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### HUMAN RIGHTS RESPECTED IN LAW, ABUSED IN PRACTICE

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1. It is possible that people have some idea of human rights wired into their brains by their genetic make-up. To put it less flamboyantly, it is possible that all humans instinctively recognise other members of their own species, and acknowledge that humans possess certain essential characteristics distinguishing them from animals. It is also possible that every identifiable human culture has at least a vague notion, familiar to those living in that particular society even if not always respected, of the basic rights possessed by all people. These are matters to which this paper will return in due course.

#### HUMAN RIGHTS AND STATES

2. One thing that is certainly not a universal phenomenon, however, is the close association made today between the respect for human rights and state law. This is a very distinctive feature of discourse concerning human rights, often heard in international conferences and discussed in learned books and journals. Human rights, as identified by appropriate international bodies, have been defined in legal texts such as the Universal Declaration of Human Rights. It has been one of the main achievements of the United Nations, which today has 190 member-states, to assert the validity of this and other codes of human rights, to oversee their incorporation into international law and to encourage their translation into national law codes.
3. Non-governmental organisations (NGOs) often try to use the existence of these codes to practical effect. The best example of this approach on the part of an NGO is probably Amnesty International, whose key argument is that states must respect the laws that they have themselves designed or recognised. A great deal of Amnesty's campaigning work is based on this simple foundation. It is very difficult for recalcitrant states to find principled arguments with which to counter this, since they can hardly deny the existence of laws that they have themselves promulgated or of conventions that they have formally accepted. If they were to argue that they

are in fact powerless to apply their own laws, it would be an assertion of their own impotence, highly damaging to their reputation. The most effective counter-argument, heard for example from governments in China, Iran and Malaysia, is not to dispute the existence of human rights but to assert that these should be identified not by reference to universal standards but to alleged cultural norms that differ from one religious, national or ethnic group to another. The fact that the latter assertion is made at all illustrates the importance of the proposition referred to above that ideas about human rights differ from one group to another.

4. In principle, then, all the world's people are recognised by law as having certain fundamental rights, the precise definition of which varies from country to country. If these rights are violated, victims should, in theory, be able to seek redress through the state that governs them. This situation has come about through the evolution of the state system with which the effective protection of human rights is so closely identified. Ironically, states, which are required in this system to respect human rights, are also the organisations most prominently associated with their abuse. While it is in theory possible to achieve a proper balance between the different functions of the state in such a way that human rights are respected, in practice not all states show an equal ability to do this, for reasons embedded in their history.
5. It is widely accepted that the legal aspect of the modern state system has its deepest roots in Europe. Early modern states in Europe invented a concept of sovereignty that is the direct ancestor of today's notion of state sovereignty. It is often said that the Treaty of Westphalia of 1648, which brought an end to the 'Thirty Years' War by recognising the sovereign rights of rulers within their own territories, and in so doing also recognised as a corollary that other states may not interfere in their internal affairs, was the point of origin of the modern state system. In short, a system that evolved in Europe to deal with particular problems gradually increased in scale of operation until, evolving over time but still having a recognisable European genealogy, it filled the whole world — or, some might say, was imposed on the whole world.
6. This was one result of Europe's extraordinary expansion during the three centuries after the Treaty of Westphalia, as Europeans settled in other continents, exported their goods, and took formal possession of other countries. It is estimated that by the mid-1930s, 84.6 per cent of the world's land surface was or had been a colony,<sup>1</sup> that is to say a territory endowed with a formal legal status subservient to that of whichever European metropolis had charge of it according to the evolving system of international law, itself essentially a European invention. Colonial powers governed their territories with methods and institutions based on metropolitan models. Even countries that were never formally colonised, like China, Japan, Iran and Turkey, felt themselves obliged to adopt such institutions and to accept the system of international law as a condition of their own recognition as sovereign states.
7. This history, although well known, is worth recalling because it is highly relevant to a consideration of why human rights are respected or not today. Europe's historic rise to domination was based on a conviction among European élites (and even European populations more generally) that they were bearers of advanced ideas and standards of universal validity. One of the features of European colonial government was that its apologists based the claim to legitimacy of the colonial system on the argument that they were bringing a higher conception of law to societies previously unfamiliar with the rule of law. Although few people would support this view nowadays, it continues to mark Western attitudes to the way in which the world is organised, and even the way in which it is to be understood. The Indian economist Deepak Lal argues forcefully that many of "so-called universal values" articulated in this process are "actually

