Human Rights in Canadian Domestic and Foreign Politics: From "Niggardly Acceptance" to Enthusiastic Embrace

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ABSTRACT

Human rights transformed international politics beginning in the 1970s. This transformation was rooted in a dialectical relationship between international and domestic human rights institutions and movements. This article explores how we can use social movements, law, and politics to demonstrate the way international human rights norms were received, interpreted, and applied domestically and how this affected states' participation in international politics. The focus is on Canada, which was profoundly influenced by international human rights norms and in turn contributed to transforming international politics. These developments were especially pronounced in the 1970s.

I. INTRODUCTION

John Humphrey, the Canadian who produced the first draft of the Universal Declaration of Human Rights (UDHR), like many other men and women of his generation, was a great admirer of Eleanor Roosevelt. There were moments, however, in the midst of the negotiations surrounding the UDHR when Humphrey worried that the US State Department was providing

Roosevelt with poor advice. He feared that they were exploiting her position as chair of the Commission on Human Rights to use the UDHR as a Cold War propaganda tool:

> [Roosevelt's tactics were] dishonest, scandalous business. . . . She is, of course, blindly anti-Soviet and perhaps does not realise that she is often unfair. . . . She has contributed largely to the growing hate in this country of the USSR and she is making of the Declaration a weapon with which to fight that country in the cold war.[1]

A common theme in the international literature on human rights is that opportunities for human rights promotion were often stifled in the context of the early Cold War period.[2] The United Nations "became a surrogate battlefield for the Cold War, and cooperation between the West and the Soviet Bloc deteriorated. The Cold War created ideological arguments over the meaning and determination of which rights deserved entrenchment into the organization's many conventions and treaties."[3] Several recent studies on the history of human rights law and politics have concluded that, until the 1970s, the Cold War had a dampening effect on human rights progress.[4] Due to the international political environment, no humanitarian interventions occurred through the United Nations Security Council during the early decades of the Cold War.[5] In the 1950s and 1960s, human rights enforcement

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1.   ON THE EDGE OF GREATNESS: THE DIARIES OF JOHN HUMPHREY, FIRST DIRECTOR OF THE UNITED NATIONS DIVISION OF HUMAN RIGHTS VOL. 1. 1948–1949 177, 249 (A. J. Hobbins ed., 1994). Diaries should not be read as a considered opinion based on reflection. Instead, they capture a moment in time. According to John Hobbins, Humphrey deeply respected Eleanor Roosevelt. In the 1940s, there were moments when he felt that she allowed the State Department, which was highly partisan in its approach to the UDHR, to unduly influence her actions. Humphrey, like other members of the Commission including Charles Malik and P. C. Chang, believed that their role at the United Nations should be independent and not answer to national interests. KIRSTEN SELLARS, THE RISE AND RISE OF HUMAN RIGHTS 74–75 (2002). David Forsythe argues that the UDHR would never have been approved if it had been introduced a few years later when the "Great Powers" were fully engaged in the Cold War. DAVID FORSYTHE, HUMAN RIGHTS IN INTERNATIONAL RELATIONS 41 (2d ed. 2006).
2.   On human rights and the early cold war period, see FORSYTHE, *supra* note 1, at 41, 43; ANNEMARIE DEVEREUX, AUSTRALIA AND THE BIRTH OF THE INTERNATIONAL BILL OF HUMAN RIGHTS, 1946–1966 (2005); SELLARS, *supra* note 1; SUSAN OLZAK, THE GLOBAL DYNAMICS OF RACIAL AND ETHNIC MOBILIZATION (2006); Jack Donnelly, *Genocide and Humanitarian Intervention*, 1 J. HUM. RTS. 93 (2002); JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS 7 (2d ed. 1998); Cynthia Soohoo, *Human Rights and the Transformation of the "Civil Rights" and "Civil Liberties" Lawyer, in* BRINGING HUMAN RIGHTS HOME: A HISTORY OF HUMAN RIGHTS IN THE UNITED STATES 198 (Cynthia Soohoo et al. eds., 2009).
3.   CHRISTOPHER MACLENNAN, TOWARD THE CHARTER: CANADIANS AND THE DEMAND FOR A NATIONAL BILL OF RIGHTS, 1929–1960, at75 (2003).
4.   Kristen Sellars further suggests that the Ford Foundation, which became a major funding source for transnational human rights activism since the 1970s, only turned to human rights work as the Cold War eased. SELLARS, *supra* note 1, at 139.
5.   Donnelly, *Genocide and Humanitarian Intervention, supra* note 2, at 94. Donnelly continues:

efforts were impaired by what Julie Mertus describes as "the ideological tug and pull of the cold war."[6] The priorities of international politics eroded the moral force of universal human rights as leaders justified incongruous policies on "human rights, democratic practice, arms supplies, trade, aid, and intervention" as necessities of the Cold War environment.[7] Human rights, as Kathleen Mahoney argues, were used to advance global strategic interests:

> By and large, each side used human rights as a tool for finding fault with and imputing immorality to the other. . . . The discussion of human rights became part of a rhetorical political game in which players sought to undermine the legitimacy of others while turning a blind eye to human rights abuses within their own spheres of influence.[8]

As studies of transnational human rights activism demonstrate, Cold War politics also undermined opportunities for grassroots mobilization.[9] It is difficult to imagine human rights transforming international politics during the height of the Cold War.

Despite the political atmosphere of the 1950s and 1960s, human rights did transform international politics as the Cold War began to wane in the 1970s. The proliferation of international human rights declarations, treaties, and conferences highlighted the emergence of human rights as a political force.[10] Samuel Moyn contends that human rights only came to the fore of international politics in the 1970s because other utopian ideals, such as communism, had been discredited. Only then did human rights transcend official domestic and international governmental institutions as a "genuine social movement."[11]

> In the political circumstances of the Cold War (and the immediate post-Cold War era), I argued strongly against a humanitarian exception to the principle of non-intervention. Despite the strong moral case, the political and legal environments were so unpromising that giving priority to the danger of partisan abuse seemed the best course. There was a clear international normative consensus, across the First, Second and Third Worlds, that humanitarian intervention was legally prohibited. And genuinely humanitarian intervention was politically unlikely, both because of the veto in the Security Council and because there were few instances in which either superpower even desired to intervene for reasons that were centrally, let alone primarily, humanitarian. The problem during the Cold War was less too little intervention of the right kind than too much of the wrong kind. A pattern of superpower *anti*-humanitarian intervention, in places such as Guatemala, Hungary, Czechoslovakia and Nicaragua, was well established.

> *Id.* at 97.

6. Julie A. Mertus, Human Rights Matters: Local Politics and National Human Rights Institutions 5 (2009).
7. Nancy Gordon & Bernard Wood, *Canada and the Reshaping of the United Nations*, 47 Int'l J. 479, 499 (1992).
8. Kathleen E. Mahoney, *Human Rights and Canada's Foreign Policy*, 47 Int'l J. 555, 561 (1992).
9. Thomas Risse & Stephen C. Ropp, *International Human Rights Norms and Domestic Change: Conclusions, in* The Power of Human Rights: International Norms and Domestic Change 234 (Thomas Risse et al. ed., 1999); Margaret E. Keck & Kathryn Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics (1998); Olzak, *supra* note 2.
10. Mertus, *supra* note 6.
11. Samuel Moyn, The Last Utopia: Human Rights in History 8 (2010).

This transformation took the form of action and rhetoric premised on the belief that citizens and governments had a legitimate interest in the human rights of people in other states. Human rights ideals placed the individual beyond the state and legitimized intervention in the internal affairs of states to protect the rights of citizens. Examples of this transformation include the Carter administration's promotion of human rights in American foreign policy; the first US State Department annual human rights reports; the emergence of international human rights organizations such as Amnesty International and Human Rights Watch; and international treaties, including the United Nations covenants and the Helsinki Accords.[12] As a result of these and similar developments, human rights "reached consensual ('prescriptive') status on the international level."[13]

If there is a weakness in current literature on human rights in inter-national politics, it is the failure to account adequately for the dynamic between international and domestic developments.[14] Jean Quataert's recent book highlights this deficiency through a discussion of how "human rights consciousness has shaped a new form of global politics, which is sustained by all manner of *local* struggles."[15] Local studies offer original insights into the impact of human rights on international politics. For example, the in-ternational rights movement affected Canada profoundly. Expansive human rights codes replaced weak anti-discrimination laws across the country, and in 1982, the constitution was amended to include a bill of rights. Interna-tional treaties largely inspired these reforms, which constituted one of the most sophisticated human rights legal regimes in the world.

A Canadian social movement dedicated to the principles of the Uni-versal Declaration of Human Rights emerged in the 1970s. Rather than adhering to the country's traditional approach to rights as civil liberties, this movement embraced the more expansive human rights paradigm. This

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12. Other examples include the first postwar international humanitarian effort (Biafra); the mobilization of transnational advocacy networks surrounding gross human rights abuses in Argentina and Chile; Soviet dissidents organizing around the regime's international human rights obligations; the Ford Foundation's initial forays into human rights promo-tion abroad; the stirrings of a global campaign against apartheid in South Africa; and the proliferation of human rights policies in individual countries' foreign aid programs.

