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THE THIRD ERA OF HUMAN RIGHTS: GLOBAL ACCOUNTABILITY

Should rulers be held accountable for their human rights policies? Should there be limits on state sovereignty? This article argues that the trend in the current protection of human rights may be seen as a revival of an old idea: governments are accountable for their actions. This article suggests that the protection of human rights has gone through three eras. In the first era, the Catholic Church in the Middle Ages claimed to rule from a divine mandate: there was a universal religious authority in Rome acting as the final arbiter in all things. This principle (the natural law) was a unifying factor in Western Europe because it created a standard system of morality. The second era, beginning in the 17th century with the doctrine of state sovereignty, rejected that natural law. Rulers wanted to run their own territories and not be subject to foreign influence. Laws were created by the "national sovereign" (king, queen, president, parliament, congress etc), and the country was bound only by the laws it created. Rulers themselves were at liberty to do what they decided was best for their countries. That legal doctrine survived for about three centuries. The excesses of leaders such as Hitler in the middle of last century forced a re-thinking of that doctrine. Although the term "natural law" is not used, there has been a revival of the essential meaning of it. The original natural law was derived from Christian thinking. That is no longer appropriate when many other faiths have equal standing. Additionally, most inter-governmental organizations have no official religious links. But the natural law principle has been revived in the idea that governments have to answerable to a higher authority for their behaviour.



INTRODUCTION

In an earlier article there was an examination of the progress made in the international protection of human rights. More recently another article sought to explain the process of globalization.

This article brings both subjects together by arguing that, thanks to globalization, a new era is probably emerging in the international protection of human rights. There is a new form of global accountability that has been created as a by-product of the globalization process.

The article argues that the world is now in a third era of human rights. It explores the historical evolution of the protection of human rights, particularly in Europe. The first era, which ran from about AD 300 to 1648, saw political leaders accountable to the Roman Catholic Church.

The second era, from 1648 to 1945, saw the political leaders no longer accountable to any international authority and often not necessarily even accountable to their own citizens. The current third era sees governments grudgingly agreeing to be accountable to international human rights bodies.

The key factor is the changing approach to sovereignty. In the first era there was effectively no national sovereignty. In the second era national sovereignty was very important. In the current era there is an erosion of national sovereignty and a greater international commitment to the protection of human rights. The current era has many problems and one should not be over-optimistic but this article suggests that there is a clear trend in favour of the international protection of human rights.

✓ **THE FIRST ERA: THE NATURAL LAW**

The first era ran from about AD 300 to around 1648 and it was based partly on the power of the church. The era contained two features worth noting. First, the church claimed to govern on behalf of God and it followed what it saw as the law of God (the natural law), which overrode local secular leaders. The Catholic Church claimed to rule from a divine mandate. Second, although “human rights” as such did not constitute part of the vocabulary, many of today’s ideas behind human rights can be found in that era.

✓ **The Natural Law**

In 313 the Roman Emperor Constantine was converted to Christianity. Christianity was transformed from being a primitive church - a marginal sect - to becoming the centre of power. In about 320, the Emperor decreed that Christianity had become the official religion of the Roman Empire. Clergy acquired a senior status within the empire. The church, as an arm of the empire, became very wealthy. Over the centuries, Christian officials increased their power so that they provided much of the legal, political and bureaucratic underpinning of the empire. The church had its own language (Latin), officials, and places of training; its staff were mobile across Europe. The church for about a thousand years was the closest Europe (or the rest of the world) has come to a regional government; the European Union is still a long way from having the power of the medieval church. The church's power was not completely absolute. There were often dissidents protesting against some of the church's teachings or the behaviour of some of the clerics. But these were usually brutally suppressed.

The original natural law thinking came from the claim of the church in the Middle Ages to rule from a divine mandate: there was a universal religious authority in Rome acting as the final arbiter in all things. The natural law was a unifying factor in Western Europe because it created a standard system of morality. A person living in England, Italy or Germany, for example, lived under

similar laws of (say) murder and robbery. It gave people the sense that all localities lived within a wider context of a universal Christian society governed from Rome.

