Chapter 12

Creating a Human Rights Culture: The Role of Local Knowledge in Cambodia’s Difficult Transition

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INTRODUCTION

Few issues in international affairs and in the history of political thought provoke as much speculation and argument as the applicability of universal human rights in diverse political cultures. The debate raises complex philosophical and political issues regarding the relative influence of indigenous and exogenous factors in creating a human rights culture and the interface of universalism and local knowledge in human rights.

The universalists argue that human rights belong by definition to people everywhere, and rights deprivation in a given society may properly be remedied through intrusive efforts from abroad, ranging from cajoling through naming and shaming to coercion through armed intervention. At the other extreme is the cultural relativist position, according to which each society determines for itself how best to govern in light of its own traditions and any questioning of internal self-determination by imposing or suggesting the relevance of the human rights paradigm is a form of cultural imperialism.

Even if we recognize that cultures generally share core values and that these values evolve into rights discourse, we may question whether and to what extent the Enlightenment philosophy and the liberal political theory, a direct ancestor to the current panoply of international human rights instruments, constitutes an

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exportable model. Instead, should not a human rights regime be contextualized to each society in accordance with its respective identities?

In the 1990s, authoritarian leaders and policy makers of the economically prosperous countries of East and Southeast Asia promoted an alternative to the Western-derived rights regime, one that emphasized the so-called Asian values of duty, harmony, community, growth, and stability over the preoccupation with individual rights and the Western excesses that result. But indigenous citizens groups tend to question the claim by political leaders that human rights are not suitable for their society. The Asian Human Rights Charter, a document issued in 1998 based on inputs from over 200 NGOs and many experts, notes:

Notwithstanding their universality and indivisibility, the enjoyment and the salience of rights depend on social, economic and cultural contexts. Rights are not abstractions, but foundations for action and policy. Consequently we must move from abstract formulations of rights to their concretization in the Asian context by examining the circumstances of specific groups whose situation is defined by massive violations of their rights. It is only by relating rights and their implementation to the specificity of the Asian situation that the enjoyment of rights will be possible.²

This dichotomy between political elite neglect of and civil society support for human rights is a tempting but perhaps oversimplified characterization of the relation between universal human rights and local knowledge in Asia. A more nuanced approach is required. Critics, including some within the human rights community, charge that assumptions of the universality of human rights concepts are steamrolling local interpretations, evoking imperialism and neocolonialism. The increasingly numerous critiques of economic, or even culinary globalization, has been extended to human rights, as illustrated by what Makau wa Mutua writes:

Human rights are part of the cultural package of the West, complete with an idiom of expression, a system of government, and certain basic assumptions about the individual and his relationship to society. The spread of the liberal constitution – with its normative assumptions and the political structures it implies – makes human rights an integral part of the Western conception of modern society and its ubiquitous domination of the globe.³

Another critic of human rights as Western describes contemporary Africa and the rest of the developing world as “a situation of disruptive and incomplete Westernization, ‘cultural confusion,’ or even the enthusiastic embrace of ‘modern’

practices and values.” In this view, the Western-style protections against the Western-style state should be disseminated but should be adapted to African cultural experiences, emphasizing the group, duties, cohesion, and communal solidarity: “Rather than being the basis for abrogating or delegitimating the emerging universal human rights regime, [the Afrocentric conception of human rights] should inform the cross-fertilization of ideas between Africa and the rest of the world.”

Jack Donnelly similarly makes the case for “weak cultural relativism.” Under this model, human rights are treated as essentially universal, which allows some space for variations in implementation. For example, cruel and inhuman treatment of prisoners is prohibited, but the legality of caning or capital punishment is open to interpretation and subject to popular views. However, the degree of variation is limited, and core concepts are not open to question. Donnelly notes, “contemporary Asian individuals, families and societies face the same threats from modern markets and states that western societies do, and therefore need the same protections of human rights.” Tempered by recognition of the need to adapt to local culture, the universalist position recognized that traditional forms of authority may have been appropriate historically, but they are not sufficient today to ensure the well-being of citizens. Sharon Hom elegantly defines the dilemma as “negotiating the twin dangers of the universalist edging–into–imperialist position and a morally bankrupt absolute relativism.”

In the legal–political discourse of international diplomacy, the closest approximation to this view is the compromise language of the International Conference on Human Rights of Vienna in 1993:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

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5 Ibid., 61.
7 Ibid., 69.
The attempted democratic transition in Cambodia, beginning in 1991, illuminates this debate for several reasons. Culturally and economically, Cambodia is as remote from Western political and cultural experience as any country. It is a severely impoverished agricultural society whose 13 million inhabitants are almost entirely Theravada Buddhist. Life expectancy is 56.4 years, and infant mortality is 95 per 1,000 live births. One-third of the adults and nearly a quarter of the youth are illiterate. After decades of civil war and foreign occupation, the international community – UN, specialized agencies, and humanitarian organizations – was invited in under an extensive mandate to conduct a transition to a regime of human rights and democracy. This process resulted in the adoption of a constitution that proclaims on paper the essential human rights and the essential institutions for their realization. While there had been little democratic development in Cambodia’s troubled history, its traditional leader and father figure, Norodom Sihanouk, embraced the discourse of human rights and “liberal democracy on the basis of pluralism” as well as the market economy.

The question I wish to address is whether and to what extent the apparently sudden embrace of human rights in Cambodia is the result of the foreign imposition of alien ideas or builds on local knowledge, acknowledging all the complex influences and interactions that make up that knowledge. Is the use of human rights discourse in Cambodia the result of exogenous influences or an indigenous impulse that was stimulated and encouraged by external influences during the transition and after? The decade since the UN transitional authority left Cambodia gives us additional insight into this question and, sadly for Cambodia, has revealed that despite some progress, the roots of the human rights culture do not go as deeply as had been hoped. One implication is that neither endogenous nor exogenous forces by themselves will succeed, especially if they do not enhance rights-respecting behavior both upstream – at the headwaters of a society’s belief system – and downstream – where tributaries from other sources flow into the stream and mingle with the older, traditional waters.

Thus, I will explore the question of local knowledge and universalism by examining in some detail what happens when the international community tries to help a country transform itself into a democratic and rights-respecting state. Specifically, what do the interventions at the top of the power structure (the judicial system and the drafting of the constitution) and at the lower levels (human rights education campaigns, NGOs, and the Buddhist clergy) tell us about the debate on local knowledge and universalism?

To address this question requires a definition of a “human rights culture” and a theory of the social foundation of human rights and the norm-creating process. After a brief discussion of the theoretical framework, I will mention some of the elements of relevant local knowledge in Cambodia and then discuss the impact of efforts to apply universal standards of human rights and democracy during Cambodia’s difficulty transition.
The emergence of a “human rights culture” refers to the idea that human rights, as defined in international texts, become integrated into the way people behave in a given society. The concept is that the norms agreed upon in those texts will become integrated into the prevailing moral framework among the major cultural-religious groups of society and that the political and legal structures will adjust to the common expectation that official and private conduct must conform to these standards.

The process whereby a human rights culture emerges is inseparable from the formation of moral values. Some theoretical approaches to whether and how human rights become part of social expectations are deterministic, such as theories of evolutionary biology and natural law. The former considers the comparative reproductive advantage of empathy and altruism of human social behavior in the context of natural selection. The latter explores the “natural” moral order based on religious precepts or assumed common understandings of justice. These theories posit a pre-established nature of the human person, whether it is genetically determined behaviors of altruism and empathy or the belief that moral behavior is a set of objectively valid prescriptions formulated or discovered by human reason or intellect.

