adopted, with modest adaptations, by peoples cultures and peoples across the world.[8]

5. States, Citizens, and the Legal Order

Modern politics in the West has been organized around the state. As dynastic regimes and multiethnic empires gave way to parliamentary and popular governments, nineteenth- and twentieth-century Western states increasingly came to be (re)organized in nationalist terms. Although the aspiration for "nation-states" (terminal political entities in which peoples and political boundaries coincide) has always been problematic, it has been a powerful ideal for much of the past two centuries. Consider, for example, understandings of France as the state of the French or Italy as the state of the Italians.

In recent decades, however, citizens in Western countries have increasingly come to be seen in juridical rather than national/ethnic/cultural terms. "The people" are coming to be seen more as those who share a common political life under the jurisdiction of a state than those who share a culture, past, or blood. For example, Germany's new citizenship laws move in the direction of the territorial *jus soli*, in contrast to the traditional genealogical *jus sanguinis* doctrine.

In redefining the people, increasing emphasis has been placed on the rule of law or the related idea of a *Rechtstaat*. Impartial public law, rather than charisma, divine donation, custom, inheritance, power, virtue, or even the will of the people is increasingly seen as the source of legitimate authority. The state thus appears as a juridical entity in which the people are bound together, even defined, by common participation in and subordination to (democratic public) law.

This transition from nationalist to territorial and juridical conceptions of political community has been closely associated with an ideology of human rights. One's rights depend not on who one is (e.g., a well-born English Protestant male property owner) but simply on the fact that one is a human being. In a world of states, this has taken the form of an emphasis on equal rights for all citizens.

6. Economic and Social Rights and the Welfare State

A prominent myth in the human rights literature, especially during the Cold War, has been that the Western approach to human rights rests on a near exclusive commitment to civil and political rights, plus the right to private property.[9] "In Western capitalist states economic and social rights are perceived as not within the purview of state responsibility" (Pollis and Schwab 1980b: xiii; compare Espiell 1979). "Philosophically the Western doctrine of human rights excludes economic and social rights" (Pollis 1996: 318). "The dominant Western conception of human rights . . . emphasizes only civil and political rights" (Muzaffar 1999: 29). Such claims bear little connection to reality. Quite the contrary, during the Cold War the West was the only region that in practice took seriously the often-repeated assertion of the indivisibility of all internationally recognized human rights.

In the nineteenth century, private property was indeed the only economic right that received extensive state protection in the West. But it boggles the mind that anyone with even a passing acquaintance with the American welfare state, let alone post–World War II Western Europe, could claim that this has been true of the West over the past half century. No Western country seriously debates whether to implement economic and social rights. Discussion instead focuses on the means to achieve this unquestioned end, how massive the commitment of resources should be, and which particular rights should be recognized and given priority.

Robert Goodin and colleagues (1999) usefully identify what they call liberal, social democratic, and corporatist welfare regimes (represented by the United States, the Netherlands, and Germany). The human consequences of the different ways in which these regimes seek to reduce poverty while promoting efficiency, equity, integration, stability, and autonomy are illustrated by the thirty or forty million Americans who are largely excluded from access to most of the health care system. From a broad comparative perspective, however, the similarities between Western welfare regimes are much more striking than their differences.

7. Inside, Outside, and the Society of States

Human rights have an inherently universalizing logic rooted in the fact that all human beings have the same human rights. In their internal legal and political practice, Western states have vigorously endeavored, with some success, to give concrete expression to this moral universality. One might expect, therefore, that these internal human rights commitments would be linked to advocacy of cosmopolitan or solidarist international human rights politics. In fact, however, the state remains the central organizing principle in Western conceptions

8. If origin is irrelevant to applicability, one might ask why devote so much attention to the question. The superficial answer is that there is a lot of bad argument in scholarly, diplomatic, and popular discussions that simply gets the facts wrong. The deeper answer is that these errors concerning historical origins are closely connected with (mis)understandings of human rights (and culture) that are politically dangerous and have been regularly used by dictators to justify their depredations. Chapters 5–7 present the evidence for this claim.

9. A more subtle version of this argument, which still is often encountered, presents three "generations" of human rights—civil and political, economic and social, and collective—which are at least loosely associated with the West, socialism, and the Third World. See, for example, Marks (1981); Flinterman (1990); Vasak (1984); Vasak (1991). I develop an extended historical and theoretical critique of this conceptualization in Donnelly (1993b).

