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# 1

## Power Leads, Rights Follow

HISTORICAL ADVANCES of human rights since the Reformation and the Enlightenment have always depended on the rising social power of the people who benefit from those rights. These successes have been based on a new way of organizing society. Boiled down to its essence, the path to human rights is a journey from personalistic social relationships based on favoritism toward the individual right to equal treatment according to impersonal rules. The success of this revolutionary system depends on the power of its core supporters, the pragmatism with which they advance toward their goals, and the persuasiveness of their ideas to those who remain ambivalent. Victories for rights have always fused power, self-interest, and principle.

The battle to establish the social order based on rights is both very old and very new, and remains only half won. The early prehistory of rights gained impetus from the increase of trade among the townspeople of northern Europe, who challenged aristocratic privileges constraining commerce and labor, and whose Protestant Reformation proclaimed the right of all believers to read the Bible in their vernacular languages.<sup>1</sup> The development of commercial society created powerful constituencies for due process of law to protect property, regulate contracts, guarantee the free flow of speech and information (the shipping news vital to their livelihoods), and to protect individuals, including wealthy religious dissenters, against abuses by authorities.<sup>2</sup> The expansion of literacy and commerce gave educated, industrious subjects greater bargaining leverage against their kings. This made plausible the idea of national self-determination of the “chosen people” through sometimes orderly, sometimes revolutionary processes of accountability.<sup>3</sup> Later, industrialization and the organization of trade unions provided clout behind demands for economic, social, and labor rights for the working class.<sup>4</sup>

Setbacks to rights have happened when the underpinnings of the social power of rights beneficiaries have come unglued. The worst historic setback to the world's rights project occurred in the first half of the twentieth century, when structural flaws in the global economy undermined the still-shaky, rights-expanding coalitions of export industry and labor in Weimar Germany and Taisho Japan.<sup>5</sup> This shift in power and interests created an opening for a rights-hostile mass politics of militarized nationalism in these two great powers. After 1945 those flaws in the liberal system were repaired with the help of Keynesian tools of economic management and the Bretton Woods international economic institutions. These pragmatic adjustments helped the liberal rights project get back on track with the Universal Declaration of Human Rights and the consolidation of democratic welfare states in the non-Communist great powers. The eventual collapse of the Soviet Union seemed to put the icing on the liberal cake, the crucial ingredient of which was human rights.

This period of liberal near-hegemony and great ambitions for the global human rights movement turned out to be short-lived. The social power base on which it rested eroded, while its detractors and free riders grew in strength and assertiveness.<sup>6</sup> Mainstream ruling coalitions frayed in the wealthy democracies as some of their key support constituencies decided that liberal business as usual—including the worldwide promotion of human rights, democracy, and free trade—was not in their immediate interest. Liberal failures to solve problems and serve tangible interests piled up: the world financial crisis of 2008, increased economic inequality, deindustrialization in struggling communities, the inability to integrate Muslim immigrants into European society, America's failed nation-building wars abroad, and the mismanagement of the coronavirus pandemic.

These repeated shortcomings convinced critics on the left and the right that the core systems of liberalism—its markets, institutions of representative government, courts, and media—were broken or somehow rigged against the people to whom they were meant to be accountable. Some formerly mainstream progressive constituencies, including the ethnic majority working class, increasingly backed sharp limits on refugees and immigration, suppression of voting by minorities, economic protectionism, torture of suspected terrorists, and populist political candidates, especially those on the nationalist right. Astonishing proportions of young adults, especially in the United States, told pollsters it doesn't matter if their country is a democracy.<sup>7</sup>

Ideological trends within the liberal rights camp have contributed to this crisis. Economic libertarians, who tout the unfettered freedoms of global

capital, have relentlessly undermined the regulatory structures that stabilized liberal markets and media, hollowing out the pragmatic class compromise of the welfare state. These were sins of commission, whereas the shortcomings of the liberal human rights movement were mainly sins of omission. Trying to maintain an unconvincingly apolitical façade, rights activists adopted a stance of legalism, moralism, and idealistic universalism that distanced them from an earlier, more successful tradition of pragmatic progressive reform. This wariness toward pragmatism has limited the power of the human rights message at a moment of precarity not only for the rights movement but for the liberal project as a whole.

### The Argument of the Book: The Pragmatic Path to Rights in Modern Times

Human rights are central to how the modern social system works. Thinking about them in a narrower way—as just ethics or law, or as an isolated niche endeavor—misses the point and leads practical recommendations astray.<sup>8</sup>

The purpose of this book is to advance a theory of human rights that places them in their broad social, political, and economic context. Chapters explore their historical development, their contemporary manifestation in diverse issue areas, and their tailoring for diverse local settings. The goal is both to understand the rights systems that actually exist and to prescribe how to move the rights project forward. These prescriptions are pragmatic in the sense that they apply outcome-oriented criteria for judging the appropriateness of tactics for advancing human rights, taking into account short-term considerations of power and interest as well as longer term effects on the power of pro-rights coalitions and the institutional entrenchment of a rights-based system. Some prescriptions are directed to the community of human rights activists and to aspiring activists who are training to join that community. Most, however, are directed to anyone in any country—students, scholars, policy makers, reformers in the opposition, journalists, businesspeople, community organizers, citizens—who seeks a pragmatic, results-oriented yet wide-angle view of problems of human rights.

