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The Problem of Human Rights

On June 12, 2009, Iran held a presidential election whose outcome was preordained. The next day, authorities declared the incumbent president Mahmoud Ahmadinejad the winner. Protests erupted. Millions of people flooded the streets to dispute the results. The world watched while the government responded with sweeping human rights violations.

Plainclothes forces attacked a Tehran University dormitory and reportedly killed student protesters.[1] The government banned foreign journalists from the streets after arresting almost one hundred people, including former government ministers and senior political figures.[2] Among the casualties was Neda Agha, a young bystander killed by riot police who became an icon for the antigovernment movement. Protests continued and the government responded with more violence. Thousands would be arrested over the next few months as the death toll mounted.

Undeterred, President Ahmadinejad was sworn into office for a new term in August. Meanwhile, show trials began against detainees, many allegedly coerced into falsely confessing that they had participated in a foreign-backed attempt to overthrow the government. Security officials shut down the offices of a committee that collected information about torture and other abuses against protesters and detainees. Journalist Ali Reza Eshranghi was sent to prison, followed by scholar Kian Tajbakhsh and other prominent intellectuals, political figures, and journalists.[3] Many were sentenced to death; some have been executed.[4]

By law, none of this should have happened. International customary law prohibits extrajudicial killing and torture.[5] And since 1975, Iran has been a party to the UN International Covenant on Civil and Political Rights, a global treaty that prohibits torture as well as cruel, inhuman, or degrading treatment or punishment. The treaty requires fair public hearings by competent, independent, and impartial tribunals established by law. It also mandates that everyone have the right of peaceful assembly.

Iran is not alone, of course. Most governments swear to pursue, promote, and protect human rights. They make legally binding promises, which they break when convenient.

While the data aren't perfect, organizations have been building records of human rights abuses.[6] Figure 1 summarizes what they show worldwide

since the 1970s for a wide array of abuses—murder, torture, political imprisonment, and forced disappearances along with other violations of political rights and civil liberties, including censorship and the suppression of political association as well as workers' rights. The dotted lines depict the total number of countries that have ratified the principal treaty outlawing these crimes, the International Covenant on Civil and Political Rights, thought to be one of the most effective international legal instruments for protecting human rights.[7] The striped boxes show every year that a number of those countries, despite belonging to this treaty, were alleged by credible sources to engage in these prohibited acts.

There is unabashedly good news in one category—disappearances are declining from their peak two decades ago. That effect stems mainly from democratization in Latin America, which removed from power military dictators who made a habit of disappearing their political opponents. On all the other rights shown in figure 1, the rise in global membership in this human rights treaty has run in parallel with a rise in measured abuse. Countries are good at joining treaties, but bad at honoring commitments. The same patterns are evident in other human rights treaties as well.[8] In spite of the expanding international legal system outlawing these acts, reports of human rights abuse endure.

Why do countries legally devoted to human rights on paper so often break the law? More important, what can be done to close the gap between paper and practice? This book aims to answer those questions. It looks at whether more international legal instruments and procedures would be helpful while probing the actions that states can take in tandem to the large and increasingly elaborate international human rights legal system.

Ever since the adoption of the Universal Declaration of Human Rights more than six decades ago, it has been clear that the world needs to do more to respect the human rights that are integral to life with dignity. That's not the issue. Instead, today the questions concern strategy. What's the best strategy for promoting respect for human rights?

Governments and NGOs have created a system of international law and procedures based on universal principles. Membership is growing across a wide array of international treaties and institutions.[9] That approach articulates a powerful vision for the promotion of human well-being everywhere. It already has made significant achievements. The approach has shifted the goalposts for what is acceptable and also motivated foreign policy on human rights. But for many victims of tyranny, brutality, discrimination, and deprivation, the results of that universal approach have been underwhelming. For some, the approach is alienating because the system of international norms and procedures is at odds with accepted local cultures and social practices.[10] A fresh look at how the system works—and its troubles—is overdue.