An international regime reflects states' collective vision of a problem and its solutions and their willingness to "fund" those solutions. In the area of human rights, this vision does not extend much beyond a politically weak moral interdependence. States are willing to "pay" very little in diminished national sovereignty to realize the benefits of cooperation. The result is a regime with extensive, coherent, and widely accepted norms but extremely limited international decision-making powers—that is, a strong promotional regime.

4. Regional Human Rights Regimes

Adopting a metaphor from Vinod Aggarwal, Keohane notes that international regimes "are 'nested' within more comprehensive agreements . . . that constitute a complex and interlinked pattern of relations" (1982: 334). Although "nesting" may imply too neat and hierarchical an arrangement, some regional and single-issue human rights regimes can usefully be seen as autonomous but relatively coherently nested international human rights (sub) regimes. This section considers regional regimes. The following section takes up single-issue human rights regimes.

A. EUROPE

A strong regional regime exists among the (primarily Western European) members of the Council of Europe. Personal, legal, civil, and political rights are guaranteed by the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Protocols, and economic and social rights are laid down in the European Social Charter (1961, revised 1996).[17] The lists of rights in these documents are very similar to those of the Universal Declaration and the Covenants. The decision-making procedures of the European regime, however, are of special interest, especially the authoritative decision-making powers of the European Court of Human Rights.

A two-tier system was initially created. The European Commission of Human Rights, an independent body of experts (one from each member state),

17. I shall restrict the term "European human rights regime" to the norms and procedures established in these documents. For a brief introduction see O'Boyle (2000). For extended legal analyses, see Dijk and Hoof (1998), Harris, O'Boyle, and Warbrick (2001), and Mowbray (2001). The official website (http://www.echr.coe.int/) is excellent. Although the international human rights activities of the European Union have become increasingly significant (see Alston 1999), for reasons of space they are not considered here. Of particular symbolic importance was the adoption in 2000 of the Charter of Fundamental Rights of the European Union. Space also precludes considering the Organization for Security and Cooperation in Europe (OSCE), which has a historically important place in the process leading to the end of the Cold War and which has undertaken some important human rights initiatives through its Office for Democratic Institutions and Human Rights (see http://www.osce.org/odihr/overview/), especially in the area of minority rights (see Kemp 2001).

reviewed "applications" (complaints) from persons, groups of individuals, nongovernmental organizations (NGOs), and states alleging violations of the rights guaranteed by the Convention. If friendly settlement could not be reached, the Commission was authorized to report formally its opinion on the state's compliance with the Convention. Although these reports were not legally binding, they usually were accepted by states. If not, either the Commission or the state involved could refer the case to the Court for binding enforcement action.

Not only are these procedures, which have been implemented with scrupulous impartiality, of unmatched formal strength and completeness, they also have been almost completely accepted in practice. Decisions of the European Commission and Court have had a considerable impact on law and practice in a number of states (Blackburn 1996). For example, detention practices have been altered in Belgium, Germany, Greece, and Italy. The treatment of aliens has been changed in the Netherlands and Switzerland. Press freedom legislation was altered in Britain. Wiretapping regulations have been changed in Switzerland. Legal aid practices have been revised in Italy and Denmark. Procedures to speed trials have been implemented in Italy, the Netherlands, and Sweden. Privacy legislation was revamped in Italy.

The impact of the Court has been especially strong and important because of its adoption of the principle of "evolutive interpretation." The Court interprets the European Convention not according to the conditions and understandings that existed in 1950 when it was drafted but in light of the current regional practices. This has resulted in a slowly but steadily rising bar and considerable pressure on states that lag behind European norms. Examples include restrictions on corporal punishment in schools in the United Kingdom and eliminating discrimination against unmarried mothers and children born outside of marriage in Belgium.

The growing success of the system and the post–Cold War expansion of membership, however, led to a crushing administrative burden. In 1981 the Commission registered 404 applications. By 1993 this had increased to 2037, and by 1997 the number had jumped to 4750 (with nearly 8000 additional files opened that did not lead to registered applications). Cases referred to the Court in those years rose from 7 to 52 to 119.

A complete restructuring was proposed in 1994 in Protocol No. 11, which was ratified in 1997 and came into effect the following year. In late 1999, the Commission was merged into a completely restructured European Court of Human Rights. In addition, jurisdiction of the Court was made compulsory (previously states had the option to participate in only the Commission and not the Court).