There was little notion of a "national government". "The power of the Church in the Middle Ages had been a check on the potential absolutism of the state". Lord Sudeley has explained the nature of life in Middle Ages, which was based on the region: the local market town with its trade privileges, the parish, and the manor, all flourishing, often with their own particular jurisdictions because of the lack of communications in the Middle Ages. Superimposed above the small and particular forms of social organization was the national centre of authority, the monarchy. The power of such a monarchy was, however, not absolute. In medieval times the poor character of communications alone sufficed to prevent centralized authority of the crown from exercising any too detailed scrutiny of all the day to day affairs conducted on any local basis. Additionally, the king really was the servant of his own people. Since his authority was sanctified from above (from God and the pope), the king in his exercise of such authority served all who were under him. It was part of the doctrine of the medieval church that subjects had a right to rebel against any king who was disobedient to the law of God.

Emperors and kings did not always enjoy a happy relationship with the church. Rulers resented local church leaders having links outside their region back to Rome. There were also demarcation disputes as to what were "religious" and what were "secular" matters and who may decide on what.

✓ Human Rights

"Human rights", as such, are a modern idea but many principles underpinning today's terminology go back over the centuries. Constantine's transformation of the church had to be reconciled with the church's understanding of its faith. William Temple, later Archbishop of Canterbury, explained that the very early church was only a handful of people quite unable to influence the Jewish authorities, let alone the Roman Empire. But as the church grew into the imperial religious organization in the 4th century it began to develop its own social philosophy. The growth led to the need for a statement of social principles for the guidance of its own members and for the guidance of the government.

A fundamental Biblical principle was that the earth - land – belonged to God: people enjoyed the use of it, and this use had to be regulated as to ensure to particular families both security in that enjoyment and exclusive right to it. But this was to be done so as to ensure also that all members of the community shared in the enjoyment of some portion. There was to be no proletariat. There were thus to be rights of property, but they were rights shared by all, and were subject to the over-ruling consideration that God alone had ultimate ownership of the land, the families to whom it was allotted being His stewards. In short, rulers were expected to look after

the poor, and people were to see themselves as members of a community with rights and responsibilities vis-a-vis that community.

The rules covered most aspects of life, including economic practice. For example “forestalling” means to stop an event from happening. The origin of the word goes back to this medieval period, when the church governed the hours of trade and it forbade stall holders from opening early and so getting an advantage over the others. Everyone had to trade at the same time so that there were no special arrangements to undercut the others. The church also laid down rules on wages to look after the workers.

The church also ran the world’s first orphanages and so pioneered the rights of children. The work began before the conversion of the Roman emperor. Children under Roman law had no rights. Therefore parents could throw babies away after birth if they did not want to keep them. Early Christians rescued dying babies from rubbish tips to look after them because they believed that all human life should be respected (the “right to life”). After the 4th century, the church also ran the first schools and hospitals in Europe (economic and social rights in today’s terms). Because it owned a lot of land, it also ran the world’s first hotels. Pilgrims and merchants travelled by road and so monasteries and other religious buildings were built on major roads at a day’s journey apart. Pilgrims and merchants had somewhere safe to stay at night and not risk thieves and wolves by sleeping in the forest or by the roadside.

Women in particular were attracted to Christianity because it raised their status (whereas the old Roman laws had put a low value on women and especially on wives). Christianity followed by Judaism in prohibiting abortion, divorce, polygamy and infidelity. Therefore, although the term “human rights” was not used, many of today’s ideas were in evidence.

✓ **THE SECOND ERA: NATIONAL SOVEREIGNTY**

The second began in about 1648 and ran until 1945. This was characterized by the end of the natural law as such but with increased interest in human rights at the national level as a response to the growth of national government power. People sometimes wanted to be protected from their governments.

The nation-state (or “country”) is regarded as the basic unit of world politics - the Westphalian System. This takes its name from the Treaty (or Peace) of Westphalia of 1648. Like the dating of the "beginning" and "end" of all "eras", the precise use of this date is somewhat misleading. However, it is necessary to give some sort of date as the beginning of the era and so it might as well be 1648. The Treaty of Westphalia marked the effective end of the church's legal and political domination of much of western Europe and the rise of national rulers.