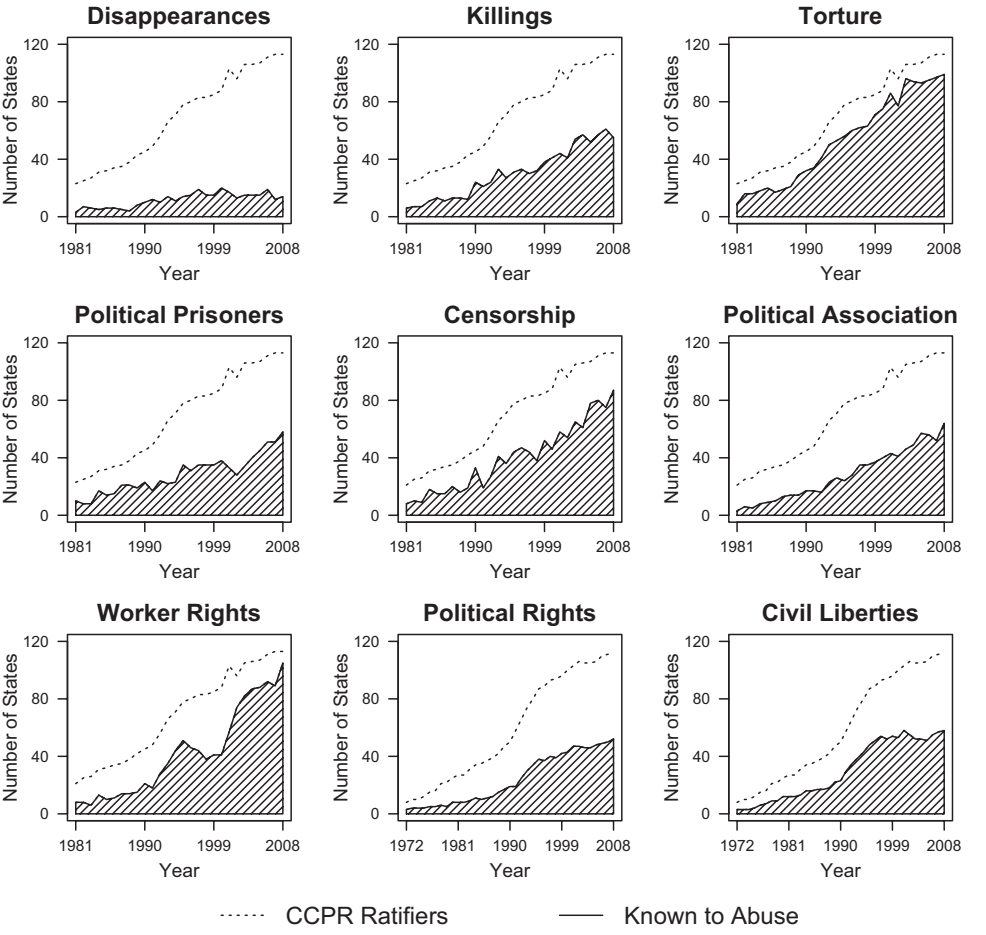

Figure 1. Ratifications and violations of 9 protected rights under the UN Covenant on Civil and Political Rights (CCPR).

Understandably, a sober appraisal of the human rights promotion system is not a popular activity. Legal scholar Makau Mutua ventures an explanation for why this is so. Until recently, he suggests, "human rights scholars and activists have been reluctant to ask uncomfortable questions about the philosophy and political purposes of the human rights movement. Such questions are often taken as a mark of disloyalty to the movement, or an attempt to provide cover and comfort to those states that would violate its norms. . . . The result is a paucity of good critiques about one of the most powerful ideologies of modern times."[11]

Given how much is at stake, critical evaluations of efforts to promote human rights are essential. Improving human rights requires a clinical assessment of why people commit human rights abuses. It demands assessments of when the international human rights system functions well and when it falls short. Analysis is also needed of the many ways, in addition to legal instruments, that states can promote human rights effectively. No single field has all the answers.[12] I look to research in anthropology, criminology, economics, history, law, political science, psychology, and sociology—along with a large dose of practical insight from the people in the field who work to promote human rights. Bringing all those insights to bear on the human rights challenge is the goal of this book. Along the way, I hope to help these different communities learn about work in other fields. I aim as well to offer a strategy for stewardship that could be influential in making human rights more of a reality.

The Argument in Brief

While this is a large book that examines a wide array of human rights issues and examples, I make three central arguments.

First, the evidence and analysis I present here suggest that the current system of international human rights law corresponds well with protecting human rights only in special circumstances—generally in the settings where the worst human rights abuses are least likely to occur. Despite that evidence, much of today's policy efforts focus on creating more international treaties and implementation procedures as well as expanding the number of countries that sign and ratify those agreements. I will assert the opposite.