The deepest origin of human rights no doubt derives from basic human instincts of survival of the species and manifestations of empathy and altruism that evolutionary biology is only beginning to explain. Since human evolution is driven by reproductive selfishness, one could wonder why the human species would develop any ethical system, like that of human rights, according to which individuals manifest feeling for the suffering of others (empathy) and – even more surprising – act in self-sacrificing ways for the benefit of others without achieving any noticeable reproductive advantage. And yet, as Paul Ehrlich notes in *Human Natures*, “empathy and altruism often exist where the chances for any return for the altruist are nil.”

Natural selection does not provide the answer to moral behavior as “there aren’t enough genes to code the various required behaviors” but rather “cultural evolution is the source of ethics” and therefore of human rights.

The second deterministic theory is that of natural law, which underlies the liberal paradigm in political theory. In this view, moral behavior is commanded or required by God or gods backed up by promises of rewards or threats of punishment in this life or the afterlife. Reason or the natural order is a substitute for the Deity for many Enlightenment philosophers. For the purposes of this paper, the Asia tradition of the god-king similarly claims an immutable order in which the

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11 Ibid., 312.
12 Ibid., 317.
rights and obligations or rulers and subjects are deemed permanent. The virtuous
ruler is under an obligation to mete out justice and charity to the people but the
people are in effect no more than “third party beneficiaries” rather than rights-
holders.

The second set of theories holds that moral behavior is a human, social product
developed by a process of biological and social evolution (associated with Hume,
and also sentimentalist, subjectivist, or naturalistic approaches) or as a sociological
pattern of rule setting (as in the sociological theory of law and the work of Weber).
This approach includes the contractarian notion that individuals in a society accept
rules from legitimate authority in exchange for security and economic advantage (as
in Rawls). In legend, literature, religion and political thought, justice, and eventually
the concept of human rights became socially constructed over time into complex webs
of social interaction striving toward a social order in which human beings are treated
fairly as individuals and collectivities. The best-known histories of the human rights
movement tend to begin with the ancient religions and societies. Other theories
are based on human agency, positing such constructs for agreement to rules on the
utilitarian principles, or consequentialism. Each of these approaches would consider
the relationship between local knowledge and universal human rights differently.

The theoretical assumption I will use for the case of Cambodia is that of social
ethics mediated by public reasoning. It is a social evolution model based on human
needs and struggle that incorporates an analysis of the norm-creating process,
which is a form of public reasoning. It does not reject concepts of justice and dign-
ity, which usually denote a natural law perspective, but treats them as social con-
structs that are contextualized in time and space. These and other values become
norms through the constitutive process of authoritative decision making. Such
norms take the form of law through a particular form of authoritative decision
making of institutions associated with a legal system. The key feature in this expla-
nation is that the decisions in question are “in conformity with the expectations
of appropriateness of those who are politically relevant: more concisely, a process
of authoritative decision.” Here the deep, cultural origin of human rights norms
emerge from belief systems, myths, legends, social structures, and power relations
– in a word, culture. These upstream factors may be consistent with or profoundly
hostile to the set of norms we now call human rights. It is the process of public rea-
soning through human rights norm-creating that progressively weeds out the cul-
trally bound behaviors that are inconsistent with contemporary human rights.

13 See P.G. Lauren, The Evolution of International Human Rights: Visions Seen, Philadelphia:
University of Pennsylvania Press (1998); and H. Lauterpacht, International Law and

14 W. M. Reisman, “Law from the Policy Perspective,” in D. N. Weisstub (ed.), Law and
Policy, Toronto: Osgoode Hall Law School (1976) 75, reprinted in M. S. McDougal and
W. M. Reisman (eds.), International Law Essays, Mineola, New York: The Foundation
I attach special importance, from a human rights perspective, to what happens upstream in this norm-creating process. Authoritative decision making may respond to interests of a select few who control the process, which is usually the case in legal systems. I interject a legitimacy or authenticity factor that distinguishes institutionalization of “rights” (defined as any legally protected interests) from “human rights” (arising from traceable human needs of people in struggle for survival, dignity, and justice). Upendra Baxi advances what he calls the “radical” view of authorship of human rights . . . where peoples and communities are the primary authors of human rights.”

He explains, “resistance to power has a creationist role in the making of ‘contemporary’ human rights [i.e., that of Cold War and post-cold War politics], which then, at a second-order level, get translated into standards and norms by the community of states. In the making of human rights,” he continues, “it is the ‘local’ that translates into ‘global’ languages the reality of its aspiration for a just world.”

Thus, the “local” norm-setting process proceeds as follows:

Needs → struggle → human rights awareness → claims → political process → legislative process → human rights norms → effective remedies

At the global level, the legislative process takes the form of human rights declarations and treaties. The remedies are provided through human rights commissions, treaty bodies, and courts. At the national level, this process relates to government policies, laws and regulations, judicial and administrative remedies, and law enforcement.

Another way of understanding this process is to distinguish how it occurs in a society that functions under democratic institutions and the rule of law from what happens under nondemocratic societies. The following chart shows two loops, one where norms can emerge and be applied in ways that have an impact on human suffering and needs and the other where such an impact is not possible unless there is regime change.

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16 Ibid.
Perceptions of survival needs, injustice, and denial of dignity are historically the strongest motivations for the struggle that moves needs and desires downstream to the status of claims and eventually to the status of human rights. Along the way, victims may assert that their human rights have been violated well before the legislative process has been completed. Morally they may be correct; as a matter of positive law, their claim may be unfounded. The dynamic of human rights norm-setting is the dialectic relation between the human rights claims based on the aspiration to escape suffering but unacknowledged in local or global "law," on the one hand, and the claims that have been transformed by the legal system into positive human rights law backed up by effective remedies, on the other. The distinction between moral and legal rights is therefore significant but does not remove the characterization of human rights from the nonlegal social process. Both are part of the notion of a human rights culture.

A final general observation concerns external influences on the norm-creating process. External influences may affect this process at various stages. People in struggle frequently find manifestations of international solidarity with their plight, such as national liberation movements supported by international community; prisoners of conscience supported by Amnesty International; local women’s action against traditional practices supported by the global feminist movement; and internally displaced persons and refugees receiving international relief. These social networks do not await the formal adoption of laws but use human rights
ideas as the basis for solidarity. Outsiders may assist the process of “translating” the aspirations into norms by providing expertise to the legislative process through seminars, training programs, model laws, assistance with participation in treaty regimes, and so on.

The process is often unsuccessful or the changes superficial and illusory, as when a monarch or government proclaims in legal rituals (constitution, laws, ratification of a treaty) that people have rights and that the government has obligations but the objective conditions of the people or the arbitrary exercise of power denies effective enjoyment of these paper rights. This is the principle of effectivity, which complements those of legitimacy (the acceptability of the regime gauged by its capacity to fulfill human right), and authenticity (legal and social change in response to the actual needs of people who suffer deprivation and abuse).