✓ The End of the Holy Roman Empire

By the 16th century Rome was caught between two forces. On the one hand, there were renewed criticisms of the corruption within the church, which this time caught the popular mood. On October 31 1517 Martin Luther (professor of theology in the Saxon University of Wittenberg) nailed a paper of Ninety-Five Theses to the door of the Castle Church in that town. He attacked the practice of selling indulgences - documents offering commutation of penance for money payments (if people gave money to the Church, they or their dead relatives would be spared some of the punishment in hell).

On the other hand, secular rulers were getting restless being subservient to church influence, especially because the centre of that influence was so far away. For example, as the British historians Heard and Tull have pointed out, "The Reformation in England began as a political movement. The question of England's loyalty to the Catholic Church arose through Henry VIII's anxiety over the royal succession." In 1527, Henry wanted to divorce his first wife; this was opposed by Rome (which disliked the principle of divorce). This changed Henry's mind about Rome, to which he had previously been sympathetic in the face of the problems being caused by Luther and the other Protestants. Now Henry decided that it was wrong for an Italian Pope to interfere in English affairs. Throughout the 1530s, Henry gradually severed the links with Rome. By 1540 the first stage of the Reformation in England was complete. The significant change was that the king had the power to alter the church's doctrines at any time. This enabled the sweeping changes which took place later in the century.

Henry VIII declared himself to both head of state and head of the national church - this was a much greater dominance of the church by the monarch than had ever been allowed by Rome in medieval society. Henry's daughter, Elizabeth I (1533-1603), who was Queen 1558-1603, consolidated the crown's power in what was called the Elizabethan Settlement. The Church of England was a state church under the Queen as supreme governor. Only members of the new church could hold public office. There was uniformity of worship strictly in accordance with a Prayer Book. Bishops were to be appointed by the Queen. Clergy were to be ordained and licensed by bishops. The church became "national" rather than international.

The Catholic Church, starting in the 1540s, embarked upon the Counter-Reformation to check the popularity of the Protestant movements throughout Europe. The ensuing disputes were not a clear-cut struggle between Protestants and Rome because some Catholic regions also liked the idea of greater autonomy from Rome.

These disputes reached a crescendo in Germany, where the Thirty Years War began in 1618. This was the last of Europe's major religious wars. The people who took part in it were fighting not only for their own form of Christianity, but also for greater freedom and independence both in the way they were governed and in the way they earned their money by

trading. Much of the fighting was done within Germany's boundaries by foreign armies and on a per capita basis more Germans were killed then than in the two World Wars of the 20th century.

To conclude, Robert Johansen of Notre Dame University, has argued that the political changes symbolized by the Peace of Westphalia of 1648 stand in sharp contrast to the political organization of the Middle Ages before the religious wars. In medieval society the Christian commonwealth was hierarchically organized and subject to the authority of the pope and the Holy Roman Empire. The Roman Catholic Church and its appointed representatives exercised centralized authority across the territorial boundaries of feudalism. This continental system gradually changed as authority, power, wealth and loyalties shifted to a nation-state level. The Peace of Westphalia acknowledged the development of independent, secular, sovereign states, no longer subject to the centralized authority of the pope or emperor.

✓ The Rise of the State Sovereignty

The creation of nation-states was a deliberate effort. "Nations" (groups of people with a common sense of national identity, national anthem, national holidays etc) had to be controlled via a "state" (a system of government). The United Nations now has a total of 192 member-states.

All nation-states are equal in international law. In November 1991, Javier Perez de Cuellar, on the eve of his retirement as UN Secretary-General, gave an address at the University of Florence on sovereignty and international responsibility. He set out the following as elements of "sovereign equality":

- states are juridically equal
- each state enjoys the rights inherent in full sovereignty
- each state has the duty to respect the personality of other states
- the territorial integrity and political independence of the state are inviolable.
- each state has the right freely to choose and develop its political, social, economic and cultural systems.
- each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states.

State sovereignty (or national sovereignty) means that each country governs itself. A country cannot, for example, be forced into accepting international obligations. Its "internal" affairs remain its internal affairs and so it cannot be forced, for example, into accepting any international involvement in its human rights policies.