The Parliamentary Assembly of the Council of Europe elects one judge for each member state (currently forty-one) for a six-year term. The Court is di-

vided into four Sections, with attention to geographical and gender balance and representation of different legal systems. Each Section includes a committee of three judges that performs much of the filtering work previously assigned to the Commission. Seven member Chambers in each Section (including the Section President and a judge representing the state in question) hear cases. There is also a seventeen-member Grand Chamber representing all the Sections.

Another notable post–Cold War innovation has been the creation of a Council of Europe Commissioner for Human Rights in 1999 (see http://www.commissioner.coe.int/). This entirely independent institution aims to promote education and awareness of human rights issues, improve the enjoyment of recognized rights, and identify possible shortcomings in national law and practice. Other than the requirement that he or she not deal with individual complaints, the Commissioner may look into any aspect of human rights in Europe, deal directly with governments, and issue opinions, reports, and recommendations. Member states even have a positive obligation to facilitate the independent and effective functioning of the Commissioner. On paper at least, these powers are of unprecedented strength and scope, and there seems every reason to believe that they will be utilized, especially as the Commissioner—Alvaro Gil-Robles of Spain was elected in 1999— and his staff become settled in their work.

The system for dealing with economic, social, and cultural rights has also changed significantly. The substance of the 1961 European Social Charter was substantially expanded by protocols in 1988, 1991, and 1995. In 1996 these changes, and some others, were consolidated into a Revised Charter of Social Rights, which entered into force in 1999. The net result was not only to expand the rights covered but also to strengthen the supervisory system and open it more fully to NGOs and so-called social partners such as workers' organizations. Rather than judicial settlement, however, supervision is through a system of reporting and collective complaints to an Independent Committee of Experts, which reports to the Council of Ministers for further action (see Harris 2000).

The Council of Europe system also includes a European Committee for Equality Between Women and Men, a Human Rights Documentation Center, and a Steering Committee for Human Rights (with three expert committees, dealing with the further development of human rights norms, improving procedures, and promotion, education, and information, respectively). There are also well-developed procedures for NGO participation.

The real strength of the European regime lies in voluntary acceptance of the regime by its participating states. The machinery of even the strongest international regime primarily checks backsliding, applies pressure for further

progress, provides authoritative interpretations in controversial cases, and remedies occasional deviations (compare Chayes and Chayes 1995). These are hardly negligible functions; they are precisely what is lacking in the global regime. Strong international procedures, however, rest ultimately on national commitment, which is both wide and deep in Europe. Strong procedures are less a cause than a reflection of the regime's strength.

A regime's shape and strength, as I argued in §3, usually can be explained by perceptions of interdependence, of benefits to be received (including burdens avoided), and of the risks of turning over authority to an international agency. The strong national commitment of the European states to human rights greatly increases the perceived value of the "moral" benefits that states can expect to achieve, suggesting that moral interdependence can occasionally rival material interdependence in political force. Furthermore, relatively good national human rights records reduce the political risks of strong international procedures. The European regime is also "safe," because it operates within a relatively homogeneous and close sociocultural community, which greatly reduces both the likelihood of radical differences in interpreting regime norms and the risk of partisan abuse or manipulation of the regime. Perceived community also helps to increase the perception of moral interdependence.

Although voluntary compliance is the heart of the regime's success, we should not belittle either the strength or the significance of the European regime's enforcement measures. Not only is completely voluntary compliance a utopian ideal, but the European case also suggests a process of mutual reinforcement between national commitment and international procedures. A strong regime is a device to increase the chances that states will enjoy the best that they "deserve" in that issue area—that is, the best to which they will commit themselves to aspire, and then struggle to achieve.

B. THE AMERICAS

The American Declaration of the Rights and Duties of Man (1948) presents a list of human rights very similar to that of the Universal Declaration. The American Convention on Human Rights (1969) recognizes personal, legal, civil, and political rights, plus the right to property. The 1988 "Protocol of San Salvador," which deals with economic, social, and cultural rights, came into force in 1999. As in the European case, though, the procedures rather than the norms are of most interest.[18]

The Inter-American Court of Human Rights, established in 1979 and sitting in San Jose, Costa Rica, may take binding enforcement action, although its ad-

18. Medina Quiroga (1988), although often dry and technical, is excellent on the Cold War era. Harris and Livingstone (1998) is probably the best single source today.

judicatory jurisdiction is optional.[19] The Court may also issue advisory opinions requested by members of the Organization of American States (OAS). The Court, however, has handled far fewer cases, with much less impact, than the European Court, despite an apparently much greater potential caseload.