13. Risse & Ropp, *supra* note 9, at 266. This study demonstrates how a process of "nor-malization" or "socialization" occurred wherein human rights principles became an integral part of international politics. The overall collection, within which this article appears, offers a series of case studies to demonstrate how violators can deny or reject rights claims, but over time they have to accept and engage in dialogue surrounding their own human rights record (or risk isolation and sanctions). Over time, this dialogue became a basis for addressing rights abuses within states.

14. Jean Quataert comes to a similar conclusion in her overview of the literature on human rights, and calls for social historians to make a contribution to the history of human rights: Jean H. Quataert, Advocating Dignity: Human Rights Mobilizations in Global Politics 9–13 (2009).

15. *Id.* at 7 (emphasis added).

article uses Canada as a case study to explore how international politics were both deeply informed by and simultaneously had a profound impact on domestic law, politics, and social movements. It shows how even a small nation, such as Canada, came to play a leading role in promoting human rights as a principle of international politics.

This article documents how the Canadian government was forced, after repeated refusals, to support the UDHR in 1948. It shows how Canadian activists and politicians were deeply inspired by international developments; how activists used Canada's international commitments successfully to demand domestic legal reform and pressure the government to participate more fully in international institutions; how as Canadians became more involved internationally, rights rhetoric informed many aspects of domestic politics and activism; and how, ultimately, Canada actively sought to promote human rights abroad. These developments were deeply rooted in the 1970s. The Canadian experience suggests that a study of international politics and human rights must consider the dialogical relationship between domestic and international forces. The first section of the article documents Canada's early history and the lack of a strong commitment to human rights at home and abroad. The second section analyzes the impact of international human rights politics on Canadian domestic law, social movements, and politics. The third section examines how countries such as Canada promoted human rights as a principle of international politics.

II. CANADA AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

For a country that would eventually become an international advocate for human rights, one of the greatest ironies in Canadian history is that the Canadian government initially wanted nothing to do with the UDHR. Considering the federal government's position in 1948, it is astonishing how enthusiastically Canadians have since embraced human rights as a staple of international politics.

René Cassin received the Nobel Peace Prize in 1968 for his work in producing the UDHR, but it was Canadian John Humphrey, who drafted the original version of the Declaration. Yet, Humphrey's own "government's attitude toward the Declaration was skeptical; at its extreme, Canada's attitude bordered on hostility."[16] When the Third Committee of the General Assembly voted on the proposed UDHR, only Canada and the Soviet-bloc abstained. Canada's Secretary of State for External Affairs, Lester B. Pearson,

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16.   William A. Schabas, *Canada and the Adoption of the Universal Declaration of Human Rights*, 43 McGill L. J. 403, 406 (1998).

was horrified at the thought of voting alongside the Soviets for the forth-coming final vote in the General Assembly. He urged the federal cabinet to change its position. Canada's abstention also puzzled its traditional allies, and Pearson was under intense pressure to support the Declaration. When the Soviet-bloc, South Africa, and Saudi Arabia abstained in the final vote, Canada voted in favor.[17]

Debates surrounding the UDHR were not restricted to the Commission on Human Rights or the United Nations. Thousands of miles away, in Ottawa, the country's political leaders engaged in fierce debates surrounding the UDHR, and the Prime Minister remained in close contact with his delega-tion to the United Nations.[18] Ostensibly, the Canadian government was not opposed to the UDHR, but insisted that the federal government could not support a document with provisions that fell within provincial jurisdiction (e.g. property, hours of work, education), despite knowing that the Declara-tion was a non-binding instrument. In other words, it was no threat to the provinces.[19] Why, then, was the cabinet obfuscating?

The cabinet was cognizant that the government's human rights record, especially during the war, was sketchy.[20] Several senior cabinet ministers feared (rightly so, in retrospect) that people would use the UDHR to criti-cize the government's human rights record. Not only had the government imposed extensive restrictions on basic freedoms during the war (as had other countries), but it had authorized the forcible removal of all Japanese Canadians from the West Coast.[21] Moreover, the government was still facing public criticism from its decision in 1946 to suspend the rights of a group of suspected Russian spies, an action that had no precedent in Canadian history and raised a storm of controversy (the "Gouzenko Affair").[22] The Prime Minister feared the Declaration could be used

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17.   *Id.* at 435–437.
18.   "Canada seemed proud of the fact that its elected officials had reviewed the draft *Dec-laration,* something that few, if any, of the other members of the United Nations had apparently taken the trouble to do." *Id.* at 416.
19.   *Id.* at 420.

> Raising the spectre of provincial jurisdiction was plainly insincere, and [Ralph] Maybank [head of the Canadian delegation] virtually admitted as much in his speech when he said the matter could be "left in abeyance" because the *Declaration* was no more than "a simple declaration whose endorsement does not require legislative action by member states." . . . But the argument was a convenient one, implying to uninformed delegations from other states that the intricacies of Canada's inscrutable constitution might explain and even justify a less enthusiastic approach to the *Declaration.*

20.   "Yet Canada was in many ways a repressive society, and its human rights record com-pared unfavourably in several respects with that of the United States and the United Kingdom." *Id.* at 410.
21.   After the war, the government also rescinded the citizenship of thousands of Japanese Canadians and sent them to Japan, including citizens born and raised in Canada. For more on these events, see STEPHANIE BANGARTH, VOICES RAISED IN PROTEST: DEFENDING CITIZENS OF JAPANESE ANCESTRY IN NORTH AMERICA, 1942–49 (2008).
22.   Dominique Clément, *Spies, Lies and a Commission: A Case Study in the Mobilization of the Canadian Civil Liberties Movement,* 7 LEFT HIST. 53 (2000).

> to provoke contentious even if unfair criticism of the Government. . . . [We] have
> real apprehensions concerning the adoption of a Declaration in terms that may
> be open to criticism on juridical and political grounds and which might serve
> to provoke contention in the domestic as well as in the international field.[23]

Philosophically, the cabinet also opposed the UDHR's provisions for eco-
nomic and social rights. The Canadian Bar Association, whose president had a
close relationship with the Prime Minister, similarly opposed these provisions
and embraced its American counterpart's bitter opposition to the UDHR.[24]

Ultimately, the government's position might be explained as simple
indifference: "There was simply no human rights culture within the Depart-
ment of External Affairs," and the cabinet ignored the issue until the UDHR
approached ratification.[25] Humphrey later described Pearson's explanation
for their government's position as "[o]ne of the worst contributions" and
"a niggardly acceptance of the Declaration because, it appeared from Mr.
Pearson's speech, the Canadian government did not relish the thought of
remaining in the company of those who, by abstaining, rejected it."[26]

This indifference was partly a product of Canada's rights culture. As
Robert Manzer points out, there was no true doctrine of human rights in
Canada until the 1970s.[27] For example, the term "human rights" had yet to
gain popular currency. During the debates surrounding the Gouzenko Af-
fair, the media and Parliament rarely used the term "human rights." Instead,
Canadians were possessed of civil liberties, and popular discourse was often
rooted in references to traditional British liberties. Canada's fledgling rights
movement reflected this approach to rights. Organized Canadian rights ac-
tivists in the 1940s were composed entirely of self-professed "civil liberties"
associations.[28] Civil liberties associations campaigned for (as they understood
it) traditional British liberties: freedoms of speech, association, assembly, re-
ligion, press, and due process (and, by the 1940s, non-discrimination). None
of them embraced broader principles of human rights.[29] Another factor was
the principle of parliamentary supremacy which was embedded deeply in

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23.   Schabas *supra* note 16, at 427.
24.   A.J. Hobbins, *Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Uni-
        versal Declaration of Human Rights: Looking Back on the 50th Anniversary of UNDHR,*
        53 Int'l J. 325, 331 (1998).
25.   Schabas, *supra* note 16, at 441.
26.   Hobbins, *supra* note 24, at 338.
27.   "In making political demands or justifying public policies, Canadians have more often
        adopted a utilitarian or a collective welfare argument, advancing economic necessity,
        national prosperity, majority preference, charitable obligations, social welfare, and
        national unity." Ronald Manzer, *Human Rights in Domestic Politics and Policy, in* Hu-
        man Rights in Canadian Foreign Policy 42–43 (Robert O. Matthews & Cranford Pratt eds.,
        1988).
28.   Dominique Clément, Canada's Rights Revolution: Social Movements and Social Change,
        1937–1982 (2008).
29.   *See generally* Ross Lambertson, Repression and Resistance: Canadian Human Rights Activists,
        1930–1960 (2005).

the country's political and legal culture.[30] Thus, the courts never challenged the federal cabinet's prerogative to suspend due process and indefinitely detain and interrogate suspected spies (while being held incommunicado) in 1946.[31] The Minister of Justice in 1946, J. L. Ilsley, justified his government's decision to suspend the rights of suspected spies by appealing to the British principle of parliamentary supremacy: "[fundamental freedoms were] privileges which can be and which unfortunately sometimes have to be interfered with by the actions of Parliament or actions under the authority of Parliament."[32]

Finally, another factor worth noting is that human rights legislation did not exist in the 1940s; even by the late 1950s there was only a scattering of weak anti-discrimination statutes in Canada. Moreover, these laws were largely ineffective, rarely enforced, few people were aware they existed, and the legislation was poorly drafted.[33] Even the first attempts to legislate some basic equality rights were met with intense skepticism. Despite having introduced the Ontario Racial Discrimination Act in 1944 (the first anti-discrimination law in Canadian history), which prohibited the display of discriminatory signs, Ontario Premier George Drew insisted that "the best way to avoid racial and religious strife is not by imposing a method of thinking, but by teaching our children that we are all members of a great human family."[34] When a federal Parliamentary committee surveyed provincial

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30. Dominique Clément, *"I Believe in Human Rights, Not Women's Rights': Women and the Human Rights State, 1969–1984*, 101 RADICAL HIST. REV. 107 (2008); WALTER SURMA TARNOPOLSKY, DISCRIMINATION AND THE LAW IN CANADA 27 (1982).