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<sup>1</sup>Calculated by the historian David Fieldhouse, quoted in Ania Loomba, *Colonialism/Postcolonialism*, Routledge, London, 1998, p.xiii.

part of a culture-specific, proselytising ethic of what remains at heart western Christendom”.<sup>2</sup> This is an important suggestion implying an urgent need to distinguish universal values and ideals — surely including universal human rights — from the cultural appearance they adopt.

8. Articulate commentators vary from those who see democracy, human rights and the defeat of ignorance through scientific knowledge as noble causes that should triumph everywhere, to those who see these as mere screens for the ruthless pursuit of self-interest by élites. My intention at this juncture, however, is not to situate my own views within such a spectrum but to point out that the conception of a universal standard of human rights is one component of a vision of a better world that, historically, has been transmitted through certain mechanisms that may themselves have left an ambiguous or even disastrous historical legacy. To be more specific, the respect of human rights today is closely associated with the operation of an effective legal system by sovereign states whereas, as a matter of historical fact, both rights and laws have been articulated by states.
9. The power wielded by states is always ambiguous in the sense that it can be used to protect or to harm. Many states carry within them the memory of terrible injustices. Zbigniew Brzezinski estimated in 1993 that at least 167 million lives had been “deliberately extinguished through politically motivated carnage” since the start of the twentieth century, generally in an effort to create “coercive utopias”.<sup>3</sup> These would certainly include fascism and communism, and some people would regard colonialism too as one of the great aberrations of modern times. Whatever one’s personal opinion on where the major responsibility lies for this dismal statistic, it is clear that killing on such a scale was made possible by the bureaucratic machinery of the state, transmitted and articulated by written codes, including laws. It is this machinery, perhaps more than any specific ideology, which has the potential both to abuse and to protect human rights.

## THE RULE OF LAW

10. Law and justice, then, are not the same thing and can even be utterly opposed. This commonplace statement is in many countries a living memory. It is in considering the historical trajectory of the law in each country or society that one may appreciate the difficulties in using it as the means for protecting human rights today.
11. Modern government, unlike the empires of most earlier ages, is based on a convention that government should be carried out by reference to written codes applicable even to the state itself and to the officials who served it. Great injustices such as annexing land, requiring forced labour, and so on can easily be compatible with the rule of law, if suitable written provision is made for these measures in advance. In many parts of the world, these are the circumstances under which written law was introduced in colonial times. This does not mean that Africa or other parts of the world were chaotic before colonial times; it means only that government in those places was generally effected without reference to written law codes. A similar function was generally fulfilled by unwritten custom, by religious ritual and other devices. Elsewhere, in places like India and China, the rule of law was an important addition to older forms of governance in which literate bureaucracies did have some role. It is the rule of law even over the state itself that makes possible the concept of a state crime.

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<sup>2</sup>Deepak Lal, “Asia and Western dominance: Retrospect and Prospect”, International Institute of Asian Studies Annual Lecture, Leiden, October 27, 2000, summarised in *IIAS Newsletter* 24, 3 (February 2001). This is explored at full length in D. Lal, *Unintended Consequences: The Impact of Factor Endowments, Culture and Politics on Long-Run Economic Performance*, MIT Press, Cambridge, MA, 1998.

<sup>3</sup>Zbigniew Brzezinski, *Out of Control: Global turmoil on the eve of the twenty-first century*, Charles Scribner’s Sons, New York, 1993, p. 17.

