplayed the centrality of the Jewish dimension of the story and the complex richness of Anne's personality. In their place, the lives of the Franks were rendered as an uplifting symbol of humanity and Anne a clichéd figure "who possessed a seemingly never-ending optimism and hope for mankind."<sup>24</sup>

The problems of human rights universalism did not go unnoticed by some contemporary observers. The American Anthropological Association's 1947 "Statement on Human Rights," prepared at the invitation of those drafting the Universal Declaration, rejected the notion of universal human rights altogether, emphasizing the plurality of cultural references and authorities for conceptions of rights.<sup>25</sup> Similarly UNESCO director Julian Huxley's efforts in 1947 to find a common philosophical basis for human rights floundered, with some interlocutors such as Gandhi questioning the whole enterprise of universal rights making.<sup>26</sup> The more general tendency toward absolutism for defining a universal human rights order in the

1940s, and the reticence to consider political, social, and cultural particularities, would continue to inflect human rights politics after the 1940s. They would also pose persisting interpretative challenges for historians who were simultaneously sympathetic to the cause of human rights but shared a disciplinary commitment to causality as a mode of inquiry.<sup>27</sup>

The moment of the Declaration turned out to be a fleeting one, with its expansive potentialities largely closed down by the mid 1950s. For the United States and the Soviet Union, their early postwar engagement on human rights questions except as an extension of Cold War polemics largely came to an end by the early 1950s. The attention of most states and peoples in the global South was increasingly focused on collective self-determination in the Cold War-inflected decolonization struggles of the 1950s and 1960s rather than the individual rights claims of the Universal Declaration. For their part, imperial powers in Western Europe, most notably Great Britain and France, remained wary of advancing a transnational human rights agenda that potentially undermined efforts to maintain control over their colonial territories.<sup>28</sup>

In the jumps and discontinuities that shaped the trajectory of the global rights order after 1945, the human rights norms of the Universal Declaration became believable again in the 1970s when their spirit reemerged with a vengeance along with a renewed appreciation of the kind of political work the human rights frame could do. The florescence of Amnesty International and its Nobel Prize in 1977, the claims for political and civil rights among dissidents in the Soviet Union, the Helsinki Accords, the Charter 77 movement in Eastern Europe, the international women's conference in Mexico City in 1975, Carter's human rights diplomacy and transnational campaigns against human rights abuses in Latin America and South Korea and apartheid in South Africa, to name just a few, were all products of this return to global human rights talk.

We know very little about the histories of these remarkable developments. If the history of the Universal Declaration and the human rights moment of the 1940s only began to be written a decade ago, the scale and scope of the long 1970s have just started to come into view by historians.<sup>29</sup> This exciting new work, and some of the best of it is included in this volume, suggests that global human rights politics increasingly shifted focus from the state-dominated norm construction of the 1940s to transnational nonstate human rights advocacy and, somewhat later, to the enforcement of a thickening body of global rights norms by both state and nonstate juridical actors. The rapid proliferation of nongovernmental human rights organizations, which increased ten-fold between 1961 and 1984 to more than twelve

thousand, was one critical element of the move toward transnational advocacy, as was a widening of the kinds of rights that were seen as deserving global protection and the growing ubiquity of international human rights law to enforce them. There were fewer than twenty global human rights legal instruments in force in 1950; in 2000 there were almost a hundred.<sup>30</sup> Moreover, beginning in the 1980s, new transnational juridical bodies such as regional courts and international tribunals—as well as the novel use of domestic courts—provided individual victims of state human rights abuses with redress and compensation. In all this, individuals mattered too. It is difficult to imagine a history of the 1970s that did not give attention to such leading figures as the Russian Andrei Sakharov, the Czech Vaclav Havel, the South African Nelson Mandela, the Argentinian group *Madres de la Plazo de Mayo*, the South Korean Kim Dae-jung, or the East Timorese José Ramos-Horta.

But the new human rights history of the 1970s has rightly steered away from more Whiggish conceptions of the contours of these developments and usefully foregrounds many of their tensions and contradictions. Essays in this volume by Barbara Keys, on the troubling ways in which torture came to matter to transnational publics in some instances and not others, and by Brad Simpson, on the willingness of the international community (state and nonstate actors alike) to look away from the human rights implications of genocide in East Timor, remind us that the seemingly capacious vision of human rights norms can be distressingly narrow. The violations of some rights, often political and civil and then only in particular geographic spaces, attracted Western human rights activists—who would become the gatekeepers of transnational human rights talk and practice in the 1970s and 1980s—other modes and locales of rights violations did not.

