THE contemporary idea of human rights was formulated and given content during the Second World War and its aftermath. During the War, the Allied powers had proclaimed that assuring respect for human rights was their war aim. In 1945, at Nuremberg, the Allies included crimes against humanity among the charges on which Nazi leaders were tried. The United Nations Charter declared that promoting respect for human rights was a principal purpose of the United Nations Organization. The human rights idea found its contemporary expression in the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, and in the numerous covenants and conventions derived from it.

"Rights" have figured prominently in moral, legal, and political theory. The idea of rights is related to theories of "the good," "the right," "justice," and to conceptions of "the good society." In contemporary philosophical literature the idea of rights is often considered an alternative to various brands of utilitarianism.

Individual rights as a political idea draws on natural law and its offspring, natural rights. In its modern manifestation that idea is traced to John Locke, to famous articulations in the American Declaration of Independence and in the French Declaration of the Rights of Man and of the Citizen, and to realizations of the idea in the United States Constitution and its Bill of Rights and in the constitutions and laws of modern states.

The idea of human rights that has received currency and universal (if nominal) acceptance in our day owes much to these antecedents but it is discrete and different from them. The contemporary version does not ground or justify itself in natural law, in social contract, or in any other political theory. In international instruments representatives of states declare and recognize human rights, define their content, and ordain their consequences within political societies and in the system of nation-states. The justification of human rights is rhetorical, not philosophical. Human rights are self-evident, implied in other ideas that are commonly intuited and accepted. Human rights are derived from accepted principles, or are required by accepted ends—societal ends such as peace and justice; individual ends such as human dignity, happiness, fulfillment.

What the pattern of declared norms amounts to, the idea it reflects, is nowhere articulated. I attempt to do so here, not as a philosophical construct, but as a distillation of what underlies national and international instruments.

Human rights are rights of individuals in society. Every human being has, or is entitled to have, “rights”—legitimate, valid, justified claims—upon his or her society; claims to various “goods” and benefits. Human rights are not some abstract, inchoate “good”; they are defined, particular claims listed in international instruments such as the Universal Declaration of Human Rights and the major covenants and conventions. They are those benefits deemed essential for individual well-being, dignity, and fulfillment, and that reflect a common sense of justice, fairness, and decency. In the constitutional jurisprudence of the United States, as we shall see, individual rights have long been thought of as consisting only of “immunities,” as limitations on what government might do to the individual. Human rights, on the other hand, include not only these negative “immunity claims” but also positive “resource claims,” claims to what society is deemed required to do for the individual. They include liberties—freedom from (for example, detention, torture), and freedom to (speak, assemble); they include also the right to food, housing, and other basic human needs.

Human rights are universal: they belong to every human being in every human society. They do not differ with geography or history, culture or ideology, political or economic system, or stage of societal development. To call them “human” implies that all human beings have them, equally and in equal measure, by virtue of their humanity—regardless of sex, race, age; regardless of high or low “birth,” social class, national origin, ethnic or tribal affiliation; regardless of wealth or poverty, occupation, talent, merit, religion, ideology, or other commitment.* Implied in one’s humanity, human rights are inalienable and imprescriptible: they cannot be transferred, forfeited, or waived; they cannot be lost by having been usurped, or by one’s failure to exercise or assert them.

Human rights are rights; they are not merely aspirations, or assertions of the good. To call them rights is not to assert, merely, that the benefits indicated are desirable or necessary; or, merely, that it is “right” that the individual shall enjoy these goods; or even, merely, that it is the duty of society to respect the immunity or provide the benefits. To call them “rights” implies that they are claims “as of right,” not by appeal to grace, or charity, or brotherhood, or love; they need not be earned or deserved. The idea of rights implies entitlement on the part of the holder in some order under some applicable norm; the idea of human rights implies entitlement in a moral order under a moral law, to be translated into and confirmed as legal entitlement in the legal order of a political society. When a society recognizes that a person has a right, it affirms, legitimates, and justifies that entitlement, and incorporates and establishes it in the society’s system of values, giving it important weight in competition with other societal values.