This understanding of how a human rights culture develops has implications for the relationship of universal and local knowledge. Both national and international forces combine to create a culture of human rights. How they combine is complex. Risse and Sikkink try to answer the question of how international human rights norms are internalized and why this happens in such a varied way across states. Based on case studies, they develop a theory of stages and mechanisms through which international norms change behavior:

| Phase 1 | Repression and activation of transnational network |
| Phase 2 | Official denial of the validity of human rights concerns |
| Phase 3 | Tactical concessions allow activity to shift from transnational to domestic organizations. Towards the end of this stage the government starts to lose control of the situation: serious violations produce reactions from above (donors) and from below, as repression ceases to serve its purpose. States tend to underestimate impact of concessions and become entrapped in their own rhetoric, leading in the end to either controlled liberalization or repression and regime change. |
| Phase 4 | Human rights norms achieve prescriptive status, in which the state ratifies treaties, institutionalizes them in the constitution or domestic law, creates credible complaint mechanisms, and engages in dialogue, ceasing to denounce “interference in internal affairs.” |
| Phase 5 | Rule consistent behavior, provided pressure from above and below continues. |

Risse and Sikkink’s model implicitly assumes that human rights concepts (or at least pressures) are universally applicable, but it also shows the important role for domestic NGOs in internalizing human rights principles and participating in transnational networks.

Cambodia seems to be stuck in the early part of Phase 3, despite (or because of) the role of the international community in the early 1990s. An exploration of Cambodia’s legacy of upstream influences on constructing local knowledge will be necessary before we can consider how the universal human rights discourse was introduced downstream into Cambodia during its difficult transition.

**THE CONSTRUCTION OF LOCAL KNOWLEDGE IN CAMBODIA**

At the risk of relying too heavily on metaphor, the ontological “stream” of human rights culture described above is, in fact, composed of a multitude of tributaries, each representing a strand of endogenous and exogenous influence. Buddhism, the political culture of the Indic kingdoms, republicanism under colonial rule, radical Maoism, Vietnamese imposed, Soviet-style communism, international human rights movement, as well as reaction to these influences, each has a different level of influence on the potential for a human rights culture in Cambodia. Like the Mekong River, this flow of influences is a source of both wealth and dispute. The development of a human rights culture in Cambodia has been influenced upstream by Cambodia’s religion and culture, experience with struggle against the widest range of human rights deficits and denials, and downstream by openness to borrowing that further blurs the lines between local knowledge and universal human rights.

**Religious and cultural values**

The convergence of Buddhist values and human rights discourse owes a great deal to the experience of exile for many religious thinkers. The Venerable Maha Ghosananda, the Supreme Patriarch and cofounder of the Inter-Religious Mission for Peace in Cambodia, is an inspirational figure among NGOs. He and his fellow monks found full compatibility between the teachings of the Buddha and international human rights. The following meditation typifies his view that human rights are universal: “During his lifetime, the Buddha lobbied for peace and human rights. We can learn much from a lobbyist like him. Human rights begin when each man becomes a brother and each woman becomes a sister, when we honestly care for each other. Then Cambodians will help Jews, and Jews will help Africans, and Africans will help others. We will all become servants for each other’s rights...”

In 1996, the Venerable Heng Monichenda published his teachings on leadership through Buddhist principles, which according to Lao Mong Hay, then execu-

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tive director of the Khmer Institute of Democracy, is “a good introduction to the Buddhist ethical sources of human rights” (Preah Bat Thoammuk).19

One earnest attempt to reconcile international human rights norms with Cambodian culture and history is *Human Rights through Khmer Culture*, a text published in 1997 and issued by the Cambodian Human Rights and Development Association (ADHOC). The booklet begins with an assertion: “. . . the existence of principles of Human Rights is not only in the culture of the civilization of the Western world, but it is also the need, the objectives of every nation in the world. Human Rights principles appear through culture, literature tradition, custom and religion of each nation.”20 The publication pairs the rights in the Universal Declaration of Human Rights with elements of Cambodian history and tradition, for example, quoting the Buddha on the right to life and citing literature containing criticism as a local example of freedom of speech.

The pamphlet has a noble goal of making something foreign seem familiar to Cambodians, but it also reveals this strategy’s pitfalls. The efforts to show correspondence in some cases reveal the gaps. This is especially obvious in the appeals to historical precedent in the form of royal benevolence. For example, the right to health is foreshadowed by Khmer king Jayavarman VII’s construction of 102 hospitals in the twelfth century. Folk tales often include partial judges, who must be appealed to the king “because the king is the true judge.” There may be a positive human rights value in the availability of health care or appeals from arbitrary justice, but the context is that of divine rule rather than peoples’ rights.

The publication, like many similar efforts, attempts to retrofit isolated facts or details from the past into international human rights concepts rather than applying local culture to adapt international norms to be meaningful and appropriate to local contexts. In fact, the booklet explicitly recognizes that cultures are not homogenous and that they are influenced by other cultures. For freedom of religion, the authors note Cambodia’s syncretic history, with ceremonies drawing on Buddhism and Hinduism, animism, and folk beliefs/magic. The examples cited in the pamphlet focus mainly on the rulers as the locus of power, their benevolent action, and to some extent their duties, but not on human rights. As Donnelly has pointed out “claims of indigenous human rights tradition in Asia and China in particular confuse human rights with human dignity and well-being, or enjoyment of goods and services that are today associated with human rights. . . . Human rights were as foreign to traditional Asian societies as they were to their Western counterparts.”21

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21 J. Donnelly, *op. cit.*, note 6. Ibhowoh offers an effective response to Donnelly in the African context: “In most traditional African societies for example, there were no clear cut distinctions between religious values, moral precepts and laws. Therefore, the question of legal entitlements as distinct from moral and religious considerations could
In a theme that is central to the present paper, the pamphlet’s authors recognize the importance of a syncretic approach to human rights. Noting that Cambodian society has many “contradictions in application,” such as the treatment of women and children, the pamphlet argues, “Each culture, each tradition should throw away what is inactive or not progressive and take any rights or new laws to transform that tradition, creatively and in accordance with satisfaction.”

A more forthright and convincing approach was taken by Burmese dissident and Nobel Prize winner Aung San Suu Kyi. She has written of her country, which also has a Theravada Buddhist population:

> It is a puzzlement to the Burmese how concepts which recognize the inherent dignity and the equal and inalienable rights of human beings, which accept that all men are endowed with reason and conscience and which recommend a universal spirit of brotherhood, can be inimical to indigenous values. It is also difficult for them to understand how any of the rights contained in the thirty articles of the Universal Declaration of Human Rights can be seen as anything but wholesome and good. That the declaration was not drawn up in Burma by the Burmese seems an inadequate reason, to say the least, for rejecting it, especially as Burma was one of the nations which voted for its adoption in December 1948. If ideas and beliefs are to be denied validity outside the geographical and cultural bounds of their origin, Buddhism would be confined to north India, Christianity to a narrow tract in the Middle East and Islam to Arabia.

Cambodia’s experience with the adaptation of universal human rights reflects a similar compatibility of local religious and cultural values with the international standards. The construction of local knowledge, however, is more than a question of religious values; it is also – and perhaps primarily – a matter of political culture and responses to modern historical events.

**Political culture and modern Cambodian history**

Like many countries in Southeast Asia, Cambodia’s political traditions derive primarily from a mix of Indic culture with its absolute rule of god-kings and Buddhist beliefs. By the seventeenth century, these values delimited proper conduct of the

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not have arisen... Thus, the rights and obligations that derived from such religious, moral and cultural values associated with human dignity in traditional society... can validly be considered the contextual equivalents of the modern concept of legal rights.”

Ibhawoh, *op. cit.*, note 4, 46.