The procedural heart of the regime lies instead in the Inter-American Commission of Human Rights. It is empowered to develop awareness of human rights, make recommendations to governments, respond to inquiries of states, prepare studies and reports, request information from and make recommendations to governments, and conduct on-site investigations (with the consent of the government). The Commission also may receive communications (complaints) from individuals and groups concerning the practice of any member of the OAS, whether a party to the Convention or not.

An "autonomous entity" within the Organization of American States (OAS), established twenty years before the Inter-American Court, the Commission has vigorously exploited this autonomy, especially in the 1970s and 1980s, in the face of strongly resistant states. It has adopted decisions and resolutions arising from individual communications from more than twenty countries in the region, including the United States. Country Reports documenting particularly serious human rights situations in more than a dozen countries have been issued, usually to be followed up by renewed and intensified monitoring. The Commission has also adopted special resolutions on major regional problems, such as states of siege.

The wide-ranging nonpartisan activism of the Commission can be attributed largely to the fact that its members serve in their personal capacity; it is more a technical, quasi-judicial body than a political body. But how are we to explain the fact that the American states, many of which have not been notably solicitous toward human rights (especially during the Cold War), have allowed the Commission to be so forceful and so active? A large part of the explanation lies in the dominant power of the United States.

The literature on international economic regimes suggests that the power of a hegemonic state typically is crucial to establishing (although not necessarily to maintaining) strong, stable regimes (Keohane 1984). Although hegemonic power had virtually nothing to do with the European regime, it has been central to the genesis and operation of the Inter-American regime. The United States, for whatever reasons, has often used its hegemonic power to support the Inter-American regime, which has also been strongly supported by some of the more democratic regimes of the region.

Consensual commitment and hegemonic power are, to a certain extent,

19. By 2000, twenty states had accepted the Court's jurisdiction. On the functioning of the Court, see Davidson (1992) and Travieso (1996) and the relevant portions of Buergenthal and Shelton (1995), Davidson (1997), and Harris and Livingstone (1998).

functional equivalents for establishing state acceptance. Voluntary compliance is, of course, the ideal, both for its own sake and because of the limited ability of even hegemonic power to overcome persistent national resistance. Coercion, however, may produce a certain level of limited participation. Consider, for example, the grudging participation of military dictatorships in Chile and Argentina during the 1970s.

Nevertheless, the relative mix of coercion and consensus does influence the nature and functioning of a regime. Coerced participation is sure to be marked by constant and often effective national resistance, and regime procedures are likely to be more adversarial. Hegemony may ensure a certain degree of international monitoring, but even a hegemon can impose only a limited range of changes.

Democratization in the region over the past two decades has led to voluntary acceptance largely replacing external coercion. It has also created a much more genuinely regional commitment to human rights. Nevertheless, only very modest incremental growth has occurred in the regime. Consent has largely replaced coercion without any significant increases in regime strength.

Both the Court and the Commission have modestly increased their levels of activity. New conventions, on torture (1985), disappearances (1994), violence against women (1994), and disabled persons (1999, not yet entered into force), have been adopted. The OAS General Assembly, the Inter-American system's principal political organ, has become much more sympathetic to human rights (in sharp contrast to its stance in the 1970s, when it was often an active impediment to the Commission). Democracy promotion activities have increased dramatically. States have even adopted much less adversarial attitudes toward the Commission. They have not, however, shown any enthusiasm for strengthening regional institutions (compare King-Hopkins 2000).

C. AFRICA, ASIA, AND THE MIDDLE EAST

In 1981 the Organization of African Unity (OAU) adopted The African Charter on Human and Peoples' Rights, drafted in Banjul, Gambia.[20] There are some interesting normative innovations in the African (Banjul) Charter, most notably the addition of and emphasis on collective or "peoples'" rights (Art. 19–24), such as the rights to peace and development, and the particularly prominent place the Charter gives individual duties (Art. 27–29). Typically, however, the substantive guarantees are narrower or more subject to state discretion than in other international human rights regimes.

20. Evans and Murray (2002) provide the first comprehensive scholarly evaluation of the operation of the African Charter system. Murray (2000) adopts a feminist perspective that leads to some unusual but often interesting assessments. On the issue of the relationship between the African Charter and national law and practice in the region, see Lindholt (1997).