My guiding hypotheses are that rights thrive (1) when the prevailing mode of social organization is no longer based on repression and favoritism but has evolved toward social relations among individuals based on impersonal rules of equal treatment, (2) when rights serve the interest of a dominant coalition, and when they are stabilized by (3) implementing institutions and

(4) a locally persuasive ideology. This book is an attempt to show in general and for specific issues and national contexts how these conditions come about. Thus, a fifth hypothesis: (5) in sequencing the shift to a rights-based society, power and politics lead, and rights follow. In addition to elaborating this argument, I also argue that the mainstream approach to rights activism and scholarship has not adequately taken these points into account and is in trouble because of it.

Each of these five hypotheses stipulates a logic of the emergence and success of the rights project, as well as the corresponding logic of barriers to its success. The first hypothesis proposes that rights provide significant functional advantages for the modern mode of production and governance. I define modernity as a system that sustains economic growth through technological innovation and achieves political stability. I treat as an empirical question what institutions and ideas are used to achieve that stable outcome. The rights-based liberal form of modernity depends on impersonal social relations based on impartial rules and free contracts enforced by accountable political authority. The emergence and success of the rights program corresponds with the development of that modern mode, as it replaces the traditional mode of social order based on personalistic social relations, patronage in economic exchange, and favoritism in the arbitrary exercise of authority.

Struggles between rights-based and favoritism-based systems of social order fill the long periods of transition between tradition and modernity. These struggles destroy the supports of the old order and create the structural preconditions for the modern system to function. While economic development has tended over the long run to create a social constituency for expanding the rights-based order, this trend has by no means been a smoothly linear progression.<sup>9</sup> Ambivalent interests of rising constituencies and shifting alliances between rising and traditional elites have often sent liberal rights down a detour of “two steps forward, one step back.” When societies first embark on the process of modern development, illiberal technocratic systems sometimes succeed in building some precursors of modernity, but their internal contradictions have so far prevented them from sustaining economic success and political stability. To succeed, they have had to liberalize, or else they get stuck in the middle-income trap, collapse from their inefficiencies, or flame out from the volatile politics that accompanies illiberal modernization.

The second hypothesis holds that rights prevail when they serve the interests of the dominant political coalition. The core groups of a successful rights-seeking coalition define rights in a way that serves their own interests,

advancing their economic power and personal security. To succeed, their rights project must serve the interests of the majority of the society or those that control the preponderance of social resources. To win such preponderance and to gain acquiescence from those who might be indifferent or opposed to rights, bargaining and side payments among diverse interests are necessary. To neutralize potential spoilers, groups that embody the logic of the modern rights-based system normally need to bargain with still-powerful remnants of the old favoritism-based regime. Even when many of the structural facilitating conditions for a rights-based order are in place, a bungled coalition strategy can produce a setback for the rights project. While the particulars of a pro-rights coalition strategy vary with local conditions, a rule of thumb is to avoid alignments based on exclusionary social identities such as ethnicity and aim instead for inclusive groups that draw in middle and working classes that cut across cultural identities. In forging a powerful coalition, rights pragmatism provides a direction-finding compass, not an invariant recipe.

The third hypothesis posits that the emergence and stabilization of the rights-based system and the empowering of its dominant coalition depend on the creation of impartial institutions to carry out its functions and enforce its rules. These must be strong institutions in the sense that their rules shape people's expectations of everyone else's behavior. If rights-supportive institutions are weak, existing only on "parchment," expectations will revert to the habit of coordinating around the personalistic norms of relations based on patronage, discrimination, corruption, and the arbitrary use of coercive power. In the absence of effective rights-based institutions, these traditional default behaviors are locked in place by decentralized routines that sustain all manner of abuses, ranging from child marriage to ethnic cleansing. Creating effective institutions is a step-by-step process in which incentives and performance must align with power and interests at every step along the way. Sometimes effective institutions can be formed by repurposing and making more inclusive the rule-based institutions that had previously stabilized relations among elite groups in premodern or early modern society.<sup>10</sup>

The fourth hypothesis proposes that a successful rights system depends on the promotion of a locally persuasive ideology and culture. The main advocate for rights-based norms is the powerful group that will benefit most from their adoption and from the weakening of traditional favoritism. This advocacy must necessarily begin in an aspirational mode in an attempt to persuade other groups of the benefit of rights. In justifying the new normative approach, advocates must criticize to some degree the unfairness and inefficiency of

traditional social practices, but successful advocates also typically try to adapt a usable normative legacy of religion or folk practices to modern purposes. Just as coalition building and institution building require compromise with and adaptation to the remnants of the old order, so too does rights ideology require the integration of modern rights ideas and traditional notions of virtue through a cultural revitalization movement.<sup>11</sup> Failure to adapt rights ideas to the local cultural idiom plays into the hands of traditional cultural elites who can characterize modern rights as the leading edge of an imperialist conspiracy.