31. Within the legal profession during the first half of the twentieth century, especially legal training, civil liberties was not yet an issue for substantive discussion and debate:

    Indeed, what is remarkable about constitutional thought during the war is the pronounced absence of civil liberties concerns. Although civil liberties had emerged as a peripheral aspect of the newer constitutional law, its position was not so integrated in the discipline's self-understanding so as to withstand a crisis perceived to threaten the foundations of the state itself.

    Eric Adams, The Idea of Constitutional Rights and the Transformation of Canadian Constitutional Law, 1930–1960, 79 (2009) (unpublished Ph.D. dissertation, University of Toronto).

32. The federal cabinet imposed similar measures in 1970 in response to a terrorist attack. Dominique Clément, *The October Crisis of 1970: Human Rights Abuses Under the War Measures Act*, 42 J. CAN. STUD. 160 (2008).

33. House of Commons, Hansard, Vol. 2, 1330 (1946). Parliament was held to be the defender of personal freedoms, as enshrined in the 1689 Bill of Rights. A.V. Dicey, possibly the most important thinker in British legal history and a mainstay of law school curriculum in Canada for most of the twentieth century, held that the

    principle . . . of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.

    A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION xxxvi (8th ed., Liberty Classics 1982) (1915).

34. James Walker, *The "Jewish Phase" in the Movement for Racial Equality in Canada*, 34 CAN. ETHNIC STUD. (2002).

attorneys general in 1948, it encountered universal opposition to placing a bill of rights in the constitution.[35]

Human rights were also not a foreign policy priority. The country accepted some minor international human rights obligations in the first half of the twentieth century. Canadians attended the Paris Peace Conference in 1919 and signed the Treaty of Versailles, joined the League of Nations, and ratified the International Labour Organization's conventions in 1935. Nevertheless, Canada was hardly committed to advancing human rights abroad. "I knew that the international promotion of human rights had no priority in Canadian foreign policy," Humphrey noted in 1948.[36] As late as the 1960s, the federal government had yet to embrace human rights as a foreign policy priority. Canada even went so far as to cite the principle of state sovereignty when it opposed international intervention over gross human rights abuses in South Africa in 1955 and Nigeria in 1968.[37]

Finally, the Cold War contributed to the country's lamentable human rights record. Only a handful of civil liberties associations were active in Canada by the 1950s, and yet even these few groups were bitterly divided between communists and social democrats (the latter allied with liberals). Their antipathy resulted in the formation of two separate organizations in Toronto: the Association for Civil Liberties and the communist-led Civil Rights Union. The Civil Liberties Association of Winnipeg refused to allow known communists to join, and the Ottawa Civil Liberties Association disbanded largely because of ideological conflict.[38]

Ideological divisions also defeated attempts to form a national civil liberties association.[39] The intensity of these divisions was such that, when the government committed one of the most egregious violations of civil liberties in Canadian history in 1946, several outspoken civil libertarians remained silent because the victims were suspected communists.[40] The federal government, in turn, often dismissed concerns surrounding human rights abuses, including its own brand of McCarthyism and vicious attacks against trade unionists, by accusing critics of being soft on communism.[41] In

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35.   Lambertson, *supra* note 29, at 346. Cathal J. Nolan, *Reluctant Liberal: Canada, Human Rights and the United Nations, 1944–65*, 2 Diplomacy & Statecraft 288 (1991).

36.   Schabas *supra* note 16, at 424. Schabas also notes: "A 112-paragraph document entitled "Views of Canada on Matters Before the United Nations" prepared by External Affairs bureaucrats for the Assembly did not even mention the Declaration." *Id.*

37.   Kim Richard Nossal, *Cabin'd, Cribb'd, Confin'd: Canada's Interests in Human Rights, in* Human Rights in Canadian Foreign Policy, *supra* note 27.

38.   Clément, *Spies, Lies and a Commission, supra* note 22, at 63, 68.

39.   Frank K. Clarke, *Debilitating Divisions: The Civil Liberties Movement in Early Cold War Canada, 1946–48, in* Whose National Security? Canadian State Surveillance and the Creation of Enemies 171, 177–178 (Gary Kinsman et al. eds., 2000).

40.   Dominique Clément, *The Royal Commission on Espionage and the Spy Trials of 1946–9: A Case Study in Parliamentary Supremacy*, 11 J.Can. Historical Ass'n. 151 (2000).

41.   Clarke, *supra* note 39, at 182.

this way, a discourse of civil liberties prevailed during the Cold War, unlike the expansive human rights discourse embedded in the UDHR.

Canadians were hardly alone in failing to embrace a rights revolution in the postwar period. The United States, Great Britain, France and others were dubious about the value of the UDHR.[42] The major powers, including the United States, did not see human rights as a foreign policy priority.[43] Human rights, according to Moyn, simply lacked popular appeal in the postwar period.[44] Moyn argues that international lawyers overwhelmingly rejected it as a basis for international law; anti-colonial movements embraced human rights, not to promote individual freedom, but for the purposes of state formation; no state prioritized human rights in foreign policy; the United Nations did little to promote human rights; and social movements had yet to embrace human rights as a vision for social change. He concludes that, rather than "turning to history to monumentalize human rights by rooting them deep in the past, it is much better to acknowledge how recent and contingent they really are."[45]

III. INTERNATIONAL POLITICS AND HUMAN RIGHTS IN CANADA

As Mary Dudziak has shown in her seminal study of the civil rights movement in the United States, international politics can profoundly influence domestic human rights politics and law.[46] In Canada, a genuine rights revolution was on the horizon by the 1970s. The development of human rights as a mainstay of international politics would soon have an influence on nearly all aspects of Canadian society.

A proliferation of international human rights agreements followed the UDHR. Canada's provincial governments, with a long history of defending their powers under the constitution, resisted any attempts by the federal government to ratify treaties that fell within their jurisdiction. Still, the federal government was under intense pressure from international institutions, a domestic human rights movement, and a maturing Canadian legal profession in the 1970s to ratify human rights treaties.[47] Moreover, the country faced a national unity crisis following the election of a separatist government in

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42.   MOYN, *supra* note 11, at 44–83; *see* QUATAERT, *supra* note 14, at 19–60.
43.   Andrew Moravcsik, *The Paradox of U.S. Human Rights Policy, in* AMERICAN EXCEPTIONALISM AND HUMAN RIGHTS 147 (Michael Ignatieff ed., 2005).
44.   MOYN, *supra* note 11, at 44–83.
45.   *Id.* at 225.
46.   Mary L. Dudziak, *Desegregation and the Cold War*, 41 STANFORD L. REV. 61, 97 (1988). *See generally*, BRINGING HUMAN RIGHTS HOME, *supra* note 2.
47.   Michael Behiels, *Canada and the Implementation of International Instruments of Human Rights: A Federalist Conundrum, 1919–1982, in* FRAMING CANADIAN FEDERALISM: HISTORICAL ESSAYS IN HONOUR OF JOHN T. SAYWELL 165–166 (Dimitry Anastakis & P.E. Bryden eds., 2009).

the province of Quebec, which among other things, managed to secure international "agreements" with France on a variety of social and cultural issues (thus challenging the federal government's treaty-making monopoly).

Participating in international treaties thus became, in a small way, a part of the federal government's national unity strategy.[48] As a first step, the federal government secured the provinces' consent to accede to the International Covenant on Civil and Political Rights, as well as the International Covenant on Social, Economic and Cultural Rights in 1976. The provincial governments agreed on the condition that they would be responsible for implementing provisions that fell within their jurisdictions.[49] In 1975, Canada created a Federal/Provincial/Territorial Continuing Committee of Officials on Human Rights to consult over international treaties.[50] Working with its provincial counterparts, the federal government later supported declarations or conventions on racism, children, and women's rights.

Meanwhile, numerous other countries were busy incorporating human rights principles into their respective constitutions and domestic law.[51] The United Kingdom established the Racial Equality and Equal Opportunities Commissions in 1971 and 1975, respectively. State and federal legislatures in both the United States and Australia introduced expansive civil rights legislation. In fact, as Linda Reif and Thomas Pegram demonstrate, the 1970s witnessed a proliferation of national human rights institutions across the globe.[52] Pegram describes the diffusion of human rights institutions as a "contagion effect." This process emerged from a "complex domestic, regional,

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48. KIM RICHARD NOSSAL, THE POLITICS OF CANADIAN FOREIGN POLICY 315–31 (3d ed. 1997); Mahoney, *supra* note 8.