In an even larger sense that reveals the lingering potency and problematics of 1940s universalism for global rights talk, many of the nonstate actors at the forefront of the human rights campaigns of the 1970s were, consciously, indifferent to context. Political repression and its history were, building on the historian Greg Grandin's arguments about the somewhat different but related work of truth commissions, presented as moral parable rather than a causal network of political and social relations.<sup>31</sup> This was especially true for Amnesty International, arguably the most influential nonstate human rights actor in this period. In the organization's internal and public articulations of its self-described "impartial" mission, Amnesty continually insisted "we do not seek to explain the root causes of political repression" and that its work was based on "universally shared values, leaving all other matters to the side."<sup>32</sup> In leaving politics, as they are more conventionally

understood, behind, Amnesty drained from many of the cases it lifted up the structural forces and local particulars that gave rise to the violations of rights in the first place. Substituting the universal for the particular brought victories and gave the movement much of its popular appeal. But it left open, and indeed ignored, the multiple and sometimes conflicting causes that had prompted the rediscovery of the lexicon of global human rights.

If pieces of the puzzle of global human rights history in the 1970s and beyond are now being put into place in an increasingly sophisticated scholarship, we still don't know where the ubiquitous presence of human rights talk in this period really came from. There are some intriguing hypotheses. In one view, the collapse of competing utopias in the 1970s—whether socialist internationalism in Europe, the liberal Cold War order in the United States, or the emancipatory discourse of Third Worldism—opened a space in which a variety of local actors from American presidents to Soviet dissidents and Latin American radicals began to see the transnational protection of human rights as a compelling form of antipolitics. A complementary though more structural explanation locates the transformations of the 1970s in the accelerating forces of globalization, most notably the emergent power of transnational finance and global civil society, that challenged the predominant political and economic statism of the postwar international order. From this perspective, the result was a world of complex interdependence in which traditional state geopolitics increasingly gave way to a new transnational politics of human rights, public health, the environment, and the global economy.<sup>33</sup>

In positing a fundamental break with the past, whether it be shifts in belief or in the international system (or both), these arguments begin to help us understand critical dimensions of the jumps and discontinuities represented by the moment of the long 1970s. And yet, in so forcefully drawing attention to rupture over continuity, they implicitly (and sometimes explicitly) do not attach much significance to the human rights histories of the 1940s for making sense of the 1970s and the present.<sup>34</sup>

That doesn't feel quite right. Let me close by offering one last case suggestive of the persisting intersections between this second global human rights moment of the late twentieth century and the larger meanings we might accord to the Universal Declaration.

On March 29, 1976, seventeen-year-old Joelito Filártiga was tortured to death by Americo Peña-Irala, the inspector general of police in the capital city of Paraguay. Joelito was the son of Joel Filártiga, a doctor and long-standing opponent of the regime that had dictatorially ruled Paraguay since 1954. Joel Filártiga unsuccessfully sought redress against Peña and



the police in Paraguayan courts for the torture and murder of his son. Several years later Filártiga and his daughter came to the United States seeking permanent political asylum. When they learned that Peña was also in United States and living in Brooklyn, they filed a complaint in U.S. District Court against him claiming Peña had wrongfully caused Joelita's death by torture.<sup>35</sup>

The complaint rested on the Alien Tort Statute, which established U.S. federal district court jurisdiction over "all causes where an alien sues for a tort" committed "in violation of the law of nations."<sup>36</sup> The legal strategy was a bold one. The Alien Tort Statute, a part of the Judiciary Act of 1789, had rarely been invoked in American courts since and never before on questions dealing with human rights. Lawyers for the Filártigas argued that official torture violated an emerging norm of customary international law, in part brought into being by the prohibitions against torture in Article 5 of the Universal Declaration, and this triggered the applicability of the statute for their case against Peña.