People obey laws when the rules coincide with how they would act without the laws in place (coincidence), when they fear punishment or other consequences for lawbreaking (coercion), or when they come to believe laws have legitimate authority and value (persuasion).[13] For all these reasons, international legal principles factor into the calculus of abuse in a number of settings that are ideally suited for international law to work; examples fill the pages of this book. But the biggest abuses arise in contexts where the incentives for protection are weak and the international legal system probably can't have much immediate impact.

My first contention is that the tendency to swell the list of countries that are members of international human rights agreements along with the list of rights themselves makes the bureaucratic challenge of promoting rights harder to solve. That is because it is difficult to enforce the law by threatening punishments alone—there isn't enough coercive capacity to deter every act of defiance. Authorities also need a lot of willing

compliance—because laws coincide with what countries will do anyway or because societies have been persuaded that laws are legitimate.[14] More laws and members erode legitimacy if they lead to lower levels of compliance. Lower compliance makes it hard for abusing countries as well as the many different actors in the international human rights system to know which laws they should take seriously. Reforms to the international human rights legal system should dampen its tendency to swell in size and ambition while refocusing efforts on better protection of core rights. The system needs reform and legitimacy before expansion.

Second, solutions require relying heavily on the actors that can have the largest impact on patterns of abuse. States are at the center of this problem and the solution. I focus especially on the countries that have a strong national interest in advancing human rights abroad: the steward states.[15] Stewardship is not an entitlement; rather, it's a description of a foreign policy decision that any state can make to promote human rights in another country. Stewards tend to have pretty good human rights records at home and also face public pressure to advance human rights overseas. They are the government engines of international human rights promotion, and with the correct strategy they can do a lot more. Steward states can give perpetrators of abuse a reason to act differently even when legal procedures don't have much influence on their reasoning. The evidence presented in this book will show that the international human rights legal system is associated with significant improvements in human rights mainly in a narrow subset of countries. For the rest, including countries where the most severe abuses take place, laws need backing with power. That's where the steward states are so vital—by deploying their power and other resources to advance human rights in the settings where international law, on its own, won't have much impact. Over time, these efforts fail unless they build legitimacy and help persuade perpetrators that respecting human dignity is appropriate and not just cost-effective.[16]

To be successful, steward states must also be aware of the many limitations and risks as they wield power around the globe. Foreign pressures won't have much impact on human rights inside countries unless foreign policies are "localized," by which I mean vetted, translated, and supported by local "norm entrepreneurs."[17] Those entrepreneurs, intermediaries between locals and foreign actors, can tailor outside pressure so it is more legitimate and effective in the local setting. Successful stewardship requires working with NGOs and national human rights institutions (NHRIs) over sustained periods. Done well, which is not easy, this approach can lend power to the service of international law so that both law and power work in tandem.

Third, stewards can become more strategic in how they allocate their resources. Human rights promotion is costly, and the needed resources

don't grow on trees. Scarcity demands priorities, and the setting of priorities requires assessing the consequences of alternative strategies. Human rights promotion calls for hard choices about which promotion efforts actually work, rather than relying on aspiration, publicity, or public outcry. What's needed is a decision-making process of triage.[18] Like the brutal medical process of triaging battlefield wounds, it requires concentrating resources where actors can make a difference. Making triage effective requires collecting the data needed for the careful and constant reassessment of priorities.

The stakes are high. As UN secretary-general Kofi Annan once said, "We will not enjoy security without development, we will not enjoy development without security, and we will not enjoy either without respect for human rights."[19] He was right. What's needed is a strategy that links that aspiration to the clinical data and practical experience about what really protects human rights.

Step by Step through the Book

The challenges in human rights promotion are many and complex. I start by looking at what's known about why people (notably leaders of governments and their envoys) commit abuses. That's part I, and it's important because instruments for promoting human rights won't work well unless they are based on knowledge of why people commit abuses and the social contexts that encourage abuse.

In part II, I look at the international human rights legal system that has emerged over the last six decades. That system both declares a growing number of rights and aims to hold governments (and sometimes individuals) accountable. One of my chief concerns about that system is that it has led to an explosion of rights and procedures without eliciting much compliance from states. One of the chief challenges for more effective rights promotion is to slow the swelling; doing that requires understanding why legalization of rights has exploded in the first place.

Part III examines what governments themselves are doing to advance human rights abroad. It is fashionable today to look beyond governments to other actors, notably nongovernmental organizations, that promote human rights. Those many nongovernmental actors are important, but governments are essential. In part III, I especially focus on the governments that have proved most crucial in backing human rights when the international legal system, on its own, can't elicit compliance with the law. These steward states all use their power and other resources to advance human rights overseas. Key to the better deployment of that power is localization and triage of scarce resources.