49. It is not uncommon for local governments to take an active role in international affairs despite a federal government's monopoly of foreign affairs:

> Non-central government activity in contemporary international affairs is extensive: the Australian state of Victoria grappling with pressure to cancel contracts with French firms in protest against nuclear testing in the South Pacific in 1995; the government of Hong Kong lobbying members of the US Congress in the early 1990s on the issue of Most Favored Nation status for China to avoid the negative effects of a MFN denial on the Hong Kong economy; the state of Georgia seeking the approval of the International Olympic Committee for Atlanta as the site of the 1996 Olympic Games; the state of Maryland imposing sanctions against South Africa in 1985; the Australian state of new South Wales embarking on a policy to increase trade relations with China in the 1980s; the government of Catalonia undertaking an advertising campaign to attract foreign investment; or the Germany *Land* government of Baden-Wurttemberg undertaking active development assistance policies.

> *Id.* at 292–93. *See also* Martha F. Davis, *Thinking Globally, Acting Locally: States, Municipalities, and International Human Rights, in* BRINGING HUMAN RIGHTS HOME, *supra* note 2, at 258.

50. KIM RICHARD NOSSAL, ET AL., INTERNATIONAL POLICY AND POLITICS IN CANADA 290 (2011).

51. PAUL GORDON LAUREN, THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN 234 (2d ed. 2003).

52. Thomas Pegram, *Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions,* 32 HUM. RTS. Q. 729 (2010); Linda Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection,* 13 HARV. HUM. RTS. J. 1, 7 (2000).

and international interaction of actors, arenas, and modalities of diffusion" that resulted in a "wave phenomenon of varying intensity across regions."[53] It began in Europe and North America in the 1970s, and later in Africa, the Americas, and the Middle East in the 1990s. The interplay between domestic and international forces was a central feature of the spread of national human rights institutions.[54]

Canada not only participated in this phenomenon in the 1970s, but it went so far as to establish one of the most sophisticated human rights legal regimes in the world. Human rights laws bound the state to enforce human rights principles. The Charter of Rights and Freedoms, a constitutional bill of rights introduced in 1982, was the culmination of a political movement in the 1970s. It recognized, among other rights, gender equality, multiculturalism, language, and education.[55] In addition, provincial and federal governments introduced human rights laws between 1962 and 1977 that prohibited discrimination in housing, employment, and accommodation.[56] Every jurisdiction copied the province of Ontario's Human Rights Code (1962), creating remarkable uniformity across the country. Human rights codes incorporated existing anti-discrimination laws into a single statute and expanded the scope of the legislation from ethnicity, gender, religion, age, and nationality to cover sexual harassment, disability, pregnancy, criminal record, family status, and sexual orientation. Specially trained human rights officers investigated complaints. They were instructed to make every possible effort to conciliate complaints informally but, if conciliation failed, the government could appoint a formal board of inquiry. The Human Rights Commission represented the complainant before the inquiry, and complainants did not have to bear the cost of hiring legal counsel. Offenders might pay a fine, offer an apology, reinstate an employee, or agree to a negotiated settlement. Boards of inquiry and commissions were not courts; commissions

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53.   Pegram, *supra* note 52, at 730, 731–32, 737.
54.   *Id.*
55.   Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *enacted as* Schedule B to the Canada Act, 1982, c. 11 (UK).
56.   Human rights laws also banned discrimination in the display of signs, and in membership to unions or trade associations. A few largely symbolic initiatives, including the Saskatchewan Bill of Rights (1947) and the Canadian Bill of Rights (1960), preceded the proliferation of human rights laws in the 1970s. A series of Fair Employment and Fair Practices legislation were introduced in the 1950s; essentially bans on racial, ethnic and religious discrimination in employment, services and accommodation. In each case, however, these initiatives failed to achieve even their own limited mandate. Only one complaint, for example, was prosecuted in Ontario under its Fair Accommodation Practices Act between 1955 and 1962 (a restaurant owner, determined to refuse serving blacks, was fined $25 and $155 for costs in 1955). Editorial, *Discrimination and the Law*, Toronto Star, 3 Aug. 1961. For a full account of the history and development of human rights laws, see Lambertson, *supra* note 29; Rosanna L. Langer, Defining Rights and Wrongs: Bureaucracy, Human Rights, and Public Accountability 4 (2007); T.M. Eberlee & D.G. Hill, *The Ontario Human Rights Code*, 15 Univ. Toronto L. J. 448, 449–451 (1964).

were specialized government agencies that were efficient, accessible, and bore the cost of investigating and resolving complaints. Commissioners came from the ranks of academia, media, social activists, churches, and the legal community. Moreover, the government gave commissions the resources to pursue vigorous human rights education programs.[57]

The Canadian human rights system was among the most comprehensive in the world. Equality commissions in the United Kingdom, Australia, and the United States, for example, had far more restrictive mandates and arguably less effective enforcement mechanisms.[58] Despite the proliferation of human rights laws since the 1970s, including Eastern European and third world countries,[59] few of these models incorporated all the strengths of the Canadian system. These components of the Canadian system included professional human rights investigators, public education, research and lobbying for legal reform, representing complainants before formal inquiries, jurisdiction over public and private sector, a focus on conciliation over litigation, independence from the government, and an adjudication process independent of the courts.[60] Considering the lack of almost any effective

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57. For a detailed description of the operations and evolution of human rights law in Canada, see CLÉMENT, CANADA'S RIGHTS REVOLUTION, *supra* note 28; BRIAN HOWE & DAVID JOHNSON, RESTRAINING EQUALITY: HUMAN RIGHTS COMMISSIONS IN CANADA (2000).

58. According to the former Chairman of the Canadian Human Rights Commission and member to the United Nations Human Rights Committee, the Canadian model had few peers:

> It should be noted that it is a particular type of commission that has similar, sister agencies in countries like Australia and New Zealand. But nothing of the sort exists, for example, in France or other European countries, where the model calls more for broad-ranging commission with widely representative (and usually numerous) membership that issue comments and criticisms of government activities or failure to act but do not deal with individual complaints as do several Canadian commissions.

   MAXWELL YALDEN, TRANSFORMING RIGHTS: REFLECTIONS FROM THE FRONT LINES 142 (2009). Even the Australian system had severe limitations, especially in the 1970s. *See* Peter Bailey & Annemarie Devereux, *The Operation of Anti-Discrimination Laws in Australia, in* HUMAN RIGHTS IN AUSTRALIAN LAW: PRINCIPLES, PRACTICE AND POTENTIAL 292 (David Kinley ed., 1998); ANDREW BYRNES, ET AL., BILLS OF RIGHTS IN AUSTRALIA: HISTORY, POLITICS AND LAW (2009); JAMES SPIGELMAN, STATUTORY INTERPRETATION AND HUMAN RIGHTS (2008).

59. In my view, all of the following factors contribute to the effectiveness of national human rights institutions: the democratic governance structure of the state; the degree of independence of the institution from government; the extent of the institution's jurisdiction; the adequacy of the powers given to the institution, including the power to investigate; the accessibility of the institution to members of the public; the level of cooperation of the institution with other bodies; the operational efficiency of the institution; the accountability of the institution, the personal character of the person(s) appointed to head the institution; the behavior of government in not politicizing the institution and in having a receptive attitude toward its activities; and the credibility of the office in the eyes of the populace.
   Reif, *supra* note 52, at 24. *See also* RICHARD CARVER, PERFORMANCE AND LEGITIMACY: NATIONAL HUMAN RIGHTS INSTITUTIONS (1999).

60. Because the provinces were responsible for most human rights work, another benefit of the Canadian model was that commissions could adapt to local circumstances (as opposed to a single national human rights institution). In addition, the province of British Columbia set a new standard in 1974 when the government introduced a

statutory or constitutional recognition of human rights before the 1970s in Canada, changes in human rights law were truly transformational.[61]

There is no denying the influence of international politics on the emergence of the Canadian human rights legal regime, but it was a process embedded in the interplay between domestic and international forces. In this case, domestic actors used international precedents to foment domestic change. In the 1940s, as Eric Adams points out,

> [c]ivil liberties groups called for the entrenchment of constitutional rights, as did the Jehovah's Witnesses, the Canadian Jewish Congress, the National Council of Women of Canada, representatives of the Chinese Canadian community, and a number of other churches, unions, and social organizations. Virtually all cited the United Nations Charter or UDHR as a touchstone for Canada to emulate.[62]

The influence of the United Nations Charter and the UDHR went beyond what anyone imagined. Ontario Judge Ian Mackay set a precedent in 1945 when he cited the Charter of the United Nations in striking down restrictive covenants (contractual agreements among home owners to prevent the sale of homes in a neighborhood to, for instance, Jews).[63] When Prime Minister John Diefenbaker introduced a bill that would ultimately result in the 1960 Canadian Bill of Rights (statutory, not constitutional), he declared, "[t]he measure that I introduce is the first step on the part of Canada to carry out the acceptance either of the [UDHR] or of the principles that activated those who produced that noble document."[64] The Ontario Human Rights

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law banning discrimination on the basis of "reasonable cause"; most human rights laws ban discrimination on certain grounds (e.g. race), but the province's legislation required any form of discrimination to be justified on the basis of reasonable grounds, opening the door to precedents in areas of sexual harassment, pregnancy, sexual orientation and others. Clément, Canada's Rights Revolution, *supra* note 28.