The District Court dismissed the complaint. But in a sweeping June 1980 opinion, the U.S. Court of Appeals held that deliberate, official torture did violate universally accepted norms of international human rights law and that under the Alien Tort Statute an alien could bring an alleged torturer before federal court for actions committed outside the borders of the United States. The *Filártiga* decision foreshadowed accelerating moves after 1980—among them efforts to try the Chilean General Pinochet in Spain; the emergence of international tribunals in the Hague, Rwanda, and Cambodia; and the establishment of the International Criminal Court—aimed at global accountability in cases of torture and other gross violations of human rights.

*Filártiga* illustrates the revolutionary reach of human rights norms in and across the boundaries of the nation-state first set in motion by the framers of the Universal Declaration. But it also reveals some of the forces that shaped and constrained the global meanings of human rights and the legacies of the Declaration. The presiding judge in the *Filártiga* case closed his opinion this way: "In the twentieth century the international community has come to recognize the common danger posed by the flagrant disregard of basic human rights . . . The torturer has become—like the pirate or slave trader before him—*hostis humani generis*, an enemy of all mankind."<sup>37</sup>

Many, if not most, who read the judge's opinion (myself included) are likely to agree. In a normative sense, for most people, to enslave or torture another person is unthinkable. But, of course, in practice, it isn't. Before and after *Filártiga*, just as before and after the abolition of slavery, human rights norms and beliefs didn't necessarily govern practice. The unthinkable

persists, most recently and dramatically, in American prisons in Iraq and Cuba, and in other violations of political, economic, social, sexual, and cultural rights in the United States and the rest of the world. Contemporary domestic courts, American included, have been considerably more reticent to take cases where their own nationals were accused of torture, reflecting the continuing unevenness between the universal and the particular that inflected human rights politics in the 1940s and 1970s.<sup>38</sup>

But the *Filártiga* case also helps us understand how the broader sensibilities of the Universal Declaration have come to make the suffering of strangers matter as much as one's own. As they do, and perhaps because they do, the history of the Universal Declaration and its meanings over the last sixty years have produced a believability in the world-shattering power of global human rights talk—no matter how contingent and situated the discourse of rights has been in historical time and however detached we ought to be from celebratory or dismissive narratives of its unfolding. If chastened by the ambiguities, contradictions, and failures of the past—and as historians by the conflicting pulls of "the cause" and causality—in the end it is the right to hope that drives us forward.

## NOTES

1. "UN Code of Rights Hailed on 1st Year," *New York Times*, December 11, 1949.
2. United Nations Charter, UN website, <http://www.un.org/en/documents/charter/preamble.shtml> (accessed January 28, 2010).
3. Aaron Copland and Vivian Perlis, *Copland, since 1943* (New York: St. Martin's Press, 1989), 148–49; Howard Pollack, *Aaron Copland: The Life and Work of an Uncommon Man* (New York: Henry Holt and Company, 1999), 438–39.
4. Pollack, *Copland*, 439.
5. Article 2, Universal Declaration of Human Rights, UN website, <http://www.un.org/en/documents/udhr/> (accessed January 28, 2010).
6. On the 1949 Geneva Conventions and Nuremberg, see William Hitchcock's and Elizabeth Borgwardt's essays in this volume. Francine Hirsch's pioneering work on the Soviet presence at Nuremberg reveals the surprising Soviet contributions to international human rights law; see her "The Soviets at Nuremberg: International Law, Propaganda and Postwar Order," *American Historical Review* 113, no. 3 (June 2008): 701–30.
7. On the Genocide Convention, see Samantha Power, "A Problem from Hell": *America and the Age of Genocide* (New York: Basic Books, 2002), chs. 2–4; and John Cooper, *Raphael Lemkin and the Struggle for the Genocide Convention* (London: Palgrave Macmillan, 2008). On the freedom of information covenant, see Kenneth Cmiel, "Human Rights, Freedom of Information, and the Origins of Third-World Solidarity" in *Truth Claims: Representation and Human Rights*, ed. Mark Philip Bradley and Patrice Petro (New Brunswick, NJ: Rutgers University Press, 2002), 107–30.