Positivism replaced the natural law. Positive national law was created by the national sovereign (king, parliament etc), and the nation-state was bound only by the laws it created or international treaties it agreed to accept. In theological terms, then, positivism ended the idea

that rulers were ultimately accountable to God. Rulers themselves were at liberty to do what they decided was best for their countries.

✓ The Concern for Human Rights

Most of the progress in the protection of human rights has come since the creation of the Westphalian System. People now needed to be protected from their own governments. Human rights have therefore long played an important part in national political life as people have tried to restrain the power of their rulers. (The major pre-Westphalian document is the Magna Carta - "Great Charter" - of June 15 1215, which was imposed on the English King John by his barons, who wanted to limit his power) .

The English Bill of Rights came from the need to reduce the political ambitions of a king. James II (1633-1701) had attempted to force a religious policy on England that was contrary to the wishes of parliament. He was forced to leave England, and parliament then invited William of Orange (later William III) to rule with his wife Mary. The 1688 Bill of Rights formed part of the settlement by which William agreed to rule. Parliament, not the king, henceforth made the laws.

The July 4 1776 US Declaration of Independence was the formal declaration of war by the 13 American colonies against Britain. The colonies complained about their treatment by Britain. Their rights had been violated. The most famous expression was in the second paragraph: "We hold these truths to be self-evident: that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness". The Declaration went on to set out how Britain had violated those rights and so made the war inevitable.

Having won the War of Independence (1776-1783), the US had to create a constitution. The 1787 version is the world's oldest written constitution. A weakness in the constitution was that it lacked a safeguard of the rights for which the Americans had gone to war against Britain. Therefore it was necessary to amend the constitution to guarantee citizens that their rights would not be violated by the new central government. On December 15 1791, the first 10 amendments to the constitution were ratified. These are known as the "Bill of Rights". These rights include freedom of religion, freedom of speech, freedom of the press and freedom of assembly.

Thomas Paine, who took an active role in the American Revolution, went on to argue in The Rights of Man in 1792 against all forms of monarchy and in favour of democratic rule of citizens. Representative government would be that in which the people of a whole country voluntarily surrender control of the apparatus of government to officials whom they elect for the purpose, and who are responsible to the people because they are elected for short periods of time . This was a revolutionary idea for its time and naturally got him into trouble. It is a sign of

the progress made in the national protection of human rights that such an argument today sounds very conventional (even if dictatorships are still unwilling to implement it).



THE THIRD ERA: GLOBAL ACCOUNTABILITY



Problems with National Sovereignty

National sovereignty meant that people within national borders had no recourse to a higher law outside their country if they disapproved of a government policy. An example of what this doctrine meant comes from Hitler's treatment of the Jews in the 1930s. As soon as Hitler came to power in 1933, he started to persecute the Jews. But, owing to this doctrine, there was no official foreign government criticism of his policies until the onset of war in 1939. His policies, no matter how unpleasant, were regarded as an "internal" German matter. At the post-war International Military Tribunals, there was little attention given to crimes committed in the peacetime period of 1933-39 because they were seen as an internal matter.

An important step in the international protection of human rights came from the Four Freedoms speech of President Franklin Roosevelt in January 1941. The US was not yet at war but that involvement could not be deferred for much longer. In the meantime, Americans should rededicate themselves to the four basic freedoms of humankind: freedom of speech and expression, freedom of every person to worship God in his or her own way, freedom from want (a healthy peacetime life), and freedom from fear (a world-wide reduction of armaments so that no country will be in a position to commit an act of physical aggression against any neighbour).

The United Nations Charter was written in the last stages of World War II. This is the first international document to proclaim the universal respect for human rights for all people regardless of gender, race, ethnicity, origin or religion. Its preamble refers to the need to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".

At the 1945 Conference which finalized the Charter, there was a proposal that the Charter contain a Bill of Rights in the same way as the US Constitution has a Bill of Rights. There was not enough time to act on this proposal. Instead, it was agreed that when the UN Commission on Human Rights was established, it should produce the Bill of Rights as its first task.