12. It is in terms of the rule of law that the concept of human rights has been promulgated and popularised during the twentieth century. It is also in terms of the rule of law that the European Union today regards millions of immigrants living within its borders as illegal, and therefore excluded from the range of basic rights that others enjoy, or that the United States has detained hundreds of people of Arab origin in defiance of the rights accorded to American citizens or even to prisoners of war. This is justified not by reference to justice so much as by reference to the law of the land. We may wonder what is the purpose of articulating universal human rights if the states that are to enforce them also use their prerogative to define substantial numbers of people of being outside the law.
13. The historical nature of states and the rule of law has a bearing on the question of failed states, so much discussed today.

## **FAILING STATES**

14. The spread of human rights legislation has been inextricably connected with the establishment of a global system of governance based on sovereign states. These have grown in number from fifty-one in 1945 to 191 today.<sup>4</sup> The great increase in the number of sovereign states in the second half of the last century was due to the dismantling of the European colonial empires. These include the Russian empire, in the form of the Soviet Union, which collapsed only in the late 1980s. If we include the Russian empire, it means that the great age of European empires ended only in the 1980s and 1990s, and not thirty or forty years earlier, as had previously been thought. The condition of the world today needs to be analysed in this light.
15. The creation of so many new states marked a revolution in international relations, to be sure, but also in international law, since it now made recognition of sovereignty dependent not on the existence of a state, as previously, but on the right to national self-determination. Within each territory that was throwing off its colonial status and assuming independence, the process entailed struggles for control of power in which the winners could entrench their power through the law. Many notorious tyrants could claim to be legitimate (since they were demonstrating that they were enunciating a right to national self-determination) and legal (because they were benefiting from a constitutional process that they may well have had made-to-measure). They could also benefit from international support through one or other super-power.
16. The general approach of human rights activists could be summed up briefly by remarking that their aim has been to ensure that each of these states effectively protects the human rights of people within its jurisdiction through the rule of law. Individuals concerned about human rights and social justice have generally assumed that states have effective power over their populations, and that what is most required is to induce states to respect their responsibility to protect human rights by taking effective action.
17. In the last couple of decades, however, many of the most egregious violations of human rights have taken place in states that are unable to enforce their formal rule over the whole country, or that function so inefficiently as to raise questions about the capacity of the various arms of government to carry out their work effectively. It is notable that such deficiencies, more than the actions tyrannical states, are responsible for a large proportion of the human rights abuses taking place today. Police forces starved of resources and competing with unofficial militias, and judicial systems that are corrupt, ineffective or even close to non-operational, can hardly act as effective enforcers of human rights legislation. There is an increasing number of such states, which have

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<sup>4</sup> One state — the Vatican — is not a member of the United Nations.

become enfeebled for a variety of reasons attributed usually to the economic changes that have taken place since the first oil shock of 1973, the end of the Cold War or to globalisation generally.

18. Probably the most extreme case is Somalia, which has not had a real government since the collapse of the Siad Barre regime in 1991. The human rights abuses that took place in the wake of Barre's departure, sparking the disastrous US-led United Nations mission of 1992-94, could not meaningfully be attributed to the workings of a state. Those Somalis considered most responsible for human rights abuses at that time were regarded by international observers to belong to the vague category of 'warlords', a word that has since entered the lexicon of social science.
19. Somalia is not unique, alas: in many parts of Africa, but also in Colombia, Afghanistan and some other parts of central Asia, Indonesia and elsewhere, serious human rights abuses take place that cannot realistically be regarded as the work of forces under the direct and effective control of the government of the country. They might be carried out by forces explicitly opposed to the government, as with the FARC in Colombia, or by forces effectively independent of the government, such as the Mayi-Mayi militias in the north Kivu region of Congo, or by security forces that, although legally answerable to the government, in reality are independent of it or under the effective authority of just one minister, of a faction within the government, or of a clique of senior army officers. This has been the case of the armed forces in Indonesia, of the Civil Defence Force in Sierra Leone, and so on. Modern military theories of counter-insurgency implicitly recognise this, emphasising as they do the use of subterfuge and the mobilisation of civilians through propaganda and selective violence as a means of establishing hegemonic control of a whole population. South Africa in the early 1990s, Algeria and Indonesia all illustrate such strategies in practice.
20. It is, moreover, becoming increasingly clear that the states in which serious human rights abuses take place outside the direct purview of a legally constituted government do not represent a temporary aberration, to be rectified by remedial action on a case-by-case basis. It is accepted by many observers<sup>5</sup> that the number of what are often called 'failing' or 'failed' states<sup>6</sup> represents a fundamental change in the nature of the international system of governance, as it was adapted to a world scale, most notably after 1945. In short, the formal system of international governance, based on the notion of a family of sovereign states that are legally equal, which are collectively governed by international law, and which are individually responsible for the maintenance of the rule of law within their jurisdiction, is now showing a distinct frailty. The United States, which before September 11, 2001 was inclined to view 'failed' states as the collateral damage of historical change, now regards them as a serious security threat.
21. The failed states of today are mostly ones that, throughout their earlier existence, were conceived of primarily as mechanisms for international management, and rarely as instruments primarily for the protection and welfare of the people who live in them. The following section will discuss some aspects of the emerging situation, particularly as they affect the rule of law and the maintenance of human rights.