8. *New York Times*, December 11, 1949, 1; readers of the *Times* would have had to wait until page 30 to learn of the Carnegie Hall anniversary event in an article itself almost overwhelmed by a three-quarter page advertisement on the same page featuring women's rhinestone-studded "cutaway" shirts and "umbrella-pleated" dresses.
9. Jeri Laber, *The Courage of Strangers: Coming of Age with the Human Rights Movement* (New York: Public Affairs, 2002), 74.
10. Alice L. Conklin, "Colonialism and Human Rights, A Contradiction in Terms?: The Case of France and West Africa, 1995–1914," *American Historical Review* 103, no. 2 (April 1998): 419–42; and, in what continues to stand as the seminal survey of this emergent field, Kenneth Cmiel, "The Recent History of Human Rights," *American Historical Review* 109, no. 1 (February 2004): 117–35. I am grateful to Sam Moyn for drawing my attention to this indexical metric.
11. Most notably Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001); and Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999).
12. See, for instance, Paul Gordon Lawrence's *The Evolution of International Human Rights: Visions Seen* (Philadelphia: University of Pennsylvania Press, 1998); and Jean H. Quataert, *Advocating Dignity: Human Rights Mobilizations in Global Politics* (Philadelphia: University of Pennsylvania Press, 2009).
13. Jeremy Bentham, "Anarchical Fallacies" in *Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man*, ed. Jeremy Waldron (London: Methuen, 1987), 53.
14. On the 1940s in this register, see Mark Mazower "The Strange Triumph of Human Rights, 1933–1950," *Historical Journal* 47, no. 2 (June 2004): 379–98; but also Kirsten Sellars, *The Rise and Rise of Human Rights* (London: Sutton Publishing, 2002); and, more conceptually, Stephen Krasner, "Rulers and Ruled: Human Rights" in his *Sovereignty: Organized Hypocrisy* (Princeton, NJ: Princeton University Press, 1999), 105–26.
15. For these arguments in the context of the UN Charter and Universal Declaration, see Roger Normand and Sarah Zaidi, *Human Rights at the United Nations: The Political History of Universal Justice* (Bloomington: Indiana University Press, 2007), chs. 3–6; more generally see Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005); and Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006).
16. Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton, 2007).
17. UN Charter, at the UN website, <http://www.un.org/en/documents/charter> (accessed January 28, 2010). For useful discussions of the drafting of the human rights language and the domestic jurisdiction clause of the UN Charter, see Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, NJ: Princeton University Press, 2009), ch. 1; Carol Anderson, *Eyes Off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–55* (Cambridge: Cambridge University Press, 2003), ch. 1; and Elizabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Cambridge, MA: Harvard University Press, 2005), chs. 5 and 6. For concerns over implications of human rights protections for British imperial policy, especially as they emerged in deliberations over the European Convention for Human Rights, see A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001).
18. On the Indian case, see UN General Assembly, Official Records, *Plenary Meeting of the General Assembly Verbatim Records, October 23–December 16, 1946*, 1006–1061; UN General Assembly, Official Records, *Jt. Committee of the First and Sixth Committees Summary Record of Meetings, November 21–30, 1946*; Mazower, *No Enchanted Palace*: ch. 4; and Lorna Lloyd, "'A Most Auspicious Beginning': the 1946 United Nations General Assembly and the Question of the Treatment of Indians in South Africa," *Review of International Studies* 16 (1990): 131–53.
19. A similar bottom-up approach to the making of human rights norms in this period emerges in two important recent dissertations: see Stephen Mak, "Enemy Aliens in a World at War: America's Other Internment during World War II" (PhD diss., Northwestern University, 2009); and Stephen Porter, "Defining Public Responsibility in a Global Age: Refugees, NGOs and the American State" (PhD diss., University of Chicago, 2009).
20. For a fuller discussion of the American global rights cases of the 1940s see my "The Ambiguities of Sovereignty: The United States and the Global Human Rights Cases of the 1940s and 1950s," in *The State of Sovereignty: Territories, Laws, Populations*, eds. Douglas Howland and Luise White (Bloomington: Indiana University Press, 2009).
21. *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 60 N.W. 2d 116–17 (1953).
22. Brief in support of petition for writ of *certiorari* to the United States Supreme Court, 18–19.
23. *Sei Fuji v. California*, Superior Court of Los Angeles County, April 24, 1950, 21: California State Archives.
24. Tony Kushner, "'I Want to Go on Living after my Death': The Memory of Anne Frank" in *War and Memory in the Twentieth Century*, eds. Martin Evans and Ken Lunn (Oxford: Berg, 1997), 17; see also Allen H. Rosenfeld, "Popularization and Memory: The Case of Anne Frank," in *Lessons and Legacies: The Meanings of the Holocaust in a Changing World*, ed. Peter Hayes (Evanston, IL: Northwestern University Press, 1991); and Daniel Levy and Natan Sznaider, *Holocaust and Memory in the Global Era* (Philadelphia: Temple University Press, 2006), 57–63. For a more general discussion of the universalizing climate that shaped Holocaust memory in the early Cold War period, and one that reads the Frank diary somewhat differently, see Peter Novick, *The Holocaust in American Life* (Boston: Houghton Mifflin, 2000), 85–123.