22 ADHOC, *op. cit.*, note 20, 34.


people, enshrined in *chbab* or laws based on positions in society.\textsuperscript{25} There was no place for egalitarianism. Some writers, including Aung San Suu Kyi, have argued that Buddhist kingdoms did not impute the divine right to govern absolutely. Rulers were traditionally expected to observe codes of conduct such as the Seven Safeguards against Decline, the Four Assistances to the People, and Ten Duties of Kings.\textsuperscript{26}

The Khmer empire, ruling from Ankor from the ninth to the fifteenth centuries, established a model of both patron-client relations and enormous power in the person of the ruler; patterns that would long outlast the kingdom. As David Chandler, the eminent historian of Cambodia, explains, “a Cambodian king, like most Chinese emperors, could rule only by extending networks of patronage and mutual obligations outward from his palace, at first through close associates and family members but becoming diffuse – and more dependent on local power-holders – at the edges of the kingdom.”\textsuperscript{27} The king was distant from the people, who rarely saw him. Even in the nineteenth century, villagers had only a vague idea of the king and generally believed him to have the power to influence the weather, to “dispense true justice” and to be “the only political source of hope among peasants.”\textsuperscript{28}

François Ponchaud explains that

\begin{quote}
[i]n the traditional mindset, the king, at the national and even universal planes was ‘the key for the preservation of harmony with the elements,’ ‘it was incumbent upon him to have the power and duty to rule over the broad universal expanses,’ and even ‘to master the earth spirits...’ The absence of a sovereign implied the lack of effective communication between the celestial powers and the world of men; without him you have complete chaos.\textsuperscript{29}
\end{quote}


\textsuperscript{26} These duties are: liberality, morality, self-sacrifice, integrity, kindness, austerity, non-anger, nonviolence, forbearance, and non opposition to the will of the people. See Kyi, *op. cit.*, note 23, 170.


\textsuperscript{28} Chandler, *op. cit.*, note 25, 107. Chandler also notes that the “Cambodian king, at the pinnacle of society, was remote from his subjects. Scholars have argued that this remoteness was expected of an Asian king; he was to rule by his largely invisible example, just as the sun shone, and he was to act as the custodian of a fund of merit and power – viewed perhaps as an interlocking, expendable commodity – that he had accumulated in previous existences en route to the throne,” *ibid.*, 112.

Patronage and clientship at the village level remained an essential part of the social structure up to the nineteenth century as the "rectitude and permanence of these relationships had been drummed into people from birth."\(^{30}\) Chandler cites Cambodian proverbs and didactic literature that "are filled with references to the helplessness of the individual and to the importance of accepting power relationships as they are."\(^{31}\) One example of the persistence of the past is the effort by rival political parties in the 1990s to win over defectors from a Khmer Rouge in decline. The effort focused largely on inducing key leaders to switch sides with their followers in tow, rather than anything approaching ideological or political arguments.

The existence of a legal system and of a formal constitution defining the functions and powers of national institutions only came with French colonialism and the realization of independence. When the French established their protectorate in 1863, Cambodia was governed much as it had been in Angkor a thousand years earlier.\(^{32}\) The French sought to inculcate "their ideas of rational, centralized control," abolish slavery and reduce the absolutism of the monarchy. In 1884, the French forced the king to accept "all the administrative, judicial, financial and commercial reforms which the French government shall judge, in future, useful to make their protectorate successful."\(^ {33}\) These French reforms and control eventually extended to all key aspects of Cambodian administration. While the small educated elite developed an understanding of French administration, "[t]here were no moves in Cambodia, for example, to widen the electorate, to introduce representative government on anything other than a consultative basis, or to train Cambodians to replace Frenchmen in the administration."\(^ {34}\)

King Monivong died in 1941 and the Vichy-appointed governor-general arranged for 18-year old Prince Norodom Sihanouk, whom the French though they could control, to accede to the throne. The Japanese soon entered Cambodia but allowed the French to maintain some administrative control until 1945 when, at the request of the Japanese, Sihanouk declared Cambodia independent and changed the name from the French "Cambodge" to the Khmer "Kampuchea."\(^ {35}\) When the French regained control, they kept Sihanouk on the throne and allowed political parties for the first time.

Elections were soon held for a Constituent Assembly to advise the king on a constitution.\(^ {36}\) Under a majority from the Democratic Party, the Assembly drafted

\(^{30}\) Chandler, \textit{op. cit.}, note 25, 105.

\(^{31}\) \textit{Ibid.}, 111.

\(^{32}\) \textit{Ibid.}, 142.

\(^{33}\) Art. 2 of the French-Cambodian Treaty as quoted by Chandler, \textit{ibid.}, 144.

\(^{34}\) \textit{Ibid.}, 164.

\(^{35}\) \textit{Ibid.}, 170.

\(^{36}\) In fact, the constitution was originally drafted by the Franco-Cambodian Commission in accordance with a \textit{modus vivendi} signed in January 1946. Sihanouk proposed amend-
a constitution in 1947 on the model of the Fourth French Republic that reduced the king’s powers. However, the Democrats “were in fact powerless to impose their will on the elite, the French, or their electorate – whose views . . . were rarely sought.”

This constitution enumerated the “Freedoms, Rights and Duties of Cambodians,” including prohibition of arbitrary arrest or detention, or mistreatment, presumption of innocence, freedom of movement, protection of property, freedom of conscience and religion, freedom of “speech, writing, printing and publishing,” freedom of association and assembly, the right to privacy, and the right to petition the government. This constitution, as amended in 1956, 1957, 1958, 1959, and 1964, remained in force until the coup of 1970, which brought Lon Nol to power and established the Khmer Republic. After the National Assembly cast a vote of no confidence against Prince Sihanouk, Lon Nol abolished the monarchy and proclaimed, in 1972, the Constitution of the Khmer Republic, which was “the only one of the six Khmer constitutions to establish a presidential regime and to provide for a modern, European-style constitutional court empowered to rule on the constitutionality of laws.” The Lon Nol constitution was short-lived, however, and was superseded by emergency powers. According to one assessment,

The Khmer Republic of Lon Nol, like its more regal predecessor under Norodom Sihanouk, represented the type of hierarchic political culture that underpins most governments in Southeast Asia to this day. In a political culture descended from the Hinduized kingdoms of Southeast Asia’s first millennium, neither equality of opportunity nor equality of attainment represented predominant social values or expected outcomes for the majority of the citizenry. All men were inherently unequal and society was hierarchically organized. Social roles were largely determined by birth, casting the individual into particular social classes or ethnic groups. Inequality was sanctified by the Buddhist concept of karma.
The Khmer Rouge\textsuperscript{41} overthrew Lon Nol in April 1975. In May, the Khmer Rouge promulgated the constitution of the newly renamed Democratic Kampuchea (DK). According to the titular president of the Khmer Rouge, this constitution was “not the result of any research on foreign documents, nor . . . the fruit of any research by scholars. In fact, the people – workers, peasants, and revolutionary army – wrote the Constitution with their own hands.”\textsuperscript{42} The constitution provided for a People’s Representative Assembly (PRA) as the supreme national foreign and domestic policy-making body. The Assembly was responsible for selecting a State Presidium of three members to function as head of state, as well as the government to implement laws and policies and the judges. State institutions were minimal and usually charged with maintaining compliance with party decisions and doctrine. The courts, for example, existed to monitor "activities . . . characterized by their systematic and dangerous attitude toward the people’s state."\textsuperscript{43}

Whatever their intent, many of these institutions existed in name only. Apparently, no judges were appointed and in fact there was no legal system in Cambodia during the 1975-79 period.\textsuperscript{44} The PRA, elected in March 1976, held its first and only plenary session for three days the following month and selected the PRA Standing Committee. According to one observer, “Rather than issuing laws and decrees, the body sent out a press release.”\textsuperscript{45} The principal human right affirmed in the constitution was the right to work and citizens were “entitled to . . . a constantly improving material, spiritual, and cultural life.”\textsuperscript{46} The constitutional affirmation of rights was, of course, irrelevant to the attempt by the DK to transform society according to a madly distorted Marxist-Leninist vision of a communist society. In the process, they succeeded in destroying the economy and infrastructure, savagely decimating the population, and producing the killing fields.