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<sup>5</sup> E.g. Robert Cooper, 'The Postmodern State', in Mark Leonard (ed.), *Re-Ordering the World: The Long-Term Implications of 11 September*, The Foreign Policy Centre, London, 2002, pp. 11-20; Phillip Bobbit, *The Sword of Achilles: War, Peace and the Course of History*, Allen Lane, London, 2002.

<sup>6</sup> This is not an entirely satisfactory term as it implies a lack of political content in the analysis of the phenomenon. However, it is now widely accepted and is therefore used in this context.

## THE EMERGING WORLD

22. There is no consensus on the nature of the world system that is emerging from the Cold War, but there are certainly some features that have been widely noted.
23. First, a significant number of states have ceased to function in the ways required of them by international law and show little sign of resuming their required level of performance in the foreseeable future. Typically, states that fit this description are those that emerged from the dismantling of the great European colonial empires. The successor-states in most cases had been introduced to the rule of law in the rather unusual circumstances of colonial government. They have assimilated aspects of the colonial style of rule into older traditions of governance that may place significant emphasis on elements such as group identity and religion and on styles of governance that are more fine-grained and more based on social relations than those used by the bureaucracies typical of the modern state.
24. Second, the circumstances of the late twentieth century were such that some states, obliged to navigate rapidly changing political and economic conditions, were unable to maintain control of significant aspects of the process of change. The prerogatives of the state itself were in some cases challenged by actors who succeeded in obtaining control of the formal powers of the state. Some such actors were themselves state officials, typically from the armed forces or the security services, but others were businessmen or even professional criminals, or combinations of all of these, well attested in the case of the former USSR.<sup>7</sup> When states were obliged to privatise state services, typically by a combination of financial necessity and the specific requirements of the international institutions that police the world system of finance, new alliances arose that were able to obtain control of these.
25. The net result has been a new and disturbing phenomenon sometimes called the criminalisation of the state. Probably the most important example of this is Russia, but some other major powers also show some of the same symptoms, namely of a sovereign state in which many important functions have been effectively privatised. Examples include the privatisation of violence, in the form of unofficial party or personal militias, vigilante groups, or the use of the official security forces for private purposes: this is to be found in many of the successor-states of the European colonial empires. Authorities may even privatise the sovereign right to issue currency, which has been done privately by heads of state in Kenya and Congo, among others. In other cases, sovereign functions are conducted under the influence of private lobbies so powerful that they can sometimes govern the state from an informal position. This has serious implications for human rights inasmuch as private lobbies cannot be expected to have a serious regard for the interests of the entire public sphere, including the rights of citizens who are unconnected with the most prominent factions. Worse still, many of these powerful new private blocs, led by entrepreneurs variously dubbed 'oligarchs', 'warlords' or such like, contain significant numbers of professional criminals and in any event do not shrink from the use of violence to further their interests.
26. Third, the emerging élites that have benefited from these new arrangements make international connections of a generally financial and economic nature that can have a bearing on the real power of states and on human rights. Private companies with good official connections in the former Soviet Union and in some countries of eastern Europe are leading exporters of the light weapons that cause so many human rights abuses in Africa. They may make deals with similar organisations elsewhere, as indicated by reports of high-level deals between Colombian, Italian and Russian mafias, or even with sovereign states, useful for laundering money, serving as entrepôts for smuggled goods and providing false documentation for business and travel. In