The fifth hypothesis, on sequencing, envisions that all four elements—a rights-based mode of production and political relations, groups and coalitions benefiting from rights, institutions based on these practices, and ideologies justifying them—will emerge partially and gradually in the course of the transition out of the traditional system and toward the hegemony of the rights-based system. Just as mainstream human rights theory posits a norms cascade that begins with normative persuasion and culminates in institutionalization and internalization, I posit a pragmatic counterpart that begins with incipient changes in the structural organization of society, proceeds through shifts in social power and coalitions, solidifies rights in the course of struggles to build enabling institutions, and legitimates rights through a locally persuasive ideology.<sup>12</sup> This can be an iterative process, punctuated by resistance from remnants of the old regime and setbacks at the hands of those who exploit a predatory equilibrium of partial reform. Details of sequencing vary with local conditions.

An important question for pragmatic proponents of rights is when to begin treating rights as if they are obligatory for the whole society rather than just aspirational. The general pragmatic guideline for finessing that threshold recommends “power first, rights follow.” Jumping the gun increases the likelihood of triggering and institutionalizing backlash that leaves the rights project more distant from its goal.

A related sequencing question is whether the spread of a rights-based order must follow the same sequence and strategies as the original creation of that order. For example, even if one accepts that the background conditions of modern society were essential to the emergence of rights-based societies in Europe and North America, must other national societies likewise undergo the same processes of modernization before rights can take root, or can they skip over the development of those facilitating conditions, climbing directly up the institutional and ideological scaffolding already constructed by the originators? For the most part, the analysis presented here warns against counting on such shortcuts to a rights-based society. The central role of the

nation-state in defining and realizing rights cannot be effectively circumvented by transnational or supranational routes.

## Alternative Views of Human Rights Futures

In the course of developing these arguments, I engage with important contrary views, some doubting the centrality of rights to successful modernity, others agreeing with the central role of rights but disagreeing about how to bring about their supremacy.

On one hand, some question the notion that liberal systems based on rights have major advantages in producing the benefits of wealth and stability in modern conditions. To them, China's recent successes suggest that a durable modern order can be constructed on the foundation of technocratic competence without any functional need for rights, liberal legality, or democratic accountability. Others question whether any single model of modernity is likely to prevail given the cultural, institutional, and historical diversity of the world's civilizations. In such a world, pragmatism might require a live-and-let-live transactional approach to international relations, not the imposition of universalistic standards. They point to the recurrent contradictions within liberalism and doubt that it has a distinctive advantage in the competition among multiple modernities.

On the other hand, mainstream human rights activists claim that their accustomed methods have been succeeding in spreading human rights norms and improving rights outcomes. Legalism, moralism, and universalism done the right way *are* effective and pragmatic, they say. At the same time, a quite different brand of rights idealists, the libertarians, extol the expansion of human freedom by means of the invisible hand of global market competition and free speech absolutism on global social media. They are skeptical of the need for pragmatically regulating the freedom of economic action and of speech.

These debates appear intermittently throughout the book. Here I introduce my general view of these opposing claims.

## Successful Technocratic Modernity without Rights?

Classic social theory posits two images of the fundamental nature of the transition to modern society. The one that I rely on, anchored in the approach of Emile Durkheim and Ferdinand Tönnies, emphasizes the shift from

homogeneous communities with little differentiation of individuals' social roles to societies based on a complex division of labor held together by rule-governed contracts in an inclusive state.<sup>13</sup> The other, based on one strand of the work of Max Weber, emphasizes the disenchantment of the world from religion and magic, and its rationalization through science, technology, and rational rules imposed by the "iron cage" of bureaucracy.<sup>14</sup> Following the logic of the first approach, liberal democratic capitalism based on individual rights seems like a plausible destination. Following the logic of the second, Chinese-style authoritarian technocracy captures the essence of its vision of modernity quite well.

While social science can't predict the future, it can draw inferences from the past. As of 1989, Francis Fukuyama argued that the final verdict of history had come in, and it showed that rights-based liberal societies had decisively won the tournament against all authoritarian alternatives.<sup>15</sup> The Soviet experiment had proved that central planning was no match for liberal market economies. German and Japanese militarized, nationalist authoritarianisms—despite their technological and organizational prowess—had proved politically and ideologically self-destructive. Only liberalism was left standing. But the economic rise of China, the apparent cohesiveness of its steely regime, and the chilling efficiency of its suppression of Uyghur Muslims, Hong Kong democrats, and the coronavirus has convinced many that the iron cage of authoritarian modernity is still very much in the game. Can it succeed where other authoritarian modernities have failed so spectacularly?

Setting aside a handful of petrostates and the city-state of Singapore, which are like specialized companies dependent on the liberal international economy, it remains true that no country has ever progressed beyond the middle-income barrier without adopting the full set of liberal civic rights.<sup>16</sup> For countries below one-fourth of US per capita income, democracy per se makes no difference in the likelihood of economic growth. In this cohort, having strong institutions relative to one's per-capita-income peer group helps growth, but these institutions do not need to be liberal. The reason is that authoritarian late developers with reserves of cheap labor and fallow resources can exploit the "advantages of backwardness" to commandeer factors of production in a project of forced-draft accumulation of capital, as Stalin did in the first two Five-Year Plans.<sup>17</sup> In more recent times, analogous strategies of state-led development have been able to accelerate even faster by plugging into the globalized liberal system of trade and finance. But once the backward economy matures, further growth depends on shifting from the marshaling of new factors

of production to the more efficient use of factors that are already in use. Experience to date shows that this can occur only when a country adopts liberal-style institutions making for more efficient capital and labor markets, dramatically curtailing corruption, and exposing political authorities to accountability through free speech and democratic political participation.<sup>18</sup>