Human rights received considerable attention during the drafting of the UN Charter. Hitler had shown that a country that violates human rights at home may eventually violate human rights overseas. As US Secretary of State George Marshall was to tell the 1948 UN General

Assembly session that adopted the Universal Declaration of Human Rights (UDHR): "Governments which systematically disregarded the rights of their own people were not likely to respect the rights of other nations and other people, and were likely to seek their objectives by coercion and force in the international field".

Thus, it was necessary to try to stop such potential violations in the bud. Additionally, the Allied countries were embarrassed that none of them had complained officially between 1933 (when Hitler came to power) and 1939 (the onset of World War II) about the treatment of Jews. They claimed at the time that countries were not allowed to interfere in the internal affairs of other countries - and this ban prohibited even making criticisms of other countries' internal policies.

Among the UDHR's 30 Articles are: the right to life, liberty and security of person; equality before the law; freedom of movement and residence; freedom from torture or cruel, inhuman or degrading treatment or punishment; the right to seek in other countries asylum from persecution; freedom of thought, religion and conscience; the rights to vote and to participate in government; the right to education; the right to work; the right to form and join trades unions; the right to an adequate standard of living; the right to health protection; and the right to participate fully in cultural life. This basic document has been followed up by a series of other declarations and treaties. The 1948 UDHR and the two 1966 Human Rights Covenants are called the International Bill of Rights.

✓ Life on the Edge

I believe that the international community is on the edge of new era. On the one hand, national sovereignty as a former UN Secretary General pointed out (above) is still a key factor in international law. From a human rights point of view, it has three limitations. First, governments may vote for a declaration in the UN General Assembly and then ignore it. There is no obligation to carry out a declaration's provisions. Second, treaties do contain obligations. But no government can be forced into accepting any treaty.

Third, a government may ratify a treaty but then not honour its provisions. For example, even if a UN investigation finds that a government has behaved badly, the UN has no power to do anything about its findings other than make them public. For example, there is no world police force to "arrest" a "guilty" government and there is no "world prison" for guilty governments. Additionally, the UN's human rights budget is minute - much less than the total funds spent each year (say) by Amnesty International, one of the world's most important non-governmental organizations. (The total regular UN budget is less than that of the New York city council.)

On the other hand, as the rest of this article argues, there are some important trends to be monitored. The world is not returning to a “natural law” era but there is now greater international scrutiny of national human rights matters. This article will identify six examples.

✓ **Ambiguities within the UN Charter**

The UN Charter itself reflects two strands of thinking: maintaining the doctrine of national sovereignty while also by implication recognizing that there may be occasions when there has to be international intervention.

First, the UN Charter, in Article 2(7), rules out any UN involvement in matters "which are essentially within the domestic jurisdiction" of any country. The use of "essentially" was derived from other provisions of the UN Charter which noted the importance of human rights. By implication, these provisions foreshadowed some UN involvement in domestic human rights issues.

Meanwhile, the Preamble of the UN Charter reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". Article 55(c) states that one of the UN's purposes is to achieve "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". In Article 56, "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55". Therefore, there has to be some form of intervention.

Second, Article 2(7) has become gradually eroded so that governments rarely try to use the Article 2(7) argument nowadays. For example, I was at the 1974 session of the UN Commission on Human Rights when the issue of Pinochet's brutal September 11 1973 coup (see below) was raised. The new Chile Government tried to argue that this was an “internal” matter that could not be discussed. But the Commission did not accept that argument and the discussion went ahead. It is now very rare for any government to try to argue that there should be no international discussion of a human rights issue. This is, of course, a long way for ensuring that there is direct intervention physical intervention but at least the trend is clear.

✓ **Broadening the Scope of International Law**

International law expanded gradually in the Westphalian era to regulate the affairs between nation-states in their dealings with each other. For example, maritime law dealt with how shipping was regulated on the high seas and the international humanitarian law of armed conflict (notably the Geneva Conventions) regulated international conflicts.

Now international law is about far more than the formal relations between nation-states. It is increasingly dealing with economic and social matters and with the internal affairs of nation-states. Admittedly national governments still have the option of not accepting these new treaties (and many governments do so) but at least the treaties are being created. New international norms are being created.