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<sup>7</sup>Stephen Handelman, *Comrade Criminal: Russia's New Mafia*, Yale University Press, New Haven and London, 1995.

cases such as these, states themselves become little more than facades behind which the real power-brokers hide, or which they use to camouflage their true intentions. States come to resemble the famous Potemkin villages, erected by the favourite minister of a Russian empress, two-dimensional structures designed only to impress those who look at them from a distance.

27. This state of affairs is often associated with human rights abuses committed by political-military entrepreneurs ('warlords') as they struggle to control markets. Wars in West and Central Africa have this character<sup>8</sup>; more generally, a political struggle in the same sense, often accompanied by a considerable use of force, has become more widespread in Africa, South America, Asia, the Balkans and Eastern Europe. Control of formal or informal markets has often become the central aim of elite political competition, but this can involve massive abuses varying from the simple neglect by states of regions or population groups that have no resources worth exploiting, to the hounding, exile and even massacre of such groups of people for fear that they might constitute a power-base for a rival warlord.
28. Such conditions are slowly but surely causing the system of international governance and law to rot from within. International lawyers, administrators and diplomats generally maintain a pretence that the real state of affairs is closer to that of international treaties and conventions than is actually the case. The World Bank, for example, even sometimes finds it necessary to pretend for certain purposes that Somalia really is a state, and not just a juridical fiction. Until recently, and perhaps even now, there was a pretence — perhaps even a belief — on the part of key actors that Russia was following a virtuous path towards becoming a liberal democracy. The international community feels itself obliged to pretend that wars in West Africa are the affair of individual states, when in reality they involve the control of markets and of populations across borders, and when leading politicians and officials in neighbouring countries are often enthusiastic participants in acts of aggression.
29. In some cases, international actors refuse to recognise realities because they feel obliged to respect conventions that, however inadequate, do still serve to support an international order that is under strain. In too many cases, though, international officials are wilfully blind to what is happening. The law increasingly serves not to define how people should act but, rather, to camouflage what they are doing. Skilful politicians know how to use the law as a cover while they carry out their own factional projects, like Zimbabwe's President Robert Mugabe who is generally scrupulous in passing laws and ensuring that his country's courts, dominated by his own placemen, will give even some extreme measures a semblance of legal justification. He has learned well from his colonial predecessors. Colonial rule in Rhodesia itself involved the massive confiscation of land and coercion of people, implemented in terms of a law code adapted for the purpose. In colonial times, there was little international outcry about what was happening. In Europe too, the law is increasingly disconnected from justice in that it is used to declare certain people illegal — immigrants without valid papers — and therefore deprived of certain basic rights.
30. For many people in the world, then, the historical experience of the rule of law is a distinctly ambiguous one. Liberal jurists can too easily forget that the law can be used to justify human rights violations. More importantly, the law always defends interests. The law in its modern sense of written codes promulgated and enforced by the state has too often protected or even empowered the strong at the expense of the weak, enabling them to carry out massive injustices under legal cover. This continues today as the law in many former third world countries is used to effect a vast confiscation of power in private hands through privatisations of various sorts.

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<sup>8</sup>Cf. William Reno, *Warlord Politics and African States*, Lynne Rienner, Boulder, 1998.

31. While an average citizen of a liberal democracy may have reason to regard the law as a mechanism that has historically functioned to constrain rulers, people born and brought up in ex-colonies may feel differently. For them, cases where the common man or woman secures justice through the mechanism of the state are rather few by comparison. People in wealthy liberal democracies tend to see the law in evolutionary terms, assuming that once it has been implanted in a country, even in the unusual circumstances of colonial rule, it will develop naturally into the rule of law in the liberal sense. Many in former colonies do not see it that way. The implication of this is that, precisely in many countries where the worst abuses of human rights take place, inserting stronger provisions for the protection of human rights into law codes may not be of much use for the effective protection of such rights, as the law is generally little observed by the mass of the population or is even held in disrepute, or is used as a façade behind which powerful factions manoeuvre.