The question remains whether the technocratic innovations of China, Singapore, or other illiberal or shallowly liberal states are discovering a way out of these contradictions without adopting fully liberal reforms, as Japan, South Korea, and Taiwan did.<sup>19</sup> China stands well below the benchmark of one-fourth US per capita income, measured by the method used for developed economies.<sup>20</sup> As its wealth has risen, its World Bank measure of institutional quality compared to its income peer group has declined. Commentators see signs that the middle-income trap is setting in: slowing growth despite overinvestment, dramatic declines in the productivity of capital, and debt bubbles.<sup>21</sup> Even if nonliberal forms of transparency and participatory consultation would be sufficient to sustain efficient growth, China has moved to limit such experiments in the Xi Jinping era.<sup>22</sup> What this portends for human rights and democracy in such regimes, and pragmatic strategies for promoting them, is taken up in chapter 5.

## Contradictions within Liberalism and Their Pragmatic Remedy

Even if authoritarian versions of modernity do have fatal flaws, liberalism too has internal contradictions, or at least tensions, which can undermine its stability in transitional states and even in established democracies.<sup>23</sup> Some of these tensions have become acute, producing the sense that liberalism may be unable to manage them.

At the most general level, liberalism's contemporary contradictions are rooted in the tension between individual liberty and the civic cooperation that is needed to make its inclusive, rule-based systems function. In economic policy, communications media, and even public health, libertarian tendencies have promoted the idea that an unfettered invisible hand of rational self-interest will reconcile everyone's sovereign individualism with the public good. A deregulated global economy, absolute freedom of speech on social media, and the God-given right not to wear a mask in a pandemic have pushed that conjecture to the limit. The result has shown that the success of liberalism depends on the *visible* hand of collective, rule-based, democratically

accountable regulation of individualistic interactions and a degree of informed deference to the professional expertise of journalists and scientists. Finding a workable balance between individual rights and their public regulation is a main theme of this book, especially chapter 7 on media freedom.

Liberalism's endemic tension between liberty and equality has sharpened with the growth of economic inequality in some liberal capitalist democracies. Individual liberty requires political equality insofar as a liberal system is based on equality before the law and the universal right to equal political participation. And yet exercising the liberty to pursue a personal life plan in which happiness is based on the freedom to accumulate property can produce gross economic inequalities that place liberal democracy under stress.<sup>24</sup>

This tension has heightened liberalism's latent contradiction between free markets and mass democratic participation. Karl Polanyi's 1944 classic, *The Great Transformation*, argued that the rise of populist fascism had stemmed from the incompatibility between free markets regulated by the invisible hand of the gold standard and mass political participation by the losers from cruelly automatic market adjustments.<sup>25</sup> In contemporary times, populist nationalism similarly expresses the demand for national political control over domestic markets and borders in the face of socially disruptive underregulated flows of capital and labor. As in the interwar period, there is a mismatch between the unaccountability of international markets and the fact that institutions of democratic accountability exist only at the national level. This loads the dice in favor of nationalist forms of remedy.<sup>26</sup>

The people of the illiberal great powers in Polanyi's day demanded that their states protect them from the global systemic contradictions of liberal capitalism. To accomplish that, Germany and Japan chose strategies of military expansion to achieve direct autarkic control over resources and markets. This turned out to be a path to unconditional military defeat. In our own era, illiberal great powers likewise face serious challenges in finding a sustainable way to fit into the system of globalized liberal capitalism. Inequality, governance deficiencies, and corruption intensify when illiberal systems have one foot in the political economy of global capitalism and the other in the domestic political economy of traditional patronage relationships. Except for China, the economic boom of the rising BRICS countries (Brazil, Russia, India, China, South Africa) was brief, and even China is tapering off. Those who benefit from autocracy and corruption on the way up often succumb to the temptation to block essential reforms and play the nationalist card when economic complications arise.

This is creating an impasse in two senses: an international equipoise of power between liberal and illiberal states, and the domestic impasse inside unreformed rising powers that are heading into the middle-income trap. In the past, the outcome of such situations has depended heavily on how well the liberal powers have managed them. In the 1920s, the leading liberal states lacked the technical knowledge and the political support to create a system to solidify liberal rights-based regimes in rising illiberal or transitional states. After 1945, they did far better in creating a stable capitalist system with social welfare democracies at its core. The rise of “neoliberal” deregulated markets after 1980 weakened some of the stabilizing practices of the post-1945 system, contributing to the 2008 world financial crisis.<sup>27</sup> In the aftermath of 2008, some commentators still argued that “the system worked,” but that conclusion seems more in doubt from a vantage point after the populist electoral surge of 2016–17.<sup>28</sup>

A solution will need to come not from illiberal states that take shortcuts on rule of law and human rights, but from the liberal states themselves. The latter are the states that have created the international order that illiberal powers are exploiting for their rise. The sometimes perverse incentives of this system are shaping many of the illiberal powers’ central social, economic, and institutional features. For that reason, the liberal powers need to stabilize their system in a way that creates the right incentives for rising powers to liberalize.