Additionally the 1948 UDHR and all other UN declarations and treaties are "universal" - they apply to all human beings in all places at all times. This sets them apart from much earlier human rights work. For example, the pioneering United States Bill of Rights was very much a document of white, middle class male Americans. The American Declaration of Independence and the American Bill of Rights were written by men who themselves were slave-owners, in a country where chattel slavery was a part of the recognized social order.

✓ Specific Human Rights

This section has two examples: a civil and political right and an economic and social one. "Universal suffrage" means the right of all to vote. Universal suffrage is a new idea. Before the 20th century, only some men had the vote: those who owned property. Then during the 19th century it was gradually extended to all men. Women received the vote only in the past hundred years (with New Zealand and Australia being a pioneer in this process). British women did not get the vote until immediately after World War I and then they had to be aged 30 (while for men it was 21). The age barrier was dropped to 21 in 1924. The first British woman Cabinet member came in 1929 with Margaret Bondfield as Minister of Labour.

Article 21(3) of the UDHR states: "The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".

In recent years, there has been more international attention to how governments hold elections and the UN is now often involved in helping to convene them – something unthinkable only a few decades ago.

Similarly, universal education is a new idea. Until about two centuries ago, formal schooling was very rare in most countries. Rich parents had their children educated by private tutors (usually people who lived with the families to educate and escort the children on their travels). Most people lived in oral cultures. They could not read and write and so developed good memories because they could not "look up" information if they wanted to find out something. There was no need for formal education for poor children. Children worked alongside their parents in the fields and so learnt by watching their parents and over-hearing their conversations on how to farm.

Formal schooling began in Britain as result of the need for educated people to work in factories, shops and offices. The present system of schooling is only about a century old. Learning is now seen as a key factor in economic growth. Article 26(1) of the UDHR states: "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit".

Education is an economic and social right. This category of human rights is also an innovation. Traditionally most human rights documents (such as the Magna Carta and US Bill of Rights) have been about civil and political rights. Now there is an expansion of what constitutes "human rights".

✓ **Responsibility to Protect**

Is it possible to reconceptualise the principle of national sovereignty as a responsibility? A national government should be seen as having the primary responsibility to protect its citizens but when a government is either unwilling or unable to fulfil that responsibility then the international community itself has a responsibility to intervene. This was the ground-breaking challenge handled by the International Commission on Intervention and State Sovereignty.

The Commission was launched at the UN Millennium Assembly in September 2000 in response to Kofi Annan's challenge to the international community to act upon future violations of human rights and humanitarian law. It had three ambitious goals: to promote a comprehensive debate on the issue of humanitarian intervention; to foster a new global political consensus on how to move forward; and to find new ways of reconciling the principles of national sovereignty and intervention.

The Commission tried to tilt the debate away from the right of a national government to evade international intervention to the plight of the country's individuals who need assistance. The Commission identified a responsibility to prevent: to address both the root causes and direct causes of internal conflict and other human-made crises putting populations at risk. There is a responsibility to react: responding to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. There is also a responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

Unfortunately the report's launch was overshadowed by the September 11 2001 terrorist attacks in the US and so it did not receive the amount of publicity it should have. But it continues to attract some attention and so it may be seen as part of the movement to reinvent national sovereignty less as a right for governments as a responsibility on how they should operate.

✓ Punishing Violators

General Pinochet, one of the most brutal of modern leaders, died – appropriately enough – on December 10 2006: international human rights day. He evaded justice to the end. But his death may help mark the end of an era. More recent leaders have died while on trial (notably Slobodan Milosevic) and Saddam Hussein was executed on December 30 2006. There is now a trend to punish people who violate human rights. The trend is small but worth noting.

Pinochet was a controversial ruler. His supporters claimed that he prevented a communist takeover of the country and that his economic policies, based on greater reliance on the market, helped create an economic revival. But his critics claimed that his rule ended one of the few traditions of genuine democracy in the whole of Latin America and that the extra wealth that was created in the 1980s and 1990s only went to a few Chileans. General Pinochet came to power on September 11 1973 in a military coup. His junta ruled the country for 17 years. There were no elections and the media were tightly controlled. About 3000 people were executed, died under torture or simply “disappeared” during his time in power.