Human rights imply the obligation of society to satisfy those claims. The state must develop institutions and procedures, must plan, must mobilize resources as necessary to meet those claims. Political and civil rights require laws, institutions, procedures, and other safeguards against tyranny, against corrupt, immoral, and inefficient agencies or officials. Economic and social rights in modern society require taxation and spending and a network of agencies for social welfare. The idea of human rights implies also that society must provide some system of remedies to which individuals may resort to obtain the benefits to which they are entitled or be compensated for their loss.† Together, the affirmation of entitlement, the recognition by society of an obligation to mobilize itself to discharge it, and the implication of remedy, all enhance the likelihood that the right will be realized, that individuals will actually enjoy the benefits to which they are entitled.

Human rights are claims upon society. These claims may derive from moral principles governing relations between persons, but it is society that bears the obligation to satisfy the claims. Of course, the official representatives of society must themselves respect individual freedoms and immunities; political society must also act to protect the individual’s rights against private invasion. As regards claims to economic and social benefits, society must act as insurer to provide them if individuals cannot provide them for themselves. Thus, government must protect me from assault by my neighbor, or from wolves, and must ensure that I have bread or hospitalization; in human rights terms my rights are

* Human rights are not equivalent to, or interchangeable with, “justice,” although some conceptions of justice—commutative, distributive, or retributive justice, or justice as fairness—are reflected in human dignity and in the particular rights human dignity requires. Human rights are not equivalent to, or interchangeable with, “democracy.” The contemporary articulation of the idea of rights includes some democracy, declaring that the will of the people is the foundation of government, and that every human being has the right to authentic participation in his or her government. But democracy thus defined is one human right of many. The will of the people, surely the will of the majority, is subject to the human rights of the individual, although in some respects rights are limited by the common interest in security, public order, health, and general welfare as democratically determined.

† In some circumstances the idea of rights may also legitimate some measure of “self-help” to realize one’s entitlement, for example, by resisting repressive behavior when no effective societal protection or remedy is available.
POLITICAL AND MORAL UNDERPINNINGS

The idea of rights here distilled from contemporary international instruments responds, I believe, to common moral intuitions and accepted political principles. Those intuitions and principles have not been authoritatively articulated. Developed during the decades following the Second World War, international human rights are not the work of philosophers, but of politicians and citizens, and philosophers have only begun to try to build conceptual justifications for them. The international expressions of rights themselves claim no philosophical foundation, nor do they reflect any clear philosophical assumptions; they articulate no particular moral principles or any single, comprehensive theory of the relation of the individual to society. That there are “fundamental human rights” was a declared article of faith, “reaffirmed” by “the peoples of the United Nations” in the United Nations Charter. The Universal Declaration of Human Rights, striving for a pronouncement that would appeal to diverse political systems governing diverse peoples, built on that faith and shunned philosophical exploration. Because of that faith—and of political and ideological forces—governments accepted the concept of human rights, agreed that they were properly matters for international concern, cooperated to define them, assumed international obligations to respect them, and submitted to some international scrutiny as to their compliance with these obligations.

International human rights derive from natural rights theories and systems, harking back through English, American, and French constitutionalism to John Locke et al., and earlier natural rights and natural law theory. In its American version, that constitutionalism included concepts of original individual autonomy translated into popular sovereignty; of a social compact providing for continued self-government through accountable representatives; of limited government for limited purposes; and retained, inalienable, individual rights (see essay 7). But the profound influence of that constitutionalism on international acceptance of human rights did not depend on, or take with it, commitment to all the underlying theory. International human rights reflect no comprehensive political theory of the relation of individual to society, only what is implied in the idea of individual rights against society. Human rights are “inherent” but not necessarily “retained” from any hypothetical state of nature antecedent government. There is a nod to popular sovereignty, but nothing of social compact or of continuing consent of the governed. Retained rights are not the condition of government, and violating them does not necessarily give rise to a right to undo government by revolution. Inevitably, international human rights also implicate the purposes for which governments are created, but they surely do not imply a commitment to government for limited purposes only. Born after various forms of socialism were established and spreading, and commitment to welfare economics and the welfare state was nearly universal, international human rights implied rather a conception of government as designed for all purposes and seasons. The rights deemed to be fundamental included not only limitations precluding government from invading civil and political rights, but positive obligations for government to promote economic and social well-being, implying government that is activist, intervening, planning, committed to economic-social programs for the society that would translate into economic-social rights for the individual (see essay 1).