Fortunately, the liberal tool kit already contains the solutions to Polanyi’s conundrum. They have been used successfully before: politically regulated markets embedded in democratic social welfare states, using policy tools of Keynesian domestic economic management and Bretton Woods–style adjustment arrangements at the international level.<sup>29</sup> The growing contradictions in liberalism have been caused by the disembedding of markets for capital, goods, and labor from democratic control, and they can be fixed by redesigning the control mechanisms of social welfare democracy for adaptation to current conditions.

Human rights, including civil-political and economic-social rights, are central to the functioning of this system. Its market dimension requires stable and fair rights to property and contract. Its dimension of political accountability requires freedom of speech and assembly, democratic participation, and governance through institutions that regulate domestic and international markets and make them accountable to citizens. Both the market and the political dimensions rest on the impartial rule of law (not Chinese-style politicized rule *by law*).<sup>30</sup> Rights are not a sideshow to justice in the functional welfare state;

they are the keystone to all the elements that makes liberal modernity work.<sup>31</sup> No rights, no functioning modernity.

In pragmatic efforts to restabilize this system, the human rights movement will be on firm ground theoretically and tactically if it prioritizes the struggle against corruption and inequality. Not only do these issues resonate with the zeitgeist, they are anchored in the modernizing logic of the shift from clientelistic societies based on in-group favoritism to inclusive societies based on impartial rules. Corruption should be considered a human rights issue, as laid out in the 2005 UN Convention against Corruption, which has over 140 state signatories.<sup>32</sup> The nearly universal popularity of the anticorruption issue harbors great potential for human rights mobilization. The human rights movement has been relatively disengaged from these issues, which constitute a major missed opportunity when human rights are under duress. Recently, however, Kenneth Roth, the executive director of Human Rights Watch, has been more vocal in featuring corruption in his criticism of “zombie democracies.”<sup>33</sup>

### Are Legalism, Shaming, and Universalism Working?

In recent decades, the international human rights movement has played down the central role of political power and self-interest in advancing its cause, emphasizing instead themes of legalism, moralism, altruism, and universalism. I argue that this bias hinders the ability of the movement and its potential constituencies to mobilize effectively in defense of human rights at a critical time when opponents of rights are everywhere on the rise.

The mainstream community of nongovernmental human rights activists has developed a standard strategy that features formulating and publicizing human rights norms, codifying them in human rights treaties, persuading audiences to press states to ratify the treaties, institutionalizing laws and norms in domestic and international practices, and shaming and punishing violators.<sup>34</sup>

The blueprint for this strategy is in the preamble of the UN General Assembly’s 1948 Universal Declaration of Human Rights, which claims the status of “a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and

observance.”<sup>35</sup> Many of the loosely formulated aspirational rights listed in the UDHR were subsequently defined and codified in treaties such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.

Once aspirations, norms, and laws begin to take shape, activists seek to persuade more states and nonstate actors to ratify or endorse them, hoping to set off a “norms cascade,” leading to a widespread social or legal consensus on a standard of appropriate behavior.<sup>36</sup> Treaty ratifiers who fail to live up to their commitments are “named and shamed” into compliance. In cases where claims for a consensus of right-thinking people can be made with some plausibility, even nonratifiers are shamed and pressured. A crucial second-order tactic is to shame powerful ratifiers, such as the governments of wealthy democratic great powers, into exerting diplomatic, legal, economic, or even military coercion against noncompliant norms outliers and cheap talkers.

Sometimes this approach can work. In an early poster case for this so-called boomerang model, Argentina’s aggrieved Mothers of the Disappeared fed information to the New York–based NGO Americas Watch (a precursor of Human Rights Watch), which publicly pressured the US government to impose sanctions on the Argentine military junta and demanded trials of “big fish” generals once the regime fell.<sup>37</sup> This strategy got a lot of help from the fact that the incompetent junta had presided over the collapse of the national economy and lost a war that it started with Great Britain over who owned the Falkland Islands.

Sometimes the unbending, universalistic tactics of legalism and shaming can overreach and provoke sharp resistance. In the Argentina case, trials had to be called off when a tank army threatened a revolt to stop them. Sometimes, however, trials are not called off when threats loom. In the aftermath of ethnic slaughter in Bosnia, when pragmatists criticized Richard Goldstone, the war crimes prosecutor of the International Criminal Tribunal for the former Yugoslavia, for launching trials that risked provoking violent backlash from Serbian nationalists, he replied with the classic dictum, “Let justice be done, though the world perish.”<sup>38</sup> Note, however, that while Goldstone gave no quarter to Serb war criminals who were outright spoilers, such as Ratko Mladic and Radovan Karadzic, he was careful to delay indicting Serb President Slobodan Milosevic, who was bargaining seriously with the US peace negotiator Richard Holbrooke.<sup>39</sup>

Human rights activists argue that their strict, unrelenting standards of accountability for violations are valid irrespective of whether they lead to

successful results in the short term. Nonetheless, they do typically claim that the tactics of legalism, moralism, and universalism have been successful in improving human rights outcomes. In chapter 2, I examine the normative differences between my pragmatic outlook and the activists' more absolutist stance, but let's first review the empirical track record of mainstream efforts to advance the rights cause.