61. For studies on human rights law in Canada, see Tarnopolsky, *supra* note 30; Howe & Johnson, *supra* note 57; Dominique Clément, *Human Rights Law and Sexual Discrimination in British Columbia, 1953–1984, in* The West and Beyond (Sara Carter, et al. eds., 2010); Dominique Clément, *"Rights without the Sword Are but Mere Words": The Limits of Canada's Rights Revolution, in* A History of Human Rights in Canada (Janet Miron ed., 2009); Clément, *supra* note 28.

62. Adams, *supra* note 31, at 170. Christopher MacLennan forwards a similar argument in his study of the 1960 Canadian Bill of Rights:

   Organizations across the country studied the [UDHR] and passed resolutions demanding various responses from the government. The demands from these human rights advocates ranged from asking Ottawa to make a symbolic gesture in support of the UN initiative to outright calls for a national bill of rights based on the contents of the declaration. . . . Newspapers, organized labour, civil liberties associations, women's groups, and ethnic organizations all pressured the federal government to explain why, in light of its apparent support for the UN program, it balked at suggestions for a national bill of rights.

   MacLennan, *supra* note 3, at 79, 82.

63. Re Drummond Wren, [1945] O.R. 778 (Can.). An American court established a similar precedence in 1950, although in this case the decision was later overturned. Soohoo, *supra* note 2, at 198.

64. *Quoted in* William Schabas & Stéphane Beaulac, International Human Rights and Canadian Law: Legal Commitment, Implementation and the Charter 36 (3d ed. 2007). Federal legislators also

Code (1962) and the Yukon Human Rights Act (1987) directly referenced the UDHR, and the UDHR was the model for the Quebec Charter of Human Rights and Freedoms (1975). Even the smaller provinces, such as New-foundland and New Brunswick, introduced their respective human rights laws in response to international human rights treaties.[65] In the case of the latter, "[t]he *New Brunswick Human Rights Act* was deeply influenced by the human rights initiatives drafted by the United Nations, and was seen as an important step in introducing a human rights culture."[66] Newfoundland and New Brunswick may never have introduced human rights legislation without the efforts of their respective local human rights organizations, the Newfoundland Human Rights Association and the Comité pour les droits de l'homme du Nouveau Brunswick, which were at the forefront of lobbying for legislation to fulfill Canada's international obligations.[67]

   The international human rights movement also profoundly shaped Cana-dian social movements. A new generation of rights associations emerged in the 1960s and 1970s. Several civil liberties associations, such as the British Columbia Civil Liberties Association, were established in major cities in the 1960s. Soon after, the federal government provided $1 million in funding to organize local community groups to celebrate the twentieth anniversary of the UDHR in 1968. Self-identified human rights associations emerged in each province to celebrate International Year for Human Rights; many of these organizations, such as the Newfoundland Human Rights Association and the Alberta Human Rights Association, evolved into permanent indepen-dent advocacy groups. Virtually every human rights group in Canada cited the UDHR in their founding constitution.[68] By the mid-1970s, more than

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         cited the UDHR when they introduced the first federal anti-discrimination law in1952. House of Commons, Hansard, vol. 4 (1952–3), 3761–3779.

65.   Telephone Interview with Fred W. Coates, Director, Newfoundland Human Rights Com-mission (11 Mar. 2002).

66.   Shannon Adair Williams, Human Rights In Theory And Practice: A Sociological Study Of Aboriginal Peoples & The New Brunswick Human Rights Commission, 1967–1997 (MA Thesis, University of New Brunswick, 1998).

67.   Dominique Clément, *Searching for Rights in the Age of Activism: The Newfoundland-Labrador Human Rights Association, 1968–1982*, 19 Newfoundland Stud. 347, 352 (2003); Alan D. Reid, *The New Brunswick Human Rights Act*, 18 Univ. Toronto L. J. 394 (1968); Williams, *supra* note 64; Telephone Interview with Théo Gagnon, Board of Directors, Comité pour les droits de l'homme du Nouveau Brunswick (20 June 2004). The Newfoundland Human Rights Association was a key player in working with the govern-ment to secure, and later expand, the human rights code: "I [Edward Maynard, Minister of Manpower and Industrial Relations] would single-out the Newfoundland-Labrador Human Rights Association and the Newfoundland Status of Women Council for their tremendous assistance in providing comprehensive briefs relating to the Amendments" (he later acknowledged the NFL's role as well). Newfoundland Legislative Library, Press Clippings. Press release, Edward Maynard, Minister of Manpower and Industrial Rela-tions, 20 Dec. 1974.

68.   A similar divide emerged in the United States, although in this case it was a conceptual divide between "civil rights" and "human rights" (rather than civil liberties and human rights). See Bringing Human Rights Home, *supra* note 2.

forty human rights and civil liberties associations were active throughout
the country.[69]

The lack of a strong tradition of rights advocacy made these develop-
ments even more surprising. Only a handful of civil liberties associations
had been active before the 1960s and they all had a short life span. The
dozens of rights associations operating in the 1970s constituted an impres-
sive network for a Canadian social movement. However, unlike civil liberties
organizations, which restricted their work to civil and political rights, human
rights organizations embraced the broader principles of the UDHR. The
latter's more expansive interpretation of human rights led to bitter debates
on prominent issues. For instance, whereas civil liberties groups fought to
remove unfair restrictions on citizens who received social assistance (e.g.
prohibiting single women from having male houseguests), human rights
groups argued that individuals had a right to economic security and could
not exercise their political and civil rights without proper resources (civil
liberties groups took the position that this was a matter of public policy,
not rights). These disagreements were evident on numerous issues, such
as pornography, immigration, sexual assault laws, and hate speech.[70] The
ideological divisions and tensions were very real for Canadian activists. For
many years, the leading national rights association in the country was an
umbrella group awkwardly called the Canadian Federation of Civil Liber-
ties and Human Rights Associations, and one of the country's largest rights
associations, the Ligue des droits de l'homme, explicitly rejected its civil
libertarian roots and embraced a human rights platform in the 1970s.[71]

The emergence of a powerful domestic human rights movement was part
of a broader global phenomenon that included the proliferation of transna-
tional advocacy networks. As Margaret Keck and Kathryn Sikkink conclude
in their study of international activism in the 1970s, "[w]hen [transnational
advocacy networks] succeed, they are an important part of an explanation
for changes in world politics."[72] Soviet dissidents embraced human rights as

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69.   For a history of Canada's human rights movement, see CLÉMENT, CANADA'S RIGHTS REVOLU-
      TION, *supra* note 28, at 58.
70.   For example, human rights groups supported censoring pornography; civil liberties
      groups responded that this constituted a violation of free speech. Human rights groups
      supported the criminalization of hate speech in Canada in the late 1960s; civil liber-
      ties groups also saw this as a restriction on free speech. Human rights organizations
      supported the creation of a rape shield law in the 1980s (prohibiting any evidence at
      trial of a victim's sexual history); civil liberties groups successfully fought to have the
      law overturned as a violation of due process. Of course, social movements are never
      monolithic, and occasionally human rights and civil liberties groups did not fall within
      this rigid dichotomy. Nonetheless, there was a surprising degree of consistency in the
      1970s and 1980s in their positions on these and similar issues.
71.   Dominique Clément, *Generations and the Transformation of Social Movements in Post-
      war Canada*, 42 HISTOIRE SOCIALE 361, 378–80 (2009).
72.   KECK & SIKKINK, *supra* note 9, at 2.

a language of nonconformity; Amnesty International, Human Rights Watch and Charter 77 flourished into genuine transnational movements (the American chapter of Amnesty alone expanded from a few thousand members to more than 90,000 by 1976); and the political left and Catholic leaders in Latin America used transnational human rights networks to resist dictatorial regimes, as "[human rights] proved to be highly coalitional and ecumenical in providing a *lingua franca* for diverse voices."[73] Transnational human rights networks provided forums for mobilization and influenced priorities within the United Nations and other international agencies. These networks directly affected interstate relations, such as leading successful campaigns to suspend arms sales to abusive regimes. They gathered information on notorious human rights abuses and, by drawing public attention to these violations, forced states to respond.[74] Local activists also used international networks to mobilize claims against domestic states in societies without established human rights practices or laws.[75]

Canadian activists participated in these networks. After more than a decade of struggling to lobby the provincial and federal governments to address inhumane treatment of prisoners, Montreal's Ligue des droits de l'homme invited Amnesty International, Human Rights Watch, and the Fédération international des droits de l'homme to investigate a case of human rights abuse in a Montreal prison in 1982. The subsequent report deeply embarrassed the federal and Quebec governments and provoked a national debate on prisoners' rights.[76] In turn, Canadian organizations contributed to injecting human rights into international policies by participating in transnational networks and supporting human rights campaigns abroad.