The Vietnamese invasion of December 1978 brought the Khmer People’s Revolutionary Party to power and the establishment of the Vietnamese-controlled People’s Republic of Kampuchea (PRK), called the State of Cambodia (SOC) since 1989.\textsuperscript{47} The PRK, led by a Khmer Rouge defector named Hun Sen, promul-
gated a constitution in 1981, along the model of socialist states, placing real power in the party while affirming limited rights and declaring progressive state policies in the interests of workers and peasants. Cambodians welcomed the Vietnamese invasion at first, if only because it signaled the end of the DK.48

The new constitution, especially with the amendments of 1989, presents a liberal façade to a single party, highly centralized state that controlled all aspects of public life and left no space for a genuine civil society. The chapter on the “Rights and Duties of Citizens” declares that the “State of Cambodia recognizes and respects human rights” and enumerates civil and political as well as economic, social and cultural rights throughout its 12 articles and the 20 articles of the chapter on the “Economic System and Socio-Cultural Policies.” As in the case of the Soviet Union and other communist party states, while human rights were not omitted from the constitution, the real problem was the complete disregard for the rule of law and the effective limitation on arbitrary power of organs of the state and the party, including the secret police, over the lives of citizens. The court system was based on the Vietnamese model in which decisions are made before trial and the judges were in effect part of the executive branch.49 In the case of Cambodia, the problem was compounded by the fact that virtually everyone with legal training had either fled or been murdered under the DK.50

Through the Law Concerning the Organization of Tribunals and Prosecutors of February 10, 1982, and the Law Concerning the Organization of the People’s Supreme Court and the Prosecutor General Attached to the People’s Supreme Court of July 31, 1985, the PRK attempted to establish a semblance of a justice system. The former law school, where students under the regimes of Sihanouk and Lon Nol studied for the license en droit, was transformed into the Institute of Public Administration and Law, which provided a brief teaching program to persons selected to serve as judges, prosecutors, and conciliators, focusing on

48 Ibid., 229.
50 The Lawyers Committee for Human Rights estimated that up to 80 percent of the 400 to 500 lawyers and legal experts in Cambodia were killed or died of starvation and disease under the DK and that when the PRK was established only ten law graduates were known to be in Cambodia, including five judges. Lawyers Committee for Human Rights, Cambodia: The Justice System and Violations of Human Rights (May 1992) 25. According to Donovan, “[s]ince the end of the Khmer Rouge regime in January 1979, the number of fully trained lawyers has actually diminished, owing to the deaths of some of the survivors of the massacres, to five. In the absence of university-level legal education, no members of the younger generation have been trained to replace them,” Donovan, op. cit., note 39, 87. A recent UN report estimated 200 practicing lawyers in a country of over 12 million. “Situation of Human rights in Cambodia, Report of the Special Representative of the Secretary-General for Human Rights in Cambodia,” A/57/230 (September 27, 2002) 9.
“Marxist-Leninist philosophy and law.”

51 Conscious of the deficiencies of the legal system and the lack of trained personnel, the regime extended the program to two years in 1987.52

Cambodia’s modern political history demonstrates openness to borrowing. But for Cambodia, even more than for most countries, the process of change has not been on its own terms. Henry Kamm writes of Cambodia that “[o]ver the past century its life has been grossly tampered with by many outsiders” including France, Japan, the US, China, Vietnam, the Soviet Union, and the UN.53 This legacy only increases the need for Cambodians to decide for themselves what they want from their government, but it also has left a cluttered legacy of colonial, Maoist, socialist, and UN institutions and concepts.

It is important not to confine the concept of local knowledge to an immutable past. Writing about the related issue of indigenous identity, Warren and Jackson warn of the “the ill-advised and often harmful assumption that indigenousness and modernity are mutually exclusive – modernity the essence of change, indigenousness the essence of atemporal continuity.”54 In Cambodia, local knowledge cannot easily be separated from foreign influence, including those influences said to be universal, such as democracy and human rights. Colonialism, invasion, and reaction are part of Cambodian history and therefore part of local knowledge and political culture. Local knowledge, in the worst sense of the phrase, is also a factor in a nation where genocide is not an abstract concept but lived experience for many. One Cambodia human rights worker told a conference, “Our recent past, oppressive beyond endurance, has consolidated the Khmer personality into obedience and fear.”55

The chart below highlights the major elements of local knowledge and external influences on the belief system and social structures of Khmer society up to the transition of the early 1990s.

51 Donovan, ibid., 81.
52 According to the director of the legislative department of the Ministry of Justice, interviewed in February 1987, “[t]here are still abuses and errors made because some representatives of state authorities do not yet fully understand the law and have been under-trained. Not all judicial personnel have backgrounds in Law and there are not enough lawyers in Kampuchea today.” E. Mysliwiec, Punishing the Poor: The International Isolation of Kampuchea, Oxford: Oxfam (1988) 49.
Figure 2: Chronological flow of influences on local knowledge in Cambodia

It is against this background that the 1991 Paris Conference on Cambodia sought to achieve an internationally guaranteed and comprehensive settlement that would restore peace and create the foundation, through a constitution, for a “liberal democracy on the basis of pluralism.” The efforts since then to apply international standards of human rights and democracy are more telling phase of the interface between local knowledge and universal human rights.

Efforts to apply international standards of human rights and democracy

The cultural traditions and political history alluded to above constitute the distal mix of local knowledge and universalist influences. The proximal mix of these influences derives from the UN-managed transition, beginning with the Paris Agreements of September 1991. That transition, which lasted until the UN’s departure in the fall of 1993, and its aftermath resulted in a faltering democracy, with a formal commitment to human rights and the continuation of many practices that violate those rights. What is new – and intimately connected with the influence of local knowledge – is the altered expectations of large segments of civil society and of their international supporters. Those altered expectations suggest a shift from a fatalistic acceptance of arbitrary exercise of power by traditional elites to a sense that regime legitimacy may be measured in human rights terms and that those responsible for violating those rights must be accountable. This complex dialectic of Cambodia’s difficult transition is characterized by the superficial introduction of human rights and democracy through elite interactions, on the one hand, and the deeper appropriation of these concepts by civil society, on the other.
Introduction of human rights and democracy through elite interactions

The political negotiations that eventually produced the Paris Agreements were concluded among the political elites of the communist state (the PRK, which had become the SOC), the Khmer Rouge opposition, the US sponsored noncommunist opposition, and the regional and global power brokers. The ideological foundation of the agreements was political and economic liberalism, an agreement at the “end of history,” if one considers that the dominant model in the first phase of the post-Cold War is that of liberal democracy and free markets. The four warring factions calculated that, in the absence of serious prospects for military victory, there was a political advantage in going along with this ideology until such time as they could gain political advantage. Thus, the agreements set out the rules concerning the holding of free and fair elections of the Constituent Assembly, which was entrusted with drafting a new constitution, the specific and required human rights elements of which were set out in an annex entitled “Principles for a New Constitution for Cambodia.” This text is drawn from a proposal, from 1982, of the five-state Contact Group that prepared recommendations for Namibia’s transition to independence and was used as the proposed constitutional structure for Bosnia-Herzegovina. The drafting process in Jakarta and Paris was, of course, the work of political elites, as was the implementation of the Paris Agreements, which was accompanied by a massive UN presence in the form of the United Nations Transitional Authority in Cambodia (UNTAC) and the formal decision-making process involving the entity in which Cambodian sovereignty putatively resided, namely, the Supreme National Council (SNC), consisting of representatives of the four factions and chaired by Prince Sihanouk.