In the three decades since the collapse of communism, mainstream rights advocacy has enjoyed substantial public and private funding, the backing of all advanced democratic states and major international organizations, massive favorable media publicity, and ideological hegemony in liberal circles. It is a fair question to ask how well they have been doing. Some critics say not well: the mainstream approach is "utopian," having only a shallow impact and possibly heading toward its "endtimes."<sup>40</sup> Defenders of existing methods, in contrast, argue that there have been major successes in establishing norms and creating institutions, as well as steady if partial successes in achieving practical outcomes on the ground. What does the best research say?

Empirical research on human rights has flourished over the past two decades, moving from a productive early phase of empirical theory development into a more recent phase of sophisticated, multimethod research and debate among different theoretical approaches and research strategies.<sup>41</sup> Broad consensus exists among both critics and defenders of mainstream practices about the conditions that promote and hinder positive rights outcomes.

Quantitative studies report that two factors are the most important predictors of the quality of rights outcomes in a country: whether the country is at peace or at war, and how democratic the country is. Some might see the democracy finding as bordering on the circular, since most measures of democracy assume the existence of the civil liberties and legal apparatus that makes democracy possible. And so it is.<sup>42</sup> But many of the other strong findings about the correlates of good rights outcomes are either causes, attributes, or consequences of democracy. This suggests that the link between democracy and rights is not just a tautology but is based on a complex of mutually supporting causal factors that sustain rights outcomes. These include a reasonably high per capita income, which is the single strongest predictor of democracy. Also important is a fairly strong institutional capacity of the state, including an effective, impartial bureaucracy and strong representative and legal institutions. Also conducive to rights is a progressive, socially inclusive ruling coalition that is "on the left."<sup>43</sup>

Risk factors that harm rights also threaten democracy. Economic inequality undermines both rights and democracy.<sup>44</sup> A large population is likewise a risk

factor for rights abuse, possibly because of the difficulty of democratically governing culturally diverse peoples in a single state.<sup>45</sup> Some findings suggest that there is “more murder in the middle”: democratizing states endure similar levels of rights abuse to authoritarian states as a result of contentious mass mobilization in a context of weakly developed institutions for managing mass political participation. These studies find that any benefit to rights outcomes from democratization accrues only after passing a rather high threshold to nearly complete democracy.<sup>46</sup> Treaty signing and mainstream methods of legal and activist follow-up have their greatest benefit for rights improvement in these successfully democratizing states.<sup>47</sup>

These statistical results correlate fairly closely with the list of conditions that qualitative scholars say hinder typical strategies of rights promotion. They find that mainstream methods work less well in authoritarian regimes, in very weak and very strong states, in issue areas where violations are socially decentralized, and where the rights-abusing state enjoys popular support.<sup>48</sup>

Notwithstanding this consensus on the facilitating conditions for rights, there is much less consensus on the overall success of rights activism in improving rights outcomes. Critics of prevailing human rights strategies argue that most rights outcomes, defined in terms of treaty compliance, have not improved in recent decades despite the intense rhetoric and mobilization of the global rights movement.<sup>49</sup> Defenders of the movement’s achievements argue that the apparent lack of progress is an optical illusion: improved data have turned up violations that previously would have gone unreported.<sup>50</sup> They also argue that it is too soon to judge the success of mainstream rights strategies, because strengthening global norms through persuasion and institutionalization is necessarily a gradual process. For example, despite the International Criminal Court’s minimal conviction rate and Africa-dominated docket, they emphasize that the institutional base for future success has been established.<sup>51</sup>

There is only partial consensus about the effects of different tactics. Research suggests that mainstream rights approaches work well mainly in what might be called easy cases: countries that are already fairly democratic, have respectable administrative capacity, have somewhat independent courts, and tolerate robust activism by principled civil society groups.<sup>52</sup> There is little agreement, however, on the effects of different tactics in harder cases.

Many studies have attempted to identify the conditions in which shaming works, but with little convergence so far. Some studies find that shaming is often ineffective or even counterproductive, leading to backlash.<sup>53</sup> Emilie

Hafner-Burton, based on statistical findings and numerous brief illustrations, finds that shaming is generally correlated with improvements in political rights but not physical integrity rights. She concludes that denunciations can have a “whack-a-mole” effect, leading the abuser to shift from more visible repression to clandestine measures.<sup>54</sup> Other studies stress more positive findings, many of them trying to identify the conditions under which shaming is effective. Ann Marie Clark, illustrating her statistical study with the example of Indonesia, finds that shaming reduces rights abuse in countries that have ratified rights treaties, even if they are nondemocracies.<sup>55</sup> Another statistical study, by Amanda Murdie and David Davis, finds that shaming by human rights organizations improves rights outcomes if local activists are numerous and if foreign states echo the denunciations of the activists.<sup>56</sup>

This pattern of research findings suggests that there are four key barriers to improving rights using mainstream tactics, which correspond to four main arguments of my book. The first barrier is a set of structural factors that make a social or political situation impervious to solutions based on law, normative persuasion, shaming, and punishment. These techniques are unable to gain traction in conditions of war, anarchy, autocracy, dire poverty, illiteracy, institutional incapacity, and the absence of strong political coalitions that favor or benefit from human rights. The implication is that a preliminary step for rights improvements must be to create stronger facilitating conditions.