It is difficult to overstate the impact of international human rights politics on Canadian society. One of the most prominent political debates of the 1970s was a constitutional bill of rights. Opponents had long appealed to notions of Parliamentary supremacy, but this became an increasingly untenable position in the 1970s. Hardly anyone raised an objection on the basis of restricting Parliamentary supremacy to the 1960 statutory Bill of Rights, and Prime Minister (1968–1984) Pierre Elliot Trudeau made no secret of his support for a constitutional bill of rights.[77] A federal Special Joint Committee

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73.   Moyn, *supra* note 11, at 144.
74.   *See* Quataert, *supra* note 14 at 229–261; Olzak, *supra* note 2.
75.   Anthropological studies of human rights have provided several case study examples of how people in countries as diverse as Guatemala and Kenya have used rights discourse to challenged repression and discrimination. *See* Culture and Rights: Anthropological Perspectives (Jane K. Cowan et al. eds., 2001); Keck & Sikkink, *supra* note 9.
76.   Interview with Jean-Claude Bernheim, Conseil Administrative, Ligue des droits de l'homme (Montréal, QC, 26 June 2005).
77.   For a full history of the debates surrounding a Canadian bill of rights, see Clément, Canada's Rights Revolution, *supra* note 28, at 4; Maclennan, *supra* note 3.

on the Constitution (1970) rejected Parliamentary supremacy as an obstacle to entrenching rights in the constitution:

> Parliamentary sovereignty is no more sacrosanct a principle than is the respect for human liberty which is reflected in a Bill of Rights. Legislative sovereignty is already limited legally by the distribution of powers under a federal system and, some would say, by natural law or by the common law Bill of Rights.[78]

The 1982 Charter of Rights and Freedoms constituted a complete break with the country's historic adherence to Parliamentary supremacy and reflected the influences of the UDHR, European Convention, and the international covenants.[79] Provincial governments still opposed national or international laws that invaded their jurisdiction but, as Michael Behiels argues, the international covenants "energized an expanding human rights culture and movement throughout Canada . . . thereby fostering a mutually reinforcing interplay between the Canadian Charter and Canada's international commitments."[80] The drafting process included one of the most extensive public consultations in Canadian history. During these deliberations, which resulted in detailed revisions to the government's original draft,

> frequent invocation was made of international human rights instruments as embodying appropriate standards by which the proposed *Charter of Rights and Freedoms* should be measured. Canada's international human rights obligations served as not only the necessary and pervasive context in which the Charter of Rights was introduced and adopted, but also as the direct inspiration for amendments designed to strengthen the human rights protection provided.[81]

In sum, Canada's international obligations became a source of inspiration for domestic actors. Human rights laws and the emergence of a widespread human rights movement in the 1970s drew inspiration from the country's

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78.   Canada, Special Joint Committee of the Senate and House of Commons on the Constitution of Canada- First Report 18–19 (Queen's Printer 1972).
79.   A few rights recognized in the International Covenant on Social, Economic and Cultural Rights, such as language and education, are recognized in the Charter of Rights and Freedoms. However, the Charter primarily reflects the principles of the International Covenant on Civil and Political Rights. The Charter also contains a broad limitation clause (section 1; see also section 33) similar to the UDHR; in contrast, the European convention provides less leeway for states to violate its provisions. In the first ten years after the entrenchment of the Charter of Rights and Freedoms, Canadian courts cited the UDHR in over 150 cases. Schabas, *supra* note 16, at 405; Schabas & Beaulac, *supra* note 64, at 41–43.
80.   Behiels, *supra* note 47, at 153, 175.
81.   John Claydon, *International Human Rights Law and the Interpretation of the Canadian Charter of Rights and Freedoms*, 4 Supreme Ct. L. Rev. 287 (1982). On the public consultations, including the impact of social movements on the Charter, see Clément, Canada's Rights Revolution, *supra* note 28, at 158–60. For original copies of briefs submissions to the Special Joint Committee on the Constitution, *available at http://www.HistoryOfRights. com/primary_committee.html.*

international obligations. It was a genuine rights revolution: Canada's rights culture increasingly reflected the international community's expansive approach to human rights. This process emerged within a web of relationships involving Canada's participation in international human rights institutions that simultaneously encouraged developments at home that, in turn, prompted the state to become increasingly involved in human rights promotion abroad.

IV. CANADA, HUMAN RIGHTS, AND INTERNATIONAL POLITICS

Canada's foreign policy soon reflected developments at home. "The early Canadian attitude toward United Nations involvement with rights," explains Cathal Nolan, "was clearly apathetic, and even a little smug. Ottawa considered the US proposal on human rights wrongheaded at best, and at worst as constituting an invalid interference in the internal affairs of states."[82] Canadian foreign policy in the 1950s privileged state sovereignty to the detriment of human rights intervention.[83] The country's support for human rights, especially within the United Nations, was initially based on a cold calculation of self-interest. "Ottawa slowly accepted an international dimension to rights because it came to believe that the popular appeal of the idea might help keep afloat the UN and thereby the promise of security that multilateral statecraft was thought yet to carry in its hold."[84]

Human rights became a foreign policy priority beginning in the 1970s. This shift was first recognized in a 1970 white paper (an official policy statement):

> Canada's approach to human rights issues in the UN has tended to be cautious . . . future approach to human rights at the United Nations should be both positive and vigorous . . . . should accept the obligation to participate actively in this important area of the UN's work . . . there is an expectation that Canada will participate in international efforts in the human rights field on a more extensive and meaningful scale than in the past.[85]

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82.   Nolan, *supra* note 35, at 287–88.
83.   During the debates surrounding the UDHR, the Canadian delegation was instructed to make every effort to dilute the language in the document to ensure the primacy of state sovereignty over individual rights in the context of inter-state relations. *Id.* at 284–86.

> For the most part, however, foreign policy reflected a commitment to state sovereignty and a willingness to accept, if not respect, different values and traditions, and different state practices. It also supported the view that interventions, for whatever reasons, constituted violations of international order and should not be condoned.

> Paul Gecelovsky & Tom Keating, *Liberal Internationalism for Conservaitves: The Good Governance Initiative, in* Diplomatic Departures: The Conservative Era in Canadian Foreign Policy, 1983–93, at 194, 195 (Nelson Michaud & Kim Richard Nossal eds., 2001).

84.   Nolan, *supra* note 35, at 294.
85.   Canada, Department of External Affairs, Foreign Policy for Canadians Vol. 3, at 26–27 (1970).

By the 1980s human rights had become an integral component of Canadian foreign policy.[86]

One of the first tests of the national government's commitment to human rights came in 1966, when the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were presented to members of the United Nations for ratification. Parliament displayed none of the opposition it demonstrated in 1948 and acceded to the two covenants.[87] This was only the beginning. Canada, alongside Europe and the United States, signed the Helsinki Accords in 1975 with the Soviet Union, which among other things committed each country to a set of human rights principles.[88] It also became a party to conventions on racial discrimination and women's rights. Canada routinely demonstrated its commitment to promoting human rights with interventions in sessions of the Commission on Human Rights and other international forums.[89] Canadians played a key role in drafting the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religious Belief (1981).[90] Public officials and social movements also embraced major international human rights initiatives, from celebrations surrounding the UDHR to "decades" on combating racism or women's rights.[91]

Meanwhile, domestic human rights laws and social movements inspired changes in foreign policy.[92] New agencies emerged within the federal and provincial governments to monitor compliance with the country's inter-

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86.   Department of External Affairs, Canada's International Relations: Response of the Government of
       Canada to the Report of the Special Joint Committee of the Senate and the House of Commons
       23–25 (1986); Canadian International Development Agency, Sharing Our Future: Canadian
       International Development Assistance 31–32 (1987).
87.   The federal government spent several years developing a consultation mechanism with
       the provinces. The federal government secured consent from each province before
       ratifying the covenants.
88.   Donnelly, *Genocide and Humanitarian Intervention*, *supra* note 2, at 98. Daniel Thomas
       argues that the Accords contributed to the fall of the Soviet Union. Daniel C. Thomas,
       Human Rights Ideas, the Demise of Communism, and the End of the Cold War, 7 J.
       Cold War Stud. 110 (2005).
89.   Cathal J. Nolan, *Human Rights in Canadian Foreign Policy, in* Human Rights in Canadian
       Foreign Policy, *supra* note 27.
90.   John W. Foster, *UN Commission on Human Rights, in* Human Rights in Canadian Foreign
       Policy, *supra* note 27, at 83.
91.   For studies on state funding of human rights initiatives in Canada, see Leslie Pal, Interests
       of State: The Politics of Language, Multiculturalism, and Feminism in Canada (1993); Clément,
       Canada's Rights Revolution, *supra* note 28.
92.   As Manzer suggests, developments at home can create greater expectations for foreign
       policy:

          Human rights are generally accorded low salience and little influence in making Canadian foreign
          policy, but from the Second World War, and especially since the 1970s, references to enhancement
          of human rights as a goal and as a justification for particular actions have increased. . . . To the
          extent that the Charter [of Rights and Freedoms] reorients domestic politics and policy-making, it
          cannot help but affect both élite and popular expectations about Canadian foreign policy.