After Chile's return to democracy, these crimes were not prosecuted. Before stepping down, the military government created legal mechanisms to shield themselves from prosecution for human rights offences. It seemed that Pinochet would get away with his crimes. Not only was he shielded by the protections given to all the military but he granted himself a lifetime seat in the Senate and so acquired a lifetime immunity from any prosecution because he was now a politician.

But the tide turned in October 1998 when he was arrested in London, having gone there for medical treatment. The London police arrested him on an international Spanish warrant charging the former dictator with human rights crimes committed during his 17-year rule. 94 of the alleged torture victims were Spanish (the former colonial power in Chile).

The case, which ran for 16 months, went to the House of Lords (the supreme legal body in England). Pinochet claimed immunity from prosecution because he had been a head of state when the alleged offences took place. The Law Lords rejected that claim because torture and murder are not the normal characteristics of a head of state.

The case created an important international precedent. Heads of state may not be able to claim immunity because he was head of state when the crimes were committed. But Jack Straw, the then Home Secretary, eventually decided to let him return to Chile rather than be extradited to Spain. He said that the former dictator was too sick to stand trial in Spain (though he seemed well enough to grant media interviews). Pinochet returned to Chile. But the British case gave Chileans fresh energy to pursue their own legal actions against him and so they began their legal proceedings. He died while they were underway.

Slobodan Milosevic (1941-2006) was wanted by the UN's international tribunal for Former Yugoslavia. He evaded capture but eventually a new government decided in 2001 that it would improve its international status by handing him over to the tribunal. He died while still on trial.

Saddam Hussein was tried by a national Iraqi tribunal. This sent shock waves through the Arab world. He is the first Arab dictator ever to be put on trial in a court by his own people. For the first time in the world since the post World War II International Military Tribunals, almost the entire senior leadership of a long-lived repressive regime is on trial for gross human rights violations. Many Arab leaders must be wondering if this could also happen to them.

✓ International Criminal Court

One of the controversies over the Saddam Hussein trial was that it was seen by some as biased. It would have been better in my opinion for the case to have been dealt with by an international body. As a final example of the progress being made, the International Criminal Court is now in operation. (The United States has boycotted it fearing that it would be used against it and so this was why Saddam Hussein could not have been sent offshore).

The ICC, created in July 2002 under the 1998 Treaty of Rome, will only act in those instances where a government has accepted its jurisdiction but is unable to put on trial certain alleged criminals. The reach of the ICC is not as significant as the temporary post-war International Military Tribunals at Nuremberg and elsewhere but there is a broader definition of what constitutes crimes. It remains to be seen how effective the ICC will be. But even to have it up and running would have seemed utopian only (say) 30 years ago.

✓ Conclusion

To conclude, does the world have the right to tell a government how to treat its people? Until a few years ago, this would have seemed a preposterous question. National sovereignty was the foundation of international law and international politics. But now the situation is not so clear. There is a new era slowly emerging by which the international community is able to tell a government how to treat its people. These are early days but an interesting new trend is emerging.

Keith Suter

NOTES

1. Keith Suter "Progress in the International Protection of Human Rights", Medicine Conflict and Survival, Vol 18, Number 3, pp 283-298
2. Keith Suter "Globalization: A Long-Term View", Medicine Conflict and Survival, Vol 19, Number 2, pp 94-106
3. A fuller description of globalization can be found in: Keith Suter Teach Yourself Globalization, London: Hodder, 2006
4. In today's secular era, it is hard to imagine the power that the Catholic Church once enjoyed. A recent study shows how the Church was a major player in European politics as recently as 130 years ago; see: David Kertzer Prisoner of the Vatican: The Popes, the Kings and Garibaldi's Rebels in the Struggle to Rule Modern Italy, Boston: Houghton Mifflin, 2004
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6. Lord Sudeley "The Disintegration of English Society Since the Middle Ages" The Contemporary Review (London) August 1976, pp 77-78
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13. See: Sebastian Haffner [Defying Hitler: A Memoir](#), London: Weidenfeld & Nicolson, 2000.
14. Quoted in: E. Stein "International Law in Internal Law: Toward Internationalization of Central-Eastern European Constitutions", [American Journal of International Law](#), July 1994: 427
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