The Banjul Charter creates an African Commission on Human and Peoples' Rights that may receive interstate complaints and individual communications. The activities of the Commission, however, are severely hampered by woefully inadequate administrative resources[21] and a requirement of complete confidentiality until an investigation has been completed. Little of substance seems to have emerged from its proceedings, although it has played a significant role in fostering the development and improving the functioning of local and regional human rights NGOs (Welch 1995; International Commission of Jurists 1996).

The regional organizational environment in Africa is extremely unpromising for any substantial strengthening of the regime. Previous efforts at regional and even subregional cooperation in other issue areas have not been very successful. The OAU is not only highly politicized but extremely deferential to sovereignty. Although this is understandable, given the weak states and strong subnational loyalties in most of black Africa, there is no reason to expect the OAU to deviate from its standard practice in an area as sensitive as human rights.

The prospects are no better when we took at national practice. During the Cold War, the human rights record of the typical African country was about average for the Third World, despite lurid and relatively overreported aberrations such as occurred under the rule of Idi Amin and "Emperor" Bokassa. Today, only the Middle East has a worse regional record. In the absence of strong pressure by a regional hegemon, the national human rights record of the typical African government suggests a high degree of aversion to international monitoring. Furthermore, the low level of autonomous economic, social, and political organization in most African states suggests that this situation is unlikely to be changed soon through mass popular action.

Even the weak procedures of the African regime, though, are far more developed than those in Asia and the Middle East. In Asia there are neither regional norms nor decision-making procedures.[22] The Association of South East Asian Nations (ASEAN) is perhaps the most promising subregional organization, but even there deference to sovereignty is high and regional cooperation low (compare Thio 1999).

The League of Arab States established a Permanent Arab Commission on Human Rights in 1968, but it has been notably inactive, except for publicizing

21. On the broad issue of resource shortages, which are a serious problem in all international human rights (with the possible but only partial exception of Europe), see Evatt (2000) and Schmidt (2000).

22. The 1996 Asian Human Rights Charter is an interesting effort by Asian NGOs to forge a regional document, but it clearly reflects NGO perspectives. See http://www.ahrchk.net/charter/final_content.html. For a report on the most recent official discussions of a regional system, see United Nations (1996).

the human rights situation in the Israeli-occupied territories. Even the regional normative environment is weak. The Arab Charter of Human Rights languished largely ignored from its drafting in 1971 until it was finally adopted by the Council of the League in 1994.[23] There currently is no basis for even the weakest of regional regimes, which is not surprising given the generally dismal state of national human rights practices in the region.[24]

5. Single-Issue Human Rights Regimes

A different type of "nested" human rights (sub)regime is represented by universal membership organizations with a limited functional competence and by less institution-bound single-issue regimes. Single-issue regimes establish a place for themselves in the network of interdependence by restricting their activities to a limited range of issues—for example, workers' or women's rights—to induce widespread participation in a single area of mutual interest.

A. WORKERS' RIGHTS

The first international human rights regime of any sort was the functional regime of the International Labor Organization (ILO),[25] established by the Treaty of Versailles. Most of the regime's substantive norms were developed after World War II, including important conventions on freedom of association, the right to organize and bargain collectively, discrimination in employment, equality of remuneration, forced labor, migrant workers, workers' representatives, and basic aims and standards of social policy. Although developed autonomously, these rules supplement and extend parallel substantive norms of the global regime.

Because regime norms are formulated in individual Conventions and Recommendations, which states adopt or not as they see fit, there is neither universality nor uniformity of coverage. Nevertheless, states are required to submit all Conventions and Recommendations to competent national authorities to be considered for adoption, and they may be required to submit reports on their practice even with respect to Conventions they have not ratified.

23. For the text, see http://www1.umn.edu/humanrts/instree/arabhrcharter.html. I can find no evidence that it has had any appreciable effect. The Cairo Declaration on Human Rights in Islam may also be of some normative interest. See http://www1.umn.edu/humanrts/instree/cairodeclaration.html.

24. On the general regional situation, see Magnarella (1999), Dwyer (1991), and Strawson (1997). See also Waltz (1995), which provides a careful and still largely accurate overview of the opportunities for and limits on human rights activism in the region.

25. The classic study of human rights in the ILO is Haas (1970). See also Wolf (1984) and Bartolomei de la Cruz, Potobsky, and Swepston (1996).