Part I: The Calculus of Abuse

The ultimate goal of this book is to understand when and how international law and state power can protect human rights. For scholars, those questions are important because the broad field of human rights is one of the most heavily legalized areas of international relations. For practitioners this is significant because human rights abuses are pervasive and more effective policy strategies are needed. Choosing better policies requires understanding, first, the many, complex, and often-veiled motivations for acts of abuse. That is the task of part I, which brings together insights from criminology and psychology on why people (as individuals or working in groups) commit crimes and other deviant acts. It also examines research in political science and sociology that has revealed the many different contexts that can encourage abusive behavior.

The central idea in this part of the book is that human rights abuses are not the work of socially or mentally abnormal madmen (or madwomen) who can't control themselves, although mental illness and other factors do play roles at times. Instead, abusers are normally ordinary people responding to the incentives and opportunities in their environment. Abuse is abhorrent, but it's typically a calculated act. It reflects deliberate and seemingly reasonable (in the eyes of abusers) calculations of the benefits and costs. Abuse is a gamble that its perpetrators think is worthwhile given the stakes. Once under way, reinforcing factors—such as rationalizations and group incentives—make it hard to stop. This perspective on abuse suggests that the task for law and other policy instruments examined later in this book is to make violators of human rights redo the calculus that guides their behavior.

For students of international law and international relations—like myself—much of the research surveyed in this part of the book will be new. I consider the research from two perspectives.

First, chapter 2 looks at the contexts that lead to abuse. There are some settings that all but guarantee large human rights abuses. Those include pervasive conflict, such as full-blown civil war, where the incentives working on leaders and rebels are short term in nature, and most formal governing institutions have broken down. Illiberal rule is another context that is ripe for abuses since illiberal rulers are not, by definition, broadly accountable to the public. Government institutions that generally are the most ardent defenders of human rights—such as courts and ombudsmen—can't operate independently of the elites who control government. These contexts are major catalysts for abuse, yet extremely difficult to manipulate. Chapter 2 focuses on six contexts that are particularly worrisome.

Chapter 3 looks more closely at individuals and the choices they make. It explores the rationales that allow people to justify their behavior.

Usually abusers are not biologically or psychologically abnormal people when they start up. They do what they do because they believe—rightly or wrongly—they will gain something: power or support, a victory over their rivals, information, money, resources, a job, a sense of superiority or satisfaction for following orders, control, or respect. With a sense of the benefits and risks in mind, perpetrators make choices that, to them, appear practical, rational, lawful, and even morally justifiable.[20] The institutions in which abusers are embedded often reinforce such rationales. Abuse usually involves many people, actions, and institutions; it's not a particular problem created by one rogue person, act, or situation. It can, says sociologist of crime Joachim Savelsberg, "involve collective action, with front-line, low-level actors who executed the dirty work as well as leaders whose hands remain untainted by the blood for the shedding of which they bear ultimate responsibility."[21] He was speaking about mass atrocities like genocide. But child labor, discrimination, censorship, tyranny, and election fraud also find their roots reinforced by institutions. Many diverse actors, each responding to local incentives, reinforce such behavior. They convince themselves and their peers that their actions—some of them crimes under law—are acceptable. Stopping the behavior requires disrupting an entire network of group conduct, which is quite a challenge.

Part II: International Law

The most visible response to the problem of abuse has been efforts to create and spread norms through a growing system of international laws and procedures. Part II considers that international human rights legal system, its practical impact on human suffering, and the many ways that system could undergo reform.

On December 10, 1948, the UN General Assembly proclaimed the Universal Declaration of Human Rights. It endorsed this statement, which at the time was widely seen as radical: "All human beings are born free and equal in dignity and rights." It vowed to protect the "equal and inalienable rights of all members of the human family" by entitling every person "to all the rights and freedoms set forth in this Declaration, without distinction of any kind."[22]

Since that day, the international community has built a vast network of legal instruments designed to turn these universal goals into practical reality. At the core of this system is a body of fundamental principles of international law ("compelling law") that apply universally to all states and are nonderogable (meaning there is no lawful excuse to violate those norms). This canon of compelling law includes norms on genocide, slavery, and torture.[23] Other treaties establish other norms, such as criminal-

izing acts of torture or protecting economic, social, and cultural rights. Some focus on certain groups of people, such as women, migrants, and the disabled. Chapter 4 looks at the origins and operation of this system at the global level (under the auspices of the United Nations) as well as in the three regions of Europe, the Americas, and Africa. (There is not yet any meaningful regional human rights legal system in Asia or the Middle East.)