Those who built international human rights perhaps saw these rights as “natural,” but in a contemporary sense; human rights correspond to the nature of human beings and of human society, to his or her psychology and its sociology. Rights (to quote from the principal international instruments) “derive from the inherent dignity of the human person.”3 “Recognition . . . of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”4 Respect for, and observance of, human rights will help create “conditions of stability and well-being which are necessary for peaceful and friendly relations among nations.”5 We are not told what theory justifies “human dignity” as the source of rights, or how human dignity is defined or its needs determined. We are not told what conception of justice is reflected in human rights, or how preserving human rights will promote peace in the world.

Necessarily, however, the idea of rights reflected in the instruments, the particular rights recognized, and the consequent responsibilities for political societies, imply particular political ideas and moral principles. International human rights does not hint at any theory of social contract, but it is committed to popular sovereignty. “The will of the people shall be the basis of the authority of government” and is to “be expressed in periodic and genuine elections which shall be by universal and equal suffrage.”6 It is not required that government based on the will of the people take any particular form. Presumably, Western-style presidential or parliamentary systems and communist “democratic centralism” might both be equally consistent with the international standard—provided the people in fact have control over how they are governed, provided they have the freedom and the means to inform their governors of their wishes, provided the governors are accountable in fact and the people can replace them at frequent, regular intervals. In any system, government by bureaucracy is presumably not government by the people if, although political authority is conceived and couched in legal forms and decorated with occasional formal votes, arbitrary power in fact prevails, without meaningful accountability and meaningful opportunity for the people to terminate or control the exercise of such power. The will of the people is not the basis of the authority of government if the people are not free to change their form of government or their political and economic system, for instance, to move toward—or away from—socialism or a market economy.*

International human rights has no commitment to any particular economic system, and a society is free to choose between a market economy and socialism and among the various gradations and combinations of each. Some of the human

* Of course, even the will of the people does not justify government in violating the rights of individuals or minority groups.
rights recognized, however, imply commitment to some political-economic principles. Every person has a right to own property and not to be arbitrarily deprived of it;^7 the right to work and be free to choose employment;^8 to enjoy trade union protection against a powerful employer, private or public; and to be protected against unemployment or its consequences.9

International human rights imply a broad conception of the purposes and responsibilities of government. The obligation of society to ensure rights may require government to plan, to regulate, to tax and to spend. Perhaps civil and political rights can be respected—in a fortunate society—by a civilized citizenry, and a minimal, honest, and benign officialdom, without any special societal interventions. But if citizen civility and official self-restraint are insufficient, the society must intervene, by civil rights acts and other laws, by institutions and remedies governing the behavior of citizen and official. Economic and social rights (food, shelter, work, health, and education) can perhaps be secured—in a fortunate society—by private initiative and means, by market forces, by employment contracts, by private insurance. But society must ensure these rights, must act as “insurer” for them; it must do what is necessary to see that such rights are in fact enjoyed, whether by improving the performance of private agencies or by supplementing or replacing these efforts by official programs.

Beneath the responsibilities of government for individual rights are political principles governing the relation of the individual to political authority, and beneath those political principles appear to be moral principles governing relations between individual human beings. If government responds to the will of the governed, the undertaking by governments to respect and ensure individual rights implies that the governed recognize these rights for each of them, and assume responsibility for these rights even when other interests, including other common interests, compete. The individual must recognize the obligation, both as an individual and as a member of the sovereign people (the majority), to respect and ensure those rights, to support the laws and institutions and the costs necessary to make the agreed-upon rights secure.

Political-moral principles are implied both in the idea of rights and in the particular rights recognized. Of course, a commitment to fair trial in the criminal process reflects a common sense of justice requiring that a person—not only I, but any other person—not be found guilty and deprived of freedom if he or she is innocent. Political-moral principles are implied in the fact that individuals not only demand for themselves, but also recognize for others equally, the autonomy, the physical integrity and freedom, the rights to due process, to property, to privacy, to “personhood,” to liberties, as well as to basic human needs and other economic and social rights.