25. Executive Board, American Anthropological Association, "Statement on Human Rights," *American Anthropologist* 49, no. 4 (October–December 1947): 539–43. See Karen Engle, "From Skepticism to Embrace: Human Rights and the American Anthropological Association," *Human Rights Quarterly* 23, no. 3 (August 2001): 533–47.

26. UNESCO, Secretariat, *Records of the Comité sur le principes philosophiques des droits d'homme, 1947–52*. For the published volume that emerged out of this project, see UNESCO, *Human Rights: Comments and Interpretations* (New York: Columbia University Press, 1949).

27. For an exceptionally thoughtful discussion of the problems of universalism for writing the history of the United Nations in this period, see Sunil Amrith and Glenda Sluga, "New Histories of the United Nations," *Journal of World History* 19, no. 3 (September 2008): 251–74.

28. For a range of the often competing interpretative perspectives in the emergent historical scholarship on the engagement in global human rights politics within the global South, see Manu Bhagavan, "A New Hope: India, the United Nations and the Making of the Universal Declaration of Human Rights," *Modern Asian Studies* (June 2008), doi:10.1017/S0026749X08003600, Cambridge University Press, <http://www.cambridge.org/>; Roland Burke, "From Individual Rights to National Development: The First UN Conference on Human Rights, Tehran, 1969," *Journal of World History* 19, no. 3 (September 2008): 275–96; Cmiel, "Human Rights, Freedom and the Origins of Third-World Solidarity"; and Samuel Moyn's essay in this volume.

29. For a still helpful overview of this period (and broader in its interpretative concerns than its title suggests), see Kenneth Cmiel, "The Emergence of Human Rights Politics in the United States," *Journal of American History* 86 (December 1999): 1249–50.

30. Akira Iriye's *Global Community: The Role of International Organizations in the Making of the Contemporary World* (Berkeley: University of California Press, 2002) remains foundational on the historical rise of nongovernmental organizations; see also Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998). On human rights instruments in force, and the intersection of nongovernmental organizations, domestic policy and effectiveness of international human rights law more generally, see Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009), 37 and passim.

31. Greg Grandin, "The Instruction of Great Catastrophe: Truth Commissions, National History and State Formation in Argentina, Chile and Guatemala," *American Historical Review* 110, no. 1 (February 2005): 46–67.

32. *Amnesty International Report 1980* (London: Amnesty International Publications, 1980), 2, 4, 7. Like much of the history of this period, the place of Amnesty International in the global human rights politics of the 1970s is just being written;

among the most promising efforts are a series of unpublished papers by Jan Eckels in the author's possession.

33. For the more ideational argument that sees human rights in the 1970s as antipolitics, see Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2010), ch. 4. The structural approach to the transformations of the 1970s emerges in Daniel Sargent, "From Internationalism to Globalism: The United States and the Transformation of International Politics in the 1970s" (PhD diss., Harvard University, 2008).

34. See Moyn, *Last Utopia*, ch. 2.

35. *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), 878. The fullest discussion of the events that gave rise to the *Filártiga* case can be found in Richard Allan White, *Breaking Silence: The Case That Changed the Face of Human Rights* (Washington, DC: Georgetown University Press, 2004).

36. *Judiciary Act of 1789*, ch. 20, codified 28 U.S.C. 1350.

37. *Filártiga v. Peña-Irala*, 890.

38. See David Cole, "Getting Away with Torture," *New York Review of Books*, January 14, 2010, 39–42. For a judicious and persuasive assessment of state policy toward torture and the relative power of international legal norms, see Simmons, *Mobilizing for Human Rights*, ch. 7.