The growth of this system is seen as evidence that the values associated with the promotion of universal human rights and government accountability are spreading.[24] Indeed, every government has made promises to uphold at least some aspects of the system. There are certainly holdouts—the United States has not ratified the UN treaties outlawing discrimination against women or protecting children, for example. (Despite that, the US record in this area is strong.) Most countries have ratified most of the highly visible international human rights treaties, such as those protecting civil and political rights along with economic, social, and cultural rights, eliminating discrimination against women and protecting children. Many have also joined treaties that protect racial minorities as well as outlaw torture and other cruel, inhuman, or degrading treatment or punishment, the death penalty, the use of children in armed conflict, the sale of children, child prostitution, and child pornography. Others have promised to protect the rights of migrant workers and their families and prohibit genocide. The overwhelming majority has ratified multiple treaties, which create legal obligations for them and give concrete expression to universality.[25]

One hole in this system is enforcement, since there is no global police force or criminal justice system to put these laws into effect. Chapter 4 surveys the international human rights legal system and considers some of the many efforts to fill the enforcement hole. In a few jurisdictions, notably in Africa, the Americas, and Europe, there are special regional human rights courts with some enforcement powers. The European Court of Human Rights and the Inter-American Court of Human Rights are examples. Since 2002, the International Criminal Court (ICC), a permanent tribunal, has been empowered to prosecute genocide, war crimes, and crimes against humanity committed not only by representatives of the treaty's participants but also by other governments, like Sudan, that never agreed to participate.

Viewed in totality, the emergence of this system is an extraordinary accomplishment. Chapter 4 also explores how scholars and practitioners think the system is supposed to function. For some, international law works through coercion by focusing incentives to reward good behavior and punish deviations. For others the law is about persuasion and the creation of shared understandings, trust, fairness, and legitimacy. Persuasion can encourage compliance if people follow the rules willingly out

of a conviction that the law is valuable. Later chapters revisit these two perspectives—coercion and persuasion—since they help reveal exactly how international legal mechanisms and other forces can alter the calculus of abuse I describe in part I.

According to many observers, making this system more effective requires more international principles, courts, treaties, and procedures that could strengthen the nets of legal protection and accountability. This mission drives activism, policy, and research, especially in the West; it is also a guiding principle inside the bureaucracies of the international organizations that manage the growing human rights system. According to this perspective, called "global legalism," one of the central goals of human rights promotion is creating stronger international legal norms and extending legal coverage to more—ideally all—nations and peoples for all manner of rights.[26] A key feature of global legalism is an open-door policy: just about any country can participate.

The many and varied advocates of global legalism fully understand that legal obligations alone will never stop all abuses. They seem convinced, however, that expanding the scope and membership of international law is an essential step in the right direction. Indeed, international institutions are already responding to this demand. The General Assembly of the Organization of American States (OAS) has drafted new treaties against racism, discrimination, and intolerance, and also for the protection of the rights of indigenous peoples.[27] The United Nations has also drafted new treaties protecting all people from enforced disappearance and promoting the rights of persons with disabilities.[28] Still other new agreements are in the works, too.[29]

Whether expanding an open-door international human rights legal system should be the core of a strategy for advancing human rights depends, in part, on whether the existing system is actually working—that is, whether human rights are improving. It's hard to make a definitive assessment, but chapters 5 and 6 scrutinize what is known from two major perspectives.

Chapter 5 examines the scholarly research—especially the systematic studies that utilize global historical statistics and hunt for associations between international legal agreements and actual changes in the protection of human rights. Research using such methods has the advantage that it doesn't cherry-pick sensational examples of success or failure. Instead, it is clinical in its effort to examine exactly which kinds of international treaties, courts, and other legal institutions have had some relationship to actual protections for human rights. Professor Beth Simmons, for example, explains in one such study that "under some circumstances, a public international legal commitment can alter the political costs in ways that make improvements to the human condition more likely." She also ob-

serves that "governments are quite unlikely to comply with their international treaty obligations with respect to human rights if it is not in their interest to do so."[30] A wide array of studies like hers has also uncovered how (and when) treaties and international courts have an influence. Most of the research suggests that the international human rights legal system works in a lot of different ways. One way is by motivating interest groups to organize and lobby governments; other ways are through fostering dialogue, shaping elite agendas, national constitutions, and legislation, or supporting domestic litigation.