Less obvious are the moral assumptions underlying the other dispositions of the idea of rights. In general, what government may not do are those things we may not do to each other, and the reason why officials may not do them—say, deprive us of our life, liberty, privacy, or property—is because ordinarily no individual may do that to another. Human dignity requires respect from my neighbor as well as from the state. Under the international instruments the state is required not only to respect but to ensure rights, that is, ensure respect for them by private persons. By what moral calculus, then, are officials permitted to do to an individual what his neighbor may not?

Implicit political-moral principles accept limitations on individual rights for the common good—to protect society against external enemies and internal disorder, or to regulate individual activity for the benefit of others and for the common welfare. Therefore, the state is permitted to take away my freedom through the criminal law, at least when imprisonment is designed to prevent and rehabilitate, probably also if it aims to deter, and perhaps even when the purpose is to express moral judgment by societal retribution. It is permissible to take away my property through taxation in order to provide for the common defense and the public welfare. From some perspectives at least, it may be assumed that these limitations on the individual are acceptable because the individual consents to them, or consented to them, in principle and in advance, by living in society and thereby submitting to government by democratic process. Individuals consent a priori, it can be argued, even to the possibility that they might be sent to their deaths for the common cause, on the assumption, or hope, that the need will not arise, and the sacrifice not prove necessary; that if someone will have to be sacrificed it will be someone else; that others submit to the same risk for one’s own welfare, and that the selection will be by lot or chance or at least according to some rational, neutral principle. Whether such consent to the sacrifice of one’s rights is authentic, whether an individual is really free to leave society so that his or her continuing consent can be assumed, is debatable and may differ from society to society, time to time, context to context, individual to individual. Or, perhaps—without insisting on consent and contract as the basis for rights and for limitations on rights—limitations on individual liberty or property are to be justified on notions of equity and practicability and some uncertain blend of the rights idea with utilitarian dedication to the “general welfare” or to maximum total happiness.*

The commitment in the human rights idea to the welfare society may imply other political-moral principles or assumptions. It implies, I think, that the basic human needs of those unable to provide for themselves are the responsibility of all, and that it is permissible if not obligatory to take from those who have (as by taxation) to provide for those who have not. Such moral obligation has been supported on various grounds:

- In the twentieth century, societies and political institutions are created and maintained for road purposes; not only for security against one’s neighbor and against external aggression, but to assure the welfare of all and each. The social contract includes agreement to create a welfare state.
- In a society with a complex, integrated economy, the economically disadvantaged—for example, the unemployed—are victims of deficiencies in the economic system, often of policies that purposefully maintain such

*The rights idea, however, rejects the extreme utilitarian position that would justify even the complete sacrifice of individuals if it would increase total happiness.
disadvantages for systemic ends. Those who benefit from the system are therefore morally obligated to help those who suffer from it, at least to the extent of assuring their basic human needs.

- We are all members of a community that benefits all. Community and communality imply obligations, and high among them is the obligation to assure basic human needs for those who cannot satisfy their own.

- We have moved away from the moral intuitions of the Anglo-Saxon tradition which saw the Good Samaritan as acting from charity, not from moral obligation. Today, we are coming to believe, one is morally obligated to save a person in danger, at least if it can be done without undue risk or cost to oneself. There is, then, a moral obligation, for one who can, to save another from death or serious injury, as by starvation. If, in the case of the hungry in the community, that obligation is indeterminate in that the moral obligation to save any one person does not ordinarily attach to any other particular person, it attaches to all members of the community collectively. The collective obligation can be met by any collective action but effectively falls on the political authorities of society to meet by public action with public funds.

The moral foundations for human rights within society apply to all societies, and perhaps also between societies, as economies and polities become interdependent and community and communality expand. The idea of human rights, born in the West, has spread and, nominally at least, been universally accepted. Sovereign states continue to resist, but the implementation of the human rights idea has been "internationalized," and become the concern of the international community of states (see essay 1).