       Manzer, *supra* note 27, at 43.

national obligations, as well as a committee to liaison on domestic and international human rights issues for future treaty ratifications.[93] Over time, these developments took on a life of their own, and a dynamic emerged in which Canada's increasing participation in international human rights initiatives prompted domestic interest in human rights promotion, forcing officials to respond. For example, as Victoria Berry and Allan McChesney note, "from the mid-1970s officials have had to prepare speeches for ministers commemorating anniversaries of international human rights initiatives. Ministerial addresses became standard at annual events of such organizations as the International Commission of Jurists and the Canadian Human Rights Foundation."[94] Officials from the Department of External Affairs also began meeting with NGOs every year to prepare for United Nations Commission on Human Rights meetings. In doing so, they were required to review policies and prepare texts for senior ministers, further facilitating the integration of human rights in foreign policy.[95]

Officials were also forced to respond when Canadian citizens submitted human rights complaints to the United Nations. Sandra Lovelace, an Aboriginal woman, received a sympathetic hearing before the United Nations Human Rights Committee in 1977. Lovelace challenged a regulation under the Indian Act that required Aboriginal women who married non-Aboriginal men to surrender their status under the act (the requirement did not apply to Aboriginal men who married non-Aboriginal women).[96] The Committee concluded that Canada had violated its treaty obligations, and the federal government eventually amended the legislation.[97] Canadians were not shy about using this new forum for human rights redress: by the late 1980s, Canadians had filed the second highest number of complaints with the United Nations.[98]

The domestic human rights movement affected even the country's rudimentary foreign policy on Asia. Except for Japan, Canada had only a marginal presence in most Asian countries and limited economic ties in the 1970s.

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93. The federal Secretary of State was responsible for coordinating the work of the Interdepartmental Committee on Human Rights, which "reviews the federal government's overall human rights responsibilities in the light of Canada's obligations stemming from international agreements." The Secretary of State also provided secretariat services to the Continuing Federal-Provincial Committee of Officials Responsible for Human Rights to liaison and consult on Canada's commitments to international covenants. CANADA, SECRETARY OF STATE, REPORT OF THE DEPARTMENT OF THE SECRETARY OF STATE (1977).
94. Victoria Berry & Allan McChesney, *Human Rights and Foreign Policy-Making, in* HUMAN RIGHTS IN CANADIAN FOREIGN POLICY, *supra* note 27, at 60.
95. *Id.* at 60–61.
96. Joanna Harrington, *How Canadian Lawyers Can Contribute to the Effectiveness of the UN Human Rights Committee, in* THE MEASURE OF INTERNATIONAL LAW: EFFECTIVENESS, FAIRNESS AND VALIDITY 134 (2004).
97. *Id.*
98. Nolan, *Human Rights in Canadian Foreign Policy, supra* note 89.

Asia simply was not a priority, and Cold War allegiances largely determined Canadian policy in the region. Yet human rights concerns were taking hold of the public imagination and becoming normalized in foreign policy. For instance, the Canadian government committed to promoting human rights in East Timor following the 1975 occupation.[99]

Another example of this new dynamic was Parliament's role in shaping foreign policy. Canada's position had remained unchanged throughout the 1950s and 1960s: it saw the United Nations' attempts to entrench human rights in international law as a domestic political threat. Nevertheless, more than 100 Members of Parliament ("MPs"), and half of the Senate, allied with national lobby groups and thousands of citizens in a campaign to pressure the federal cabinet to accede to the covenants. The Prime Minister relented and then successfully lobbied the provincial governments to support the covenants.[100] Other initiatives soon followed. A private members' bill was introduced in 1978 to prohibit foreign aid to countries with poor human rights records. Although the federal government immediately rejected the idea, the bill remained on the Parliamentary agenda, drawing attention to the human rights component of Canadian foreign policy. As a result, the government was forced to defend and elaborate its aid policies in public.[101]

Meanwhile, MPs participated in increasing numbers in international human rights conferences as part of official Canadian delegations to the United Nations and as members of various monitoring groups abroad.[102] Over time, many MPs gained valuable experience and expertise on human rights issues, and they brought this knowledge to Parliament where they continued to pressure the federal government to integrate human rights into foreign policy.

The Helsinki Accords, in particular, created a unique opportunity. In the early 1970s, MPs tended to respond to human rights violations in Eastern Europe with vague calls for self-determination or the rights of minorities. MPs developed a more sophisticated approach in the mid-1970s, however,

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99. David Webster, Fire and the Full Moon: Canada and Indonesia in the Decolonizing World 156–84 (2009). Still, promoting human rights did not mean imposing sanctions, which Canada was loath to do for economic and political reasons. See Kim Richard Nossal, Rain Dancing: Sanctions in Canadian and Australian Foreign Policy 33–54 (1994).

100. Cathal J. Nolan, *The Influence of Parliament on Human Rights in Canadian Foreign Policy*, 7 Hum. Rts. Q. 373, 379 (1985).

101. *Id.* at 382.

> The point of main interest here is that even though the government opposed this private member's bill its presence on the agenda compelled a public elaboration of policy, and thus contributed to the progressive expansion of a definition of a human rights component in Canada's aid programs. In this way, parliamentary prerogatives were used to assist in the development and promulgation of a general principle of human rights limits to development assistance, a principle which would later be defined in more explicit form in a House committee report.

102. *Id.* at 386–87.

because of their participation in an Inter-Parliamentary union conference leading up to the negotiations for the Accords and the subsequent Belgrade Review in 1975. MPs drew on the language contained in the Accords to introduce resolutions in Parliament dealing with family reunification, free movement of people, religious freedom, and other equally precise reforms that demonstrated a far greater understanding of the issues.[103] These developments resulted in significant foreign policy changes. The government introduced and passed a Foreign Aid Prohibition Act in 1978, took unilateral action in withdrawing commercial services from South Africa in 1977, withdrew aid from the Amin regime in Uganda, imposed limited economic measures (including bans on exporting food and credits) to Poland and the Soviet Union in 1977, and suspended aid to Guatemala and El Salvador in 1981.[104] In the midst of these debates, the opposing Conservative Party committed itself to a more rights-based foreign policy. When the party came to power in 1979, it honored this commitment by, among other initiatives, withholding aid from Vietnam because of gross human rights violations surrounding the expulsion of the "boat people."[105]

The interrelationship between domestic and international developments was not limited to international law. Following the 1975 United Nations for Women conference in Mexico City, two Canadian participants (Norma E. Walmsley and Suzanne Johnson-Harvor) returned to Ottawa and founded an international development agency for women in 1976.[106] The first of its kind in the world, MATCH International was run for women and by women, and worked in partnership with women in poor countries around the world. It soon received extensive funding from the federal government to support human rights and humanitarian work abroad.[107]

The United Church of Canada is another example of the interrelationship between local and international human rights promotion. After decades of supporting overseas evangelical missionary work, the church embraced a new mandate in the 1960s and 1970s of humanitarian aid. Evangelicalism was put aside largely in favor of sending Canadians overseas to provide food, education, medicine, and technical assistant to small communities in poor nations. In 1968, the federal government began using the church as a conduit for development aid, beginning with a $100,000 grant to the United Church to manufacture water-drilling rigs in India. Within a few years, this

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103. *Id.* at 387–88.
104. T.A. Keenleyside & Patricia Taylor, The Impact of Human Rights Violations on the Conduct of Canadian Bilateral Relations: A Contemporary Dilemma 5 (1984).
105. Nolan, *The Influence of Parliament on Human Rights in Canadian Foreign Policy, supra* note 100, at 383.
106. MATCH International Centre, History, *available at http://matchinternational.org/about/history.html.*
107. MATCH International Centre, An UnMATCHed Partnership: 25 Years of Working with Women (2001).

relationship was formalized, and the government's primary donor agency, the Canadian International Development Agency, established a permanent NGO division.[108]

As several Christian churches across Canada shifted towards humanitarian and rights-based work overseas, they sought to influence the direction of the federal government's foreign policy to account for human rights. Canadian churches only began seriously addressing human rights and Canadian foreign policy beginning in the 1970s. They responded, for example, to the 1970 White Paper on foreign policy with a brief titled "The Black Paper," calling on the federal government to boycott South Africa.[109] The volume and frequency of their lobbying efforts increased throughout the 1970s and 1980s, and their efforts sensitized Canadian public opinion to foreign policy and human rights abuses abroad.[110]

Christian churches formed numerous international NGOs in the 1970s to promote humanitarian aid abroad: the Inter-Church Committee for Human Rights in Latin America, Canada-Asia Working Group, Inter-Church Coalition for Africa, and the Task Force on Corporate Responsibility. One project, Ten Days for World Development, begun in 1978, was especially successful in generating support for a rights and humanitarian-based foreign policy.[111] Their efforts contributed to, among other things, the government's decision to impose numerous restrictions on South Africa in the 1970s, including a ban on athletes entering Canada, removal of trade commissioners, cancelled export credits, and banned arms sales. Their work also caused Canada to accept a higher number of refugees following crises in Chile and Uganda (1973), insert a section on refugees to the immigration law (1976), and cancel bilateral support to El Salvador, Guatemala, and Chile in the 1970s.[112]

The shift towards embracing human rights as a cornerstone of international politics was, at least in the Canadian context, the result of a fascinating dynamic between domestic and international initiatives. The federal government only reluctantly agreed to support the UDHR in 1948. Social movement organizations and law reformers drew on the UDHR to