The bulk of the evidence discussed in chapter 5 shows that participation in the international human rights legal system is associated with human rights protections only in a limited number of contexts. To have much relationship to actual protections for human rights, international laws and procedures must creep into domestic affairs, be taken up by local advocates, and applied by local courts.[31] Those conditions are present mainly in reasonably developed and stable or some budding democracies. In those countries, leaders control their security forces, are constrained by their legislatures and courts, face scrutiny from a free press along with active civil societies, and care about their global image. Since the advanced democracies, for the most part, would probably protect many human rights without the presence of reinforcing international legal norms, the conclusion from the scholarship is that international legal norms probably are having an effect mostly on a subset of newly democratizing countries. That is, they are having an impact on those countries with the right conditions in place to be influenced by international law, yet not already sure to internalize international legal norms on their own. Outside that group, the effect of international law on actual protections for human rights is probably small compared with other factors that international law doesn't much influence, such as the presence of war, an organized domestic political opposition, and institutions for accountability.

The systematic, scholarly research also reveals that despite all the efforts devoted to the international human rights legal system, the people most at risk still are not getting much relief. Even in fledgling democracies, where researchers now think that international legal institutions could probably help to protect some human rights, many victims go unaided by the law. And outside this group of countries is a large group where autocrats rule over cloistered, poor, war-torn, or unstable countries. There, millions of people suffer, and the perpetrators of human rights abuses have little to fear or learn from international law. According to professor Mark Massoud, "[International] law is not enough—and is potentially dangerous—in the insecure and impoverished areas where the international aid community has been encouraging it to flourish."[32] While most of the research pointing to this finding comes from scholars working in

political science and law, similar conclusions emerge from anthropology, sociology, and other disciplines.[33]

Systematic, statistical research is helpful, but it also has flaws. That's why chapter 6 complements the statistical insights with a second perspective: the experiences of practitioners who work inside and around the system. Those insider views—many of them from lawyers who have one foot in academia and another in the practical efforts of NGOs and international legal bodies—point to many similar findings. They see a system in which legal obligations and membership have expanded much faster than the capacity to yield practical improvements in human rights. The legal system, many of these practitioners say, has been tremendously successful at declaring universal values, yet has fallen quite short in practical implementation.

Looking across chapters 5 and 6, it is clear that the open-door approach to international law has amplified the attributes of the system that impede its ability to turn bold international legal norms into actual human rights protection. The system is open to (in fact, welcomes) chronic lawbreakers. These governments formally adopt treaties on human rights and then violate their obligations without sanction from the system because the international legal system's enforcement structures are weak. In most cases, shaming is the worst that can happen, and it often falls on deaf ears.[34] Other instruments of coercion are largely unavailable within the international legal system. Nor is persuasion that easy to mobilize because the system lacks legitimacy in the face of so much open defiance of its norms. Because its doors are open, the institutions that administer these international laws are mired in politics and bureaucratic dysfunction with many actors especially keen to avoid holding states and individuals accountable. Indeed, within the international legal mechanisms that provide oversight and accountability, the inclusion of rampant lawbreakers has led to a growing number of irresolvable cases—and defiant decision makers—that waste the system's scant resources.

These downsides of the existing system are now gaining popular attention. For instance, journalist David Rieff, also a board member of the Arms Division of Human Rights Watch, has concluded in a high-profile assessment that "the human rights movement has assumed that establishing norms will lead to a better world. But can anyone be confident that developing the 'right' norms will lead to effective enforcement? It sometimes appears as if it is extrapolating from the experience of civil rights legislation. You establish norms, and they're unpopular, but eventually people acquiesce. But what if the model is not civil rights law, but drug law, in which the norms have not led to obedience but to mockery of the law itself?"[35]

Law professor Anne F. Bayefsky sums it up: "Somewhere along the path the international legal response to the protection of human rights has lost its way. Half a century after the project of developing and adopting human rights treaties began, the ultimate goal of alleviating human suffering remains elusive."[36]

The messages from chapters 5 and 6 are sobering. From two related perspectives, the international human rights system faces deep challenges. Before looking to alternatives, perhaps a major effort at reform could make the system more influential. That's the question examined in chapter 7. People often say that reform is needed, and they may be surprised to learn in chapter 7 just how much reform has already been attempted over the years. There have been many efforts, for example, to clarify legal obligations and set more precise expectations. The result is that universal norms, obligations, and boundaries for the international human rights system are already well defined. The problem today is not the lack of collectively articulated principles; quite the contrary, some people even talk of "norm fatigue."[37] Rather, it is that the institutions designed to manage and implement those principles cannot much affect the causes of the behavior they aim to change—not directly. They can't enforce the law using only coercion and they're not very persuasive. Facing this reality, a lot of reformers call for stronger enforcement mechanisms, including courts that would oblige all governments and people to defend human rights.