It was at this elite level that Cambodia became party to the major human rights treaties, that attempts were made to reform the judiciary and the legal system, that the constitution was drafted, and that the country has weathered three elections, each illustrating how difficult it is to transform elite political behavior.

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57 These four factions were the People’s Revolutionary Party of Kampuchea (PRPK), which headed the People’s Republic of Kampuchea (PRK), since 1989 called State of Cambodia (SOC), represented by the Cambodian People’s Party (CPP); the monarchist National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC); the Khmer People’s National Liberation Front (KPLNF), also known as the Buddhist Liberal Democratic Party (BLDP) since May 1992; and the Party of Democratic Kampuchea (PDK) or Khmer Rouge (KR).
Accountability under the rule of law and international human rights treaties

The Supreme National Council, on behalf of Cambodia, adhered to seven international human rights treaties,\(^{58}\) in accordance with Article 15(2)(a) of the Paris Agreements.\(^{59}\) The set of universal standards was therefore ratified as part of the implementation of an internationally brokered settlement and was not driven by domestic forces, although the human rights NGOs, several of which were formed before the UN’s arrival, strongly favored this process. However, such elite behavior can have significant impact on the expectations of civil society, as Lutz and Sikkink point out in the case of Latin America, often exceeding what authoritarian signers anticipated.\(^{60}\)

On the ground, UNTAC struggled to ensure accountability and the rule of law while existing systems remained in place. This can be seen in the transitional provisions on the judiciary and criminal law and procedure, the Special Prosecutor’s Office, and the drafting of the constitution. UNTAC’s experience in carrying out the human rights and civil administration mandates was only partially successful in holding authorities accountable.

An important tool used by both the Human Rights and the Civil Administration Components of UNTAC to carry out their respective mandates was the Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (“Transitional Provisions”) of September 10, 1992, which were designed to incorporate the most relevant standards of international human rights law into domestic law. These provisions set out rules for an independent judiciary, the conduct of law enforcement officials, conditions of arrest and detention, a fair trial and the definition of crimes and misdemeanors and the

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\(^{58}\) The two international covenants, the Convention on the Elimination of All forms of Discrimination against Women, the Convention against Torture, the Convention on the Rights of the Child, and the Convention and Protocol on the Status of Refugees. Cambodia was already a party to the Convention on the Repression and Punishment of the Crime of Genocide and the Convention on the Elimination of All Forms of Racial Discrimination. Other, more technical, treaties, such as the UNESCO Convention on Illicit Traffic in Cultural Property, would belong to a more exhaustive enumeration of human rights treaties but are not relevant for present purposes.

\(^{59}\) This provision contains the undertaking of Cambodia “to adhere to relevant international human rights treaties.”

\(^{60}\) E. L. Lutz and K. Sikkink, “International Human Rights Law and Practice in Latin America,” 54 International Organization (2000) 658. “Because international law is perceived as not having any enforcement mechanisms, states may have believed that they could selectively and instrumentally partake in it. But international human rights law was capable of imposing more costs than they originally anticipated because it was enforceable not only directly, but also indirectly through a wider range of political channels. These diverse channels eventually imposed more costs or required more compliance than state actors originally thought possible, but by the time this became apparent, states could not readily disentangle themselves from their legal obligations.”
penalties for these infractions. The Transitional Provisions abrogated those existing texts that were incompatible with them and remain applicable “until such time as the Legislative Assembly resulting from the elections amends them or adopts new legislation in this area.” They also incorporated by reference numerous UN standards of human rights and criminal justice, all of which “are applicable as law in Cambodia once they have been officially published by UNTAC.”

In spite of fairly extensive UNTAC training, the under-educated, ill-equipped, and politically controlled judiciary could not, with few exceptions, adapt to principles of independence and due process in a matter of months. This was especially true for serious crimes, involving gross violations of human rights with political implications. UNTAC human rights officers and civilian police would conduct investigations into such incidents and either seek “corrective action” from the existing administrative structures (usually of SOC) in the form of an official’s dismissal or urge the SOC judicial authorities to prosecute. In response to the unwillingness of prosecutors to charge persons identified by UNTAC, the Special Representative of the Secretary-General signed a directive on January 7, 1993, giving UNTAC police and troops the power to arrest, detain, and prosecute anyone against whom they had evidence of serious human rights violations, establishing a novel institution in UN peacekeeping. An UNTAC Special Prosecutor’s Office was also established, and several persons were arrested, following investigation. The procedure was innovative but was not intended to replace the existing judicial structures. Rather it was intended to “kick-start” the court system by bringing properly investigated cases with legally sound indictments before the judges.

The situation has improved little in the decade or more since the UN transition ended. A UN report from 2002 found that “Cambodia’s judicial system remains weak and highly prone to pressures including corruption, executive interference and influence peddling. Reform efforts are progressing slowly or have stalled. Key appointees are in many cases individuals with strong political affiliations, reflecting a tendency for those in power to exert control over court decisions.”

Drafting the constitution

UNTAC (as well as several foreign governments, especially France and the US) attempted to prepare political parties for the constitution-drafting process. For example, the Asia Foundation organized seminars on constitutionalism, with particular emphasis on the US Constitution. France used more subtle ways to

61 Art. 73: Abrogation of Inconsistent Rules.
62 Ibid., Preamble.
63 Ibid., Art. 74 (1). The official publication of the UN documents was provided in a 400 page compilation in Khmer and distributed in 10,000 copies.
influence the process. Their efforts and those of the UN are direct examples of the interaction at the elite level between local knowledge and proponents of universal human rights. The least successful effort was that of the US and France to convince Constituent Assembly members to follow the models of their national constitutions. In the end, the UN’s model, much more “universal” by definition, did not prevail in several important respects over local knowledge in the form of the Buddhist and monarchical traditions.65

An exchange during an SNC meeting in Siem Reap in September 1992 demonstrates how local knowledge – in the form of the particular behavior of then Prince Sihanouk – played with the UN approach to universal human rights. The Special Representative of the Secretary-General, Yasushi Akashi, placed an item relating to the draft constitution on the agenda and distributed a brief, factual analysis prepared by Professor Reginald Austin, the head of the Electoral Component and a professor of law and former dean of the University of Zimbabwe’s law school. Austin’s information document deliberately avoided any suggestion that UNTAC intended to write the constitution or propose draft texts; it merely set out, in general terms, the issues that must be addressed when drafting a constitution, such as name, flag, delimitation of territory, form of government, and so on. The Special Representative’s intention was to suggest a SNC task force that would consider the issues, preparing the ground for the Constituent Assembly. Following Austin’s presentation, Prince Sihanouk expressed his warmest congratulations and then proceeded to formulate his preferences through a section-by-section review of what the future Cambodian constitution should contain. He would punctuate each point by stating “That’s what we should do, isn’t it, Mr. Akashi?”66 In this way, he stated his position on the name, flag, national anthem, borders, type of government, governmental institutions, independence of the judiciary, requirements for the presidency, and so on. While in fact anticipating the outcome of the Constituent Assembly’s work, formally Sihanouk was merely endorsing the idea of creating an SNC task force to study these issues. Whether traditional royal leadership or the lessons learned as a survivor of the Indochina conflicts of the twentieth century, Sihanouk ensured that a version of his personal views was known at the outset.