The second barrier, typically an outgrowth of such underlying structural problems, is the presence of powerful spoilers that have strategic reasons to resist human rights improvements because their power and their predatory economic methods rely on violence, repression, intimidation, corruption, and discrimination.<sup>57</sup> Insofar as some of these actors, such as warlords and criminal organizations, are purely strategic actors who are impervious to normative leverage, hardly any of the usual tactics of mainstream rights advocates carry much weight. Such spoilers must be forcefully defeated, politically isolated, or bargained with.

The third barrier is a set of decentralized social dilemmas in which established practices lock people into abusive patterns of behavior even when their self-defeating nature is widely understood. For example, situations of lawless anarchy or extreme resource scarcity compel individuals or groups to adopt aggressive and predatory behaviors in struggling for security and subsistence. Related to this, entrenched systems of corruption commonly compel the participation of individuals regardless of personal inclination; when “everybody does it,” there is often no other way to accomplish a task.<sup>58</sup> This corresponds

to another major argument of the book: human rights prevail when they are stabilized by effectively implementing institutions that solve social dilemmas by reshaping incentives and reliably providing public goods.

The fourth barrier is resistance from illiberal, traditionalist, or communitarian norms competitors who can make persuasive appeals to constituencies that are skeptical of or threatened by human rights ideas. Cosmopolitan ideas coming from powerful liberal states, law-based institutions, and market-driven economic actors inherently challenge the worldviews and interests of religious actors, nationalists, tribal leaders, anti-imperialists, and patronage-based economic networks.<sup>59</sup> All such elites have at their disposal deeply embedded ideological tools and mass social constituencies that can be easily activated to resist outsiders' alien ideas that threaten established interests and folkways. Naming and shaming are likely to play directly into the hands of these forces of ideological resistance.

A common thread tying together these points is that insisting that people act based on the fiction that aspirational norms are actually in force misunderstands the problem and can aggravate abuse. Yet the mainstream approach often adopts this counterfactual stance, demanding that "what ought to be" should trump "what is." Instead, I argue that in sequencing the shift to a rights-based society, politics and power must lead, rights follow.

## Plan of the Book and Standards of Evidence and Argument

This book is a work of synthesis, pulling together insights and evidence from diverse sources to show how human rights can become a reality in modern societies. The order of the chapters is designed to follow the logic of the five steps of my pragmatic theory: the emergence of favorable conditions for the system of impersonal social relations, bargaining among powerful self-interested coalitions, the institutionalization of rights, persuasion in the vernacular, and throughout the book, pragmatic sequencing of rights initiatives. Within each chapter, I flesh out the mechanisms that come into play in laying the foundation for human rights.

Chapter 2 accomplishes two framing tasks. First, it addresses readers who might think that a pragmatic theory of human rights is a contradiction in terms. When I told one of my research assistants that I wanted her to work with me on a book on a pragmatic approach to human rights, she was perplexed. She said, "I thought that human rights are by definition idealistic, not pragmatic." Activist exhortations could indeed create that impression.

The chapter begins by explaining how pragmatic philosophy applies to human rights.

Second, the chapter explains how rights emerged along with modernity. Drawing on the canon of historically grounded social theory, I argue that one does not need to see liberalism as the teleological end of history to understand the long-term functional advantages of rule-based individualism for modern social organization. I stress the difficulty with which the liberal system emerges, however, and the likelihood of failures and reversals on its path. I argue that a successful trajectory depends on facilitating conditions and advantageous sequences in development. In this contest, the winning system can still have flaws; it just needs to perform better than the menu of alternative models of society with which the system competes and cooperates at any given time.<sup>60</sup> I also argue that the necessary role of national self-determination in the realization of civic rights gives states rather than international bodies priority in the advancement of human rights.

Chapter 3 fleshes out all the building blocks of the social power theory of human rights, including its structural preconditions; the role of power, self-interest, and bargaining in the making of a pro-rights coalition; and its facilitating institutions and ideology. The chapter addresses how these mechanisms build on each other and how to sequence pragmatically the development of these facilitating conditions for rights. It also explains how and why the process proceeds from rights motivated by self-interest to more general conceptions of rights, including human rights. This happens, I argue, because general rules are functional to cooperation in complex systems and because generalized norms help persuade diverse groups to join in a broader, more powerful reform coalition.

Chapters 4 and 5 focus on the fraught process of moving across the threshold from a society based mainly on repression and patronage to one based on impartial rules for rights-based political participation and economic activity. Chapter 4 applies the theory laid out in chapters 2 and 3 to understanding political transitions from authoritarian to liberal regimes, with special attention to pragmatic designs for anticorruption reforms, accountability for the crimes of the old regime, and the first post-transition elections. Chapter 5 deploys the theory to illuminate the crucial role of human rights in shaping the politics of contemporary China's incomplete transition to a market economy.