Chapter 7 doesn't just survey these reforms; it also looks practically at just what kinds of reforms are achievable in the real world along with their likely impact. Already states have adopted some of those reforms, notably through the creation of the ICC, which has the authority in some places to judge crimes such as those against humanity or genocide. As of 2012, about 60 percent of the UN members had recognized the ICC's jurisdiction on paper.[38] (Some notable exceptions include the United States, a country that strongly endorses values such as the promotion of human rights, but is wary of empowering this new court to enforce them.) Of those governments that recognize the court's authority, many have ignored its guilty verdicts and never enforced its rulings. In July 2009, the entire continent of Africa refused to acknowledge the ICC's arrest warrants against Sudanese president Omar al-Bashir even though his rule has seen tens of thousands killed and the death of many more through starvation and infection.[39] Some people even fear that the court's arrest warrants make things worse—indicted leaders are more inclined to fight it out, because once a leader loses power, they are more prone to arrest and accountability. Others worry the court deters intervention by other states.[40] The validity of those fears is debatable.[41] But the experience with the ICC—a massive reform similar to the kinds of reforms that the

perspective of global legalism envisions for the future of the international legal system—is a reminder of the fundamental problem. A system that is universal in scope has some of the biggest abusers as formal members. Those countries in particular have strong incentives to frustrate reform agendas and undercut the efficiency of the system's procedures for making decisions.

Part II offers a baseline for just what's been achieved with international law as well as perspectives on whether those laws are working and the array of efforts at reform. Almost nobody thinks those reforms are enough, but chapter 7 suggests that they're all that is achievable. Part III outlines what else might be done by channeling state power.

Part III: A Stewardship Strategy

Part III looks at what governments might do to fill in the many areas where international human rights law, on its own, isn't having much impact on the calculus of abuse. For better or worse, some states—including some of the most rich and powerful—are also willing to promote human rights through their foreign policy. They try to create incentives that can protect human rights. Although these incentives exist quite apart from the international human rights legal system, they can reinforce its legal norms. They can also backfire, by undermining the law, provoking resentment of universal norms, exacerbating motivations for abuse, and offending human rights stakeholders.

As with international law, experts and advocates often think that state power can get a lot more done than is likely in the real world. That is because they imagine that state power is readily available for any issue. In fact, even for the most sympathetic governments, the promotion of human rights overseas is just one of many foreign policy goals. Thus, a starting point for any evaluation of how steward states could actually better promote human rights requires looking at what they do already. That is the task of chapter 8, which discusses the punishments and rewards that steward states use as part of their foreign policy to advance human rights today. That chapter leads to two big lessons about how stewards can be more effective: one concerns localization, and the other is about setting priorities.

One lesson from chapter 8 is that stewards could have a much bigger impact overseas if they invested more in the process of localizing their efforts at diplomacy within the countries they are actually trying to influence. Localization matters because it affects the full range of incentives that abusers ultimately face. If foreign human rights pressures are localized in national courts, for example, then abusers must fear the legal con-

sequences of deviant action at home. Localization is also crucial to the processes of persuasion and building trust, for a well-localized strategy helps create and support interest groups within a country that advance the message of human rights promotion. It builds legitimacy and thus is a keystone for making stewards' policies more influential.

Chapters 9 and 10 look in depth at localization, and how it might work. Chapter 9 explores how engagement with nongovernmental organizations, or NGOs—such as local chapters of multinational human rights organizations and especially homegrown NGOs—can lead to localization. Chapter 10 examines localization through national human rights institutions, or NHRIs. These institutions are important because they have formal roles in public debate and the policy process as well as direct linkages to government.

The other lesson from Chapter 8 concerns priorities. Stewards frequently squander resources on efforts that are misplaced, targeted on perpetrators that will never be swayed, erratic and ephemeral rather than sustained over the long term, and generally not well informed by the underlying causes of human rights abuse. Chapter 11 offers a new approach for resource allocation. Its central message is that human rights stewardship requires difficult discussions—and also policy evaluations—that today are treated as taboo. It involves acknowledging that stewards often make choices about where they devote their scarce resources for human rights without a transparent or coherent set of guidelines. It advocates a process I call "triage" that requires investing more heavily in areas where the evidence indicates that human rights promotion is most likely to work. Chapter 11 doesn't offer detailed answers for exactly what stewards should embrace and avoid. It is a framework for each steward to make its own choices, not a formula that determines the answers.