In fact, the Electoral Component did convene several working sessions on constitutional matters with party representatives and a few outside experts, but without the participation of either Sihanouk or Akashi. The most significant event was the Constitutional Seminar held from March 29 to April 3, 1993. All Cambodian parties and many Cambodian NGOs were invited to participate in discussions around presentations made by UNTAC staff and several Cambodian and outside experts. While helpful in deepening participants’ awareness of com-

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66 Personal recollections of the author.
parative approaches to governance and constitution drafting, the seminar did not appear to have much of an impact on the final text, which was to be the work of Cambodia’s political elites, and reserved some surprises for the internationals.

The draft, which was prepared by the 12 members of the Drafting Committee (6 from FUNCINPEC, 5 from CPP, and 1 from BLDP) in August 1993, was kept secret from the 108 other members of the Constituent Assembly and from NGOs, although its contents were leaked. It was rumored that Prince Ranariddh, the chief of state in the provisional government, disagreed with the Committee’s draft and wanted to resurrect the monarchical constitution from 1947. The procedure’s secrecy was in accordance with the Assembly’s rules, adopted without discussion at its first meeting in June 1993. It has been reported that the vote on these rules was also secret and was not even tallied. In the end, however, there was precious little participation of the NGOs or Assembly members. In the second week of September 1993, the Drafting Committee released its draft, about the same time as FUNCINPEC made its monarchical draft available. Although the Drafting Committee apparently worked hard and independently, the Assembly as a whole did not show much independence of the two dominant parties, the CPP and FUNCINPEC, and their leaders, Hun Sen and Prince Ranariddh. They both traveled to Pyongyang, where Sihanouk had once again removed himself to influence affairs from a distance, carrying two constitutions, a republican version (most likely containing language proposed by the CPP) and another restoring the monarchy (drafted by FUNCINPEC). Milton Osborne describes what happened:

Sihanouk commented publicly that the decision as to whether he once again became king was the Cambodian assembly’s, but there was no doubt in the minds of those who had seen him that he expected to become king again. And, indeed, he is reported to have made many handwritten amendments to the monarchical constitution shown to him for his approval. Yet no sooner had the announcement of the intention to return to Phnom Penh, than Sihanouk called for the population to renounce the monarchy and his projected role as king. To further compound confusion, the prince also announced he was ending his presidency of the SNC. It was all very much of a piece with Sihanouk’s behavior in the past. Once the members of the assembly begged him to change his mind, he graciously did so. He had shown that he was truly wanted.

The Assembly adopted the text and one of its members even remarked that the public and unanimous voting on limited matters in the Assembly was “just like

68 Ibid., 8.
Under communism.” 70 On September 24, 1993, Prince Norodom Sihanouk ratified the new constitution during an elaborate ceremony in the ornate Royal Palace. UN Special Representative Yasushi Akashi’s voice broke with emotion when he announced at the airport as he left two days later, “Cambodia made a giant step on September 24 when it promulgated the new Constitution” and gave UNTAC a grade of “nine out of ten.” 71 Other countries gave UNTAC considerable credit for this outcome. 72 The head of the US mission to the SNC, subsequently appointed ambassador to Cambodia, Charles Twining, remarked that the constitution’s adoption “carries out completely the designs of those Cambodians and non-Cambodians who drafted the Paris agreements.” 73 The Clinton administration noted that “[d]espite persistent Khmer Rouge threats, democracy in Cambodia has shown impressive staying power over the past year. Cambodian accomplishments in this area would not have been possible without the contribution of the UN Transitional Authority in Cambodia (UNTAC). UNTAC was a stunning peace-keeping success.” 74

From the perspective of national reconciliation, this process appears to be a successful application of the transformation of warring factions into political parties. The fourth faction, the PDK (Khmer Rouge), had withdrawn from the electoral process and, although still technically a member of the SNC, was not involved in the constitution-making process, although Sihanouk tried very hard to bring them in. 75 In fact, the PDK continued waging war against the newly created Royal Cambodian Armed Forces (RCAF). This development was clearly a failure of the peace process, attributable to Akashi’s calculated risk that by not confronting the Khmer Rouge he could preserve the essential goal of holding the election.

70 Brown, op.cit., note 67, 8.
74 “Cambodia: Recent Developments,” Statement by P. Tomsen, Deputy Assistant Secretary For East Asian and Pacific Affairs, before the Subcommittee on Asia and the Pacific of the House Foreign Affairs Committee, Washington, D.C., May 11, 1994, Department of State Dispatch (May 23, 1994), Section: Vol. 05, No. 21.
He was indeed able to hold the election but the price for Cambodians was another six years of military confrontation.

In 1994, the National Assembly adopted the “Law on Outlawing the Group of ‘Democratic Kampuchea.’” The DK, which many believe never should have been allowed to participate in the peace process, were excluded from democratic representation, and collapsed completely four years after being outlawed. Attempts by Ranariddh to bring DK leaders into the government precipitated the bloody coup of July 5–6, 1997, by Hun Sen’s forces against those of FUNCINPEC. Hun Sen consolidated power after the coup in July 1997, which was a result of the failure to guarantee genuine democratic representation during the constitutional phase of Cambodia’s transition. Pluralism was accepted on paper only.

On July 26, 1998, the first national election since 1993 was held to select the 122 members of Cambodia’s National Assembly. For Second Prime Minister Hun Sen, the presence of international observers would help him gain international legitimacy, specifically, the restoration of Cambodia’s seat at the UN, its admission to ASEAN, and the restoration of aid, especially from the US, suspended in response to the coup. For the opposition, the observers were there to prevent the “conversion” of Hun Sen’s violent ousting of First Prime Minister Prince Norodom Ranariddh, in July 1997, into unrivaled political dominance. Therefore, the presence of 500 international observers was critical for both of these seemingly contradictory objectives. From the perspective of the consolidation of democracy, it was vital that Cambodians be able to run free and fair elections themselves, even if they needed the international community’s financial and technical support. The CPP managed to win a plurality of votes, although the election was marred by voter intimidation and partisan violence, mostly attributable to that party. A new coalition government was formed, with Hun Sen as prime minister, Ranariddh as Assembly president, and Chea Sim of CPP as president of the Senate, which was created in March 1999, pursuant to a constitutional amendment.