### **HUMANS HAVE RIGHTS, BUT WHO IS HUMAN?**

32. Round the former colonised world, new ways of living are struggling to emerge from the history created when the powerful technologies of control and vehicles of inequality known as states were introduced into other systems of governance. This is producing a great variety of forms of governance. Many religious fundamentalisms are a product of this process.<sup>9</sup> In Africa, and doubtless elsewhere, there are communities that live their lives as far removed from the state as possible. In reality, power may be in the hands of unofficial authorities that have no standing in law, and whatever conception they have of human rights is the one that counts. A great variety of systems of governance are actually emerging, clustering behind the vague and forbidding notion of 'failed states.' Many of these systems are hardly ideal; most are improvised. Yet it behoves us to ask whether they may not contain within themselves the seeds of workable systems for the protection of human rights.
33. In principle, there is no reason why the retreat of relentlessly modernising states should not result in the invention of new styles of governance that are rooted in indigenous traditions of justice and equity that have some respect for human rights, at least as defined in local terms. However, it is unlikely that this will be achieved by the standard method of incorporating human rights legislation into national law codes, to be enforced by the executive and judicial branches of government. If it is to be achieved at all, it may well be through other techniques of inclusion and exclusion that are not based on law. This is sometimes difficult to imagine for anyone who has come to regard law as the only real guarantee of human rights.
34. For these reasons, we need rather urgently to discover what people think about human rights in countries where there is no effective rule of law, or where it is a caricature of what is intended by international jurists. It is likely that people's ideas about the rights of themselves and others in these circumstances are influenced by a wide range of factors, including some ideas drawn from international debates on human rights but also more home-grown or traditional ideas, as is suggested by apologists for a cultural vision of human rights. The fact that the idea of indigenous notions of human rights is manipulated by politicians in their own interest is no reason to deny the existence of such notions altogether. In but few cases has an allegedly indigenous view of human rights been investigated systematically and thoroughly with a view to developing law-codes that both resonate with local ideas but are also consistent with the principles of international human rights law.

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<sup>9</sup>Cf. Mark Juergensmeyer, *Terror in the Mind of God: The Global Rise of Religious Violence*, University of California Press, Berkeley, 2000.



35. This is the case, for example, with debates on Sharia law, which too easily descend into crude exchanges between those who regard Sharia as entirely inappropriate for modern times, and those who see it as a symbol of resistance to Western or secular influence. In Islamic tradition, Sharia is supposed to operate in concert with a number of other mechanisms of consultation. There is an urgent need for human rights activists not to reject concepts like Sharia out of hand, but to engage in a serious discussion about how indigenous ideas of rights and justice can be made compatible with international norms in an increasingly inter-connected world.
36. This task, moreover, should not be taken as a suggestion that there is nothing to be done in defining and protecting the human rights of people in advanced industrial or post-industrial democracies, not least as these attempt to exclude illegal immigrants by increasingly rigorous means. This is resulting in the growth inside the European Union of an underclass of so-called 'illegals' who are effectively outside the protection of the law in most respects. Everywhere, there is much to be done in strengthening domestic human rights lobbies that can inform people of the basic rights that belong to them under law.
37. In view of the situation described in the previous section, it is also worth contemplating the forgotten half of the expression 'human rights': that is, to concentrate not so much on the question of determining what rights humans have, but on considering who qualifies as a human in the first place.<sup>10</sup> This too makes human rights less of a legal question and more of a moral one. It is notable that the most serious abuses are often committed against people regarded by their aggressors as less than fully human. It seems to be a widespread trend that, in situations of political tension, one group may suggest that another part of the population is polluted or sub-human, describing it in terms of dirt and impurity that needs to be removed ('ethnic cleansing') or literally describing the enemy as vermin such as rats and cockroaches. Not only is the use of such language a warning that tempers are running high, but it also suggests that part of the process of committing serious human rights abuses is to consider those targeted as not fully human, and therefore not deserving of human rights. All societies exist in part by making distinctions between who is part of the society (a citizen, in republican parlance) and who is not, and therefore they all appear to have the capacity to dehumanise others in this way.
38. This suggests that human rights activists need to look more closely than they have done in the past not only at legal texts and mechanisms, but at the ideas people ordinarily have in different parts of the world about themselves and others. Such an inquiry is likely to reveal some quite surprising results, for there seem to be many societies in which certain parts of the population are considered not human in the same way as the mass of people. This is inherent, for example, in the many societies where there are strong traditions of monarchy or aristocracy, where it is common to consider that people belonging to these elite categories are not entirely human. They may be considered as the descendants of gods, like the emperor of Japan. It is for this reason that aristocrats or others of exalted birth, in many traditions, may marry only others of their own kind, as the royal families of Europe have traditionally done. In a constitutional monarchy such ideas may seem faintly ridiculous, and not to be taken too seriously, but they illustrate the fact that in many parts of the world, large groups of people are considered to fall outside the categories of normal humanity deserving of full rights. Some reflection on these lines seems to be the case in places where parts of the population are traditionally regarded as forming part of a 'backward' group (as with indigenous peoples in North and South America and Australia), or a slave group. In practice, people from these population groups find it hard to secure their rights even when these are guaranteed by law. The time appears to be past when it could be argued that modernisation and education would shortly put an end to such anomalies. On the contrary, modernisation and education have shown their limits.