The combination of localization and triage is a strategy that steward states can use to make their own human rights promotion more effective. That stewardship strategy, on its surface, will appear to be the antithesis of universalism in international law, for it requires making choices instead of treating all abuses as equal. It prizes effectiveness over open doors. It embraces what power can do to promote norms.

The Road Ahead

This book is intended mainly as a hard-nosed look at the human rights situation today. It is analytical throughout and written in part to help analysts from different backgrounds understand the important, relevant debates in other fields. However, the arguments here also have some broader implications for public policy and the international order.

The concept of human rights arose mainly through the stewardship of states and NGOs that have built an elaborate system of international legal norms and procedures, and backed it, at least in some places, with their own substantial resources. It has now spread so widely that the very universalism of international human rights law poses one of the system's central challenges. What should the advocates that historically have been the main advocates for better human rights protection actually do in this circumstance? This question arises not just for human rights but also in many other areas of international cooperation where international law plays a central role, such as protection of the environment, labor, and promotion of human welfare through economic growth from trade liberalization.[42] Across such issues, the role of international law as an ordering principle faces great challenges. Global diplomatic talks on new legal agreements concerning matters as far ranging as trade, climate change, and financial coordination have ground to a halt. Making progress on such topics, I suggest in chapter 12, lies not in viewing law and power as substitutes but rather complements.

An international order that relies on law and power working in tandem won't happen automatically. It necessitates building institutions and capabilities—notably the ability of stewards to measure and assess whether their human rights promotion efforts are actually working. And it requires those stewards to invest more heavily in the frameworks needed to work together.

Critics might wonder why I put emphasis on states that are central actors in this book. After all, even the most democratic and constitutionally liberal of them can be hypocrites. They create false appearances of virtue—telling others to respect values they wittingly violate when convenient. People often make this claim about the United States, a country that advances policies that are filled with contradictions, but it's true for many other countries as well.[43] I focus on states willing to promote human rights around the world, not because they are morally upstanding or perfect advocates for human rights—they certainly are not—but because some have unique resources and personalities that give them an interest in along with influence over human rights. Their challenge is to use their power to greater effect—becoming better leaders and reducing more suffering. I put emphasis on states—not just democracies, but any state that seeks to promote human rights abroad—because international law requires the active support of states to get much done.

Still, states have their own interests, and their resources are scarce. Even the most ardent promoters of human rights face many other priorities and public pressures. We shouldn't pretend otherwise. Their efforts to spread human rights values involve motives other than altruistic compassion. No strategy that relies on governments for action can avoid risks

that other matters of self-interest will intervene or that states will use their resources unwisely. These are inevitable dangers of any strategy that looks for change in a world where international law, on its own, can't achieve what's needed without the power of states.

Conclusion

This book will articulate a strategy that is based heavily on identifying what works for actually reducing abuse of human rights.[44] That approach requires setting priorities—realistically, human rights can't be universal or indivisible in the efforts to promote and protect them. Some issues and countries will attract lots of attention; others will be impossible to manage for the resources and leverage available. Not everyone can be helped. Contending with this fact responsibly requires localization (a process for building legitimacy) and triage (a process for assessing priorities to maximize protection of human rights).

I rely heavily on steward states alongside international legal procedures because the practice of open-door universalism has made the legal system dysfunctional and less legitimate. The participation of lawbreakers is one of the most central problems in the international human rights legal system today.[45] Lawbreakers degrade the quality of international legal procedures; they clog treaty bodies with hopeless cases that squander resources to little effect, and they thwart reform. Even where efforts have been focused on making stronger enforcement mechanisms, as a practical matter many of these new structures are often hamstrung.[46] They are limited in who, what, and how they can punish.

The legal norms that are needed for promoting and protecting human rights already exist. That is a tremendous accomplishment. Creating more open-door legal procedures is not the best way to translate these bold norms into action—already these procedures have put the legal bureaucracy into gridlock. Foreign policy efforts could help translate legal norms into action, but these efforts easily are distorted. Some do more harm than good. Some undermine the spirit of the law. For law and power to work together for human rights, both need greater legitimacy. This book is a search for ways to build that legitimacy.