Chapters 6 and 7 highlight the role of institutions in facilitating the advancement of rights. Chapter 6 argues that the contemporary human rights movement is weakened by its narrow view of civil society. The chapter shows

the need for a mutually supportive tripod of complementary institutions to underpin a powerful coalition to push for human rights: not only elite human rights advocacy organizations, but also mass social movements and progressive political parties, all acting in concert. Chapter 7 corrals a sacred cow of the US human rights movement: free speech absolutism based on a widespread but unjustified understanding of the First Amendment. The benefits of free speech depend decisively on the journalistic and regulatory institutions that create forums to organize open discourse in a constructive way. Freedom of the press is the complementary but overlooked ingredient that is needed to produce the magic of the First Amendment.

Chapters 8 and 9 illustrate the need for human rights advocacy to undertake persuasion in the local vernacular. Chapter 8 takes on another sacred cow: the naming and shaming of rights violators. When outsiders denounce routine local practices as violations of universal rights, custodians of sacred values can readily mobilize mass support to protect their culture against imperialist meddling. The chapter draws on social psychology to propose pragmatic steps to promote better practices without triggering counterproductive backlash. Chapter 9 reviews a large body of research on the conditions that sustain female genital cutting, drawing out recommendations for combining more subtle persuasion with the creation of facilitating structural conditions for reform.

The empirical chapters are designed to demonstrate pragmatism's relevance across a broad range of major, contentious rights topics. These include topics most conducive to the view that "power leads, rights follow," such as bargaining with powerful spoilers during democratic transitions, but also cultural identity issues that might not seem like the easiest terrain for a pragmatic approach. The latter include the role of religion in mobilizing mass movements for social justice (chapter 6), community sensitivity over shame and status (chapter 8), and culturally entrenched practices affecting women's reproductive health (chapter 9).

Works like this one that attempt to synthesize arguments across a broad range of periods, locations, and issues are obligated to employ diverse strategies of evidence and inference. My standard for evaluating broad framing theories from the canon of historical sociology is whether they have generated an active empirical research program that demonstrates staying power in rigorous debates.<sup>61</sup> For generalizing applications of these theories across diverse thematic issue areas, the standard is demonstrating empirical reach without having to stretch the meaning of the core concepts.<sup>62</sup> For empirical illustrations

of concepts, the standard is depicting the causal mechanism at work and variations in outcomes. For invoking secondhand statistical findings, the standard is the use of well-vetted sources and the acknowledgment of any significant contrary findings. In some places, I employ standard principles of comparative research design, for example, chapter 4's "most similar case" and "hard case" comparison of ethnic politics in democratizing Malaysia and Sri Lanka. In the free-speech and media chapter, I reframe the best available secondary sources to analyze a naturally occurring experiment in which the sudden arrival of satellite TV dramatically increased the availability of information and diversity of opinions in Arab media. Because little existing research directly addressed the main questions of that media chapter, my Columbia colleague Tamar Mitts and I designed and carried out some correlational statistical tests, while not making strong causal claims. In contrast, one of the reasons I chose to study female genital cutting in chapter 9 was the wealth of statistical, survey, comparative, and ethnographic research that allowed a multifaceted exploration of the topic. In several chapters I have also drawn illustrations from my own interviews of human rights activists, humanitarian practitioners, businesspeople, journalists, government officials, and scholars in New York and on research trips to China, Egypt, Hong Kong, Indonesia, Myanmar, Turkey, and Ukraine.

Sometimes the most important methodological question is where to place the bar for an argument to be convincing as a guide to action. In presenting this research to audiences of mainstream human rights professionals, I have found that the most common disagreement hinges not on the facts or the causal interpretation, but on what to do about it. Conversations tend to go like this: "All of us here know that shaming by outsiders is not the preferred approach, so we always try to quote locals who make critical remarks. In any case, how is it possible to push for change without making justified criticisms?" Or like this: "Of course there will be resistance from people who want to continue these abuses, but saying that critical persuasion works only in favorable circumstances is essentially saying we should do nothing."

The part of my presentation that practitioners usually like best comes when I tell them that they may be able to use their current approach more successfully if they adjust their tactics slightly: for example, focus on guilt for the action, not shame for the character flaw that led to it. What doesn't always get through is the more important part of the message: the most effective role for outsiders is to change the incentives and opportunities in the broad environment in which abuses occur. For example, eliminate import tariffs on fair trade

products. Import parts only from suppliers that comply with certified labor standards based on routine, transparent inspection. Offer free accounting training and technology upgrades for foreign banks that voluntarily and verifiably implement a standard package of anticorruption measures. Then wait for the targets of persuasion to decide for themselves whether adopting rights-compliant attitudes and behaviors will work for them. At the level of the country or the individual firm, research shows that international trade can produce a “race to the top” when incentives are favorable, not just a race to the bottom for cheaper, more exploited labor.<sup>63</sup> This can be best achieved not with the hard sell, but through the open door.

Far from “doing nothing,” the strategy of the open door requires doing a lot. In fact, it takes more effort than sending out a scathing press release. As I explain in chapter 10, it requires patience, and it sometimes requires action by people with skills, resources, and social networks who are different from many human rights activists. Most important, it requires thinking about the big picture and the fundamental drivers of action over the long term.

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