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108.   Ruth Compton Brouwer, *When Missions Became Development: Ironies of "NGOization"* *in Mainstream Canadian Churches in the 1960s,* 91 CAN. HIST. REV. 661 (2010).
109.   *See* GARTH LEGGE, ET AL., THE BLACK PAPER: AN ALTERNATE POLICY FOR CANADA TOWARDS SOUTHERN AFRICA (1970).
110.   Keating & Gecelovsky, *supra* note 83, at 203.
111.   For a detailed study of the impact of Canadian churches' on foreign policy in the 1970s, see Robert Gardiner, *Building a Counter-Consensus in Canada, in* CANADIAN CHURCHES AND FOREIGN POLICY 63, 65 (Bonnie Greene ed., 1990).
112.   Canada, however, continued to provide credit through the Export Development Corporation. T.A. Keenleyside, *Aiding Rights: Canada and the Advancement of Human Dignity, in* CANADIAN INTERNATIONAL DEVELOPMENT ASSISTANCE POLICIES: AN APPRAISAL 244–50, (Cranford Pratt ed., 1994). *See also* Robert O. Matthews, *The Christian Churches and Foreign Policy: An Assessment, in* CANADIAN CHURCHES AND FOREIGN POLICY, *supra* note 111, at 161.

campaign for domestic reform, which resulted in the creation of an expansive human rights system. These developments fostered a sympathetic atmosphere for expanding Canada's international human rights obligations and, in a complete turnaround, the federal government actively sought to adhere to human rights treaties and participate in United Nations forums. Meanwhile, the federal government found it increasingly difficult to resist pressure from Parliamentarians and church groups (among others) to incorporate human rights considerations in development aid and foreign policy. These were significant developments given the government's determination in the past to place state sovereignty above human rights. In retrospect, Pearson's warning to the federal cabinet in 1948 appears prescient: "If we vote for the declaration, some private member might introduce a resolution incorporating the text or expressing approval of the declaration which might put every Member of Parliament in the position of having to take a stand on every Article in the declaration."[113]

V. CONCLUSION

Canada's role as an international human rights advocate represents a clear break from its foreign policy priorities in the early Cold War period. At best a middle power in the international arena, Canada nonetheless played a role in promoting human rights abroad and facilitating the promotion of human rights as a cornerstone of international politics.

   Canada's contributions to human rights in international politics are remarkable given its early history. The Charter of Rights and Freedoms, for example, became a model for other countries (including New Zealand and South Africa). The Supreme Court of Canada's decisions in the human rights field set precedents cited in courts around the world on a myriad of issues, from capital punishment to crimes against humanity.[114] Canadian courts were "[a] mong the very first domestic jurisdictions to make reference to international human rights law. . . . It is now clear that Canadian courts were pioneers in a movement of judicial globalization that has captured the imagination of jurists around the world."[115] Domestic organizations played a leadership role in forums such as the Fédération international des droits de l'homme, and Canadian groups such as MATCH International or Rights and Democracy poured extensive resources into promoting human rights abroad.[116]

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113.   *Quoted in* MacLennan, *supra* note 3, at 78–79.
114.   Schabas & Beaulac, *supra* note 64, at 436–37.
115.   *Id.* at v.
116.   T.A. Keenleyside & Nola Serkasevich, *Canada's Aid and Human Rights Observance: Measuring the Relationship*, 45 Int'l J. 138 (1989–90).

Canadian foreign policy underwent a dramatic shift in the 1970s. Canada placed restrictions on development aid and supported sanctions on other countries for egregious human rights violations. It was also actively involved in helping draft international human rights treaties, participating in various United Nations human rights organs, and adhering to every major human rights treaty introduced since the 1970s. South Africa's expulsion from the Commonwealth was largely a result of pressure from the Canadian government.[117] True, Canada was hardly above reproach; it continued to support abusive regimes in the 1980s (for instance, foreign aid was re-introduced for Guatemala and El Salvador) and it often prioritized security and economic interest above human rights.[118] Nonetheless, it was a remarkable transformation for a country that, in the 1950s, had no human rights movement, no human rights law, a weak Supreme Court, no concern for human rights abuses abroad, and had nearly voted against the UDHR.

These developments were not limited to Canada. It was one of a small group of "like-minded countries" (including Norway and the Netherlands) that explicitly linked development aid to human rights beginning in the 1970s.[119] Successful campaigns run by transnational advocacy networks led to the suspension of arms sales by Britain and the United States to Argentina, Uganda, and Chile. International human rights treaties, including the United Nations human rights committees, received widespread support from individual states. The campaign against apartheid in South Africa also had broad international appeal; dozens of states supported its expulsion from the Commonwealth and restrictions on trade.[120] Human rights movements flourished within countries around the world, from the Soviet Union to Australia, and human rights laws proliferated within numerous countries. Over time, human rights would increasingly play an influential role in states' foreign policies, including diplomatic pressure, sanctions, and military action (humanitarian intervention and support for peacekeeping missions) against states engaging in widespread human rights violations. Of course, such interventions have been selective and laced with self-interest. Nonetheless, these developments exemplify the emergence of human rights as a cornerstone of international politics.

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117. Denis Smith, Rogue Tory: The Life and Legend of John G. Diefenbaker 353–66 (1995).
118. For a critique of Canadian foreign policy (with regards to human rights) see Nossal, *Cabin'd, Cribb'd, Confin'd, supra* note 37; David Gillies, Between Principle and Practice: Human Rights in North-South Relations (1996).
119. For a detailed comparison of foreign aid and human rights among these three countries in the 1980s, see Gillies, *supra* note 118. On the United States, see Donnelly, International Human Rights, *supra* note 2, at 108.
120. Campaigns against apartheid also included sub-national governments, including local states in the United States: Davis, *supra* note 49, at 261–63.

The influence that human rights now play in international politics was a product of a complex dynamic between domestic and international actors and institutions. Local factors played a key role in making this transformation possible. Roger Normand and Sarah Saidi come to a similar conclusion in their study of the role of the Universal Declaration of Human Rights in promoting domestic reform:

> Popular expectations and actions also make history, in dynamic interaction with state politics. In this instance, the rhetorical sponsorship of human rights by powerful states, however half-hearted or even duplicitous, gave new impetus to civil society efforts, just as these efforts had pushed states to adopt human rights ideas in the first place.[121]

Ironically, as Ronald Burke has shown in his recent study on decolonization, third world countries were initially among the most vocal supporters of universal human rights. But by the 1970s, after many colonies had achieved independence while abandoning democracy, Western nations such as Canada had become the most fervent advocates for universal human rights, whereas the leaders of many third world countries rejected universal rights.[122]

Many of the reasons why Canada experienced this transformation in the 1970s undoubtedly apply to other nations. The Helsinki Final Act and the Carter administration's policies on human rights in the context of lessening Cold War tensions had a profound effect on countries around the globe. Apartheid in South Africa inspired a truly international movement that generated widespread support for a coordinated international response to human rights abuses, as did atrocities in Kampuchea and Uganda.[123]

Meanwhile, in Canada, Cold War politics no longer had a dampening effect on human rights policy. The first Canadian Prime Ministerial visits to China, the Soviet Union, and Cuba, as well as several precedent-setting trade agreements, signaled a rapprochement between Canada and communist nations in the 1970s. During the peak of the Cold War, governments in Canada justified horrendous abuses of rights as part of the struggle against communism. Critics were accused of having communist sympathies and even the most progressive political and labor organizations were hostile to communism. However, the worst excesses of domestic Cold War politics appear to have dissipated by the 1970s. Communist purges in trade unions and within the civil service were exhausted, several of the most outrageous laws restricting basic rights were eliminated, and political debates no longer drew heavily on Cold War rhetoric. The communist movement in Canada was a shell of its former self, and rights associations were no longer ridden

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121.   Roger Normand & Sarah Zaidi, Human Rights at the UN: The Political History of Universal Justice 95 (2008).

122.   Roland Burke, Decolonization and the Evolution of International Human Rights (2010).

123.   Nossal, *Cabin'd, Cribb'd, Confin'd, supra* note 37, at 51.

with internal ideological conflicts. Instead, the primary source of division among rights associations in Canada in the 1970s was between *civil liberties* and *human rights* associations. Similar developments were taking place across the western world.

It is axiomatic that international politics is statist. States played a central role in the development of a politics of human rights in the 1970s, alongside newly emerging transnational advocacy networks linking domestic and global organizations. For this reason, studies of international human rights politics must also consider developments *within* states.[124] Equally, state actors worked within a complex web of international institutions that constituted the human rights system, and engagement with the international community provided a source of inspiration for state actors and local activists. In much the same way states' actions abroad can be traced to domestic developments, their participation in international human rights initiatives also inspires change at home. The domestic and international developments explored above, which continually informed and reinforced each other, creating opportunities abroad and at home for further human rights reform, contributed to the transformation of international politics. In essence, the human rights imperative in international and domestic politics had, by the 1970s, taken on a life of its own.

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124.   On the relationship between domestic politics and human rights in foreign policy, see Forsythe, *supra* note 1, at 43; Devereux, *supra* note 2, at 6–7.