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<sup>10</sup>The following is based on Gerrie ter Haar, *Rats, Cockroaches, and People Like Us: Views of Humanity and Human Rights* Institute of Social Studies, the Hague, 2000.

39. A reasonable consequence of these observations is that human rights activists and policy-makers need to take account of new data as they observe how widely practices and ideas can differ. It is unfortunate that some writers have drawn a very different conclusion, such as Samuel Huntington in his well-known *Clash of Civilisations*.<sup>11</sup> According to this model, ideas and behaviour are determined by culture, conceived as an autonomous and slowly evolving corpus of ideas and habits, like a species of plant or animal. This is a view of culture and cultures that has been influential in European thought since the late eighteenth century and has been a main component of nationalisms. However, 'cultures' in this sense do not really exist in daily life. Ideas held in common by large groups of people change over time and merge often imperceptibly with other ideas held by members of the same group, as well as by others. All societies contain significant numbers of people who do not subscribe to the alleged cultural norms, and actually almost everyone, if they were examined thoroughly, would probably be found to deviate in some respect. Hence, cultural traits exist and can be identified, but it is wrong to consider them as homogeneous and substantially unchanging.
40. Debate on whether certain social and political ideas, like democracy and human rights, are universal, or whether they are proper to particular cultures or civilisations only, is one of the most important matters at issue in the world today. I believe that the most important ideas about how people can live together are universally applicable in at least some sense, with the important proviso that they do not necessarily find the same cultural expression in every society.
41. The declining credibility of earlier ideas about universal knowledge has opened up a vital space of intellectual and political contention. It is in this uncertain space of social ideas that new ideas or institutions about human rights may emerge, especially in the former colonised world. It may be that, as the colonial period fades into history, a growing number of countries will adopt institutions and law-codes that have roots in precolonial history. Western intellectuals are less sure than previously about which of these new productions can be regarded as universally valid. Western politicians, keeping their main attention on the interests of themselves and their constituents like all politicians, will need to see how far new ideas and institutions arising from the former Third World are useful for their own purposes, but they will also need to make allowances for the formation of idioms or systems of political discourse that are unfamiliar, including the religious idiom.
42. Activists need to investigate this contested terrain, and to do so in the belief that all human beings have fundamental qualities and abilities in common, often the very ones that distinguish people from animals. It must be possible to reach a sophisticated and informed understanding of what these qualities are, exactly. This may not mean renouncing any aspiration to create a better world, if that is what development means, where people are less likely to have lives that are nasty, brutish and short. This is not a task that can be tackled with legal instruments alone.

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<sup>11</sup>Samuel Huntington, *The Clash of Civilisations and the Remaking of World Order*, Simon & Schuster, New York, 1996.