The next stage for democratic representation was the communal elections in February 2002. The democratic representation that began with the Assembly’s election and was set back by the consolidation of one-party rule in 1997, advanced to a degree in that election, only to be further challenged by the national elections of July 2003, which resulted in another stalemate with the opposition parties refusing to take their seats in the National Assembly. One thousand international observers and about 30,000 local observers monitored the voting process in more than 12,000 polling stations. CPP won the majority of the votes (73 seats in 123-seat National Assembly), while the Sam Rainsy Party (SRP) and FUNCINPEC were second and third with 26 and 24 seats respectively and rejected the results, leading to another stalemate with the refusal of opposition deputies to take their seats and an extended delay in appointing a government and opening of the par-

77 Arts. 99-105, amended Constitution.
liament. The propensity for extraconstitutional power grabs and electoral violence underscore the fragility and vulnerability of democratic institutions at the level of elite interactions during Cambodia's difficult transition. Among these elite forces, there is little space for synergistic interaction of local knowledge and universal human rights however compatible they may be in theory. The interactions at the level of civil society paint a somewhat different picture.

Local knowledge adapting to human rights through human rights education, civil society, and the Buddhist Clergy

A less top-down model of the adaptation of local knowledge to the creation of a human rights culture involved the process of human rights education, the emergence of civil society organizations, and the engagement of the Buddhist clergy.

Human rights education

According to the secretary general’s report from 1992, which set out the UN mandate during the transition of 1992-93, “The development and dissemination of a human rights education program is foreseen as the cornerstone of UNTAC’s activities in fostering respect for human rights...” This statement is based on UNTAC’s responsibility as set out in the Paris Agreement’s Article 16 (“fostering an environment in which human rights shall be ensured”) and Section E of Annex I, which states that UNTAC shall make provision for the “development and implementation of a program of human rights education to promote respect for and understanding of human rights.” The meaning of “education” is broad; it implies “teaching” in formal and informal learning environments, as well as “training” and “information.” With respect to formal teaching, the secretary general’s report envisaged “that UNTAC would also work closely with existing educational administrative structures in Cambodia to ensure that human rights education is appropriately included in the curriculum at all levels, including children, adults and special groups.” Significantly, the report stated that

[...] Cambodians must fully understand both the content and the significance of those rights and freedoms in order to be in a position to know when and how to protect them properly. This is especially important in an environment in which the framing of a new Cambodian Constitution containing human rights guar-

79 Report of the Secretary-General, UN Doc. S/23613, para. 12. This document is the principal source, after the text of the Paris Agreements, of UNTAC’s mandate.
80 S/23613, para. 13.
Such a civic education program would be developed in a manner that is culturally sensitive and generally “accessible” to Cambodians. Its dissemination would rely upon all channels of communication available in the country, including printed materials (words and pictures), cultural events and presentations, radio and television media, videocassette distribution, mobile teaching units, etc.\textsuperscript{81}

Thus, while the secretary general’s report does not distinguish between types and levels of education, it does provide guidance on training and information, and target groups for these educational activities. The implementation of these broad guidelines required a more specific strategy and plan of action.

After determining that the mandate included all levels and types of education, the Human Rights Component identified the target groups to whom educational activities would be directed: two from UNTAC (UNTAC Civil Police and electoral staff), seven from the Existing Administrative Structures (police, teachers, university students, ministerial officials, other civil servants, political party representatives, judges, and prosecutors), and six from civil society (defenders, human rights associations, women’s associations, journalists, monks, and health professionals). The following table indicates the number of people in each group that received training.

\textit{Table 2: Target Groups of UNTAC’s Human Rights Training}

<table>
<thead>
<tr>
<th>Group</th>
<th>Number receiving human right training</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teachers</td>
<td>9,215</td>
</tr>
<tr>
<td>Civil Servants</td>
<td>4,450</td>
</tr>
<tr>
<td>Judges &amp; Prosecutors</td>
<td>409</td>
</tr>
<tr>
<td>Political Party Representatives</td>
<td>2,335</td>
</tr>
<tr>
<td>Police</td>
<td>2,990</td>
</tr>
<tr>
<td>Human Rights Associations</td>
<td>3,674</td>
</tr>
<tr>
<td>Women’s Associations</td>
<td>560</td>
</tr>
<tr>
<td>Electoral Staff</td>
<td>1,752</td>
</tr>
<tr>
<td>Students</td>
<td>9,335</td>
</tr>
<tr>
<td>Health Professionals</td>
<td>1,103</td>
</tr>
<tr>
<td>Other</td>
<td>27,640</td>
</tr>
<tr>
<td>Total</td>
<td>63,463</td>
</tr>
</tbody>
</table>

The total number of persons reached by the education and training work of the Component by mid-1993, according to its database, was thus around 63,000. Given the fact that the trainers kept incomplete records, a more accurate estimate is closer to 80,000. Furthermore, the principal reason for providing training and

\textsuperscript{81} \textit{Ibid.}, paras. 12-13.
financial resources to the human rights associations was to allow them to train their own members. This multiplier effect probably resulted in a further 4,000 persons receiving some human rights training through each of the two larger human rights association (LICADHO and ADHOC) and 1,000 each for the two smaller ones (Vigilance and Outreach). Adding these to the above total gives the approximate figure of 90,000 as the total number of persons who attended at least one human rights course organized as a result of the Component’s education and training program. In addition, since the data were collected, several large-scale training projects were implemented, such as the training of 4,000 teachers in Kompong Cham province, a systematic training project for the monks in all provinces, and an extensive program for judges and defenders. It would, therefore, be reasonable to estimate that a further 10,000 people were reached by projects launched during UNTAC’s official mandate, bringing the overall total to close to 100,000 people during the 1992-93 period. Most of these efforts were funded through a trust fund in human rights education for Cambodia.

The human resources available to reach these groups began with the initial staff of four in the Education, Training, and Information Unit in Phnom Penh. A major staffing addition was the appointment, in late 1992, of 21 Provincial Human Rights Officers, whose responsibilities included education, training, and information. Even more important were 21 Training Assistants: Khmer-speaking educators, trained by the Component, and assigned to each Provincial Human Rights Officer to work full-time on training at the provincial level. Such staffing was small compared with the mission’s other components but is significant compared to what is normally available for human rights education.

There was a sense of urgency to proceed with the implementation of the human rights education program because of the extremely short time available to the mission, and the conviction that such resources and political will were not likely to be found again. Moreover, bureaucratic delays to obtain approvals from administrative and financial services in Phnom Penh and New York shortened even more the effective time for project implementation.

The content of the educational activities was based on the presumed expectations of each group in light of the secretary general’s report. In most cases, the main goal was a basic understanding of human rights concepts and international standards, as well as their applicability in Cambodia and their relation to the lives and work of those receiving the education. The impact of the educational activities in terms of the assimilation of concepts and skills appeared to be directly proportional to the links established between the content and the daily lives of those in the courses. An interesting example was the human rights education program developed for health professionals, in which case studies were used and a curriculum was developed by a team that included Cambodian doctors and nurses, former refugees, and victims of torture, as well as an American doctor, a British lawyer, and a French nurse.82

The UNTAC human rights education program had broader objectives than targeted training. For example, after the election of the Constituent Assembly, which was tasked with drafting the new constitution, the Human Rights Component redirected its human rights education program toward “constitutional literacy” in an effort to provide Cambodian NGOs and the general public with information on popular participation in constitution drafting, drawing on other Asian examples as well as a basic understanding of constitutional concepts. Audio-visual materials were prepared and disseminated through television and video cassettes, discussion groups were set up with NGOs, and a “constitutional forum” was organized during which three Cambodian activists (a monk, a representative of women’s organizations, and the leader of an indigenous human rights organization) participated in a panel with three Asian experts who had been active with popular organizations during the drafting of other constitutions in the region. The audience, which included more than 100 activists, engaged in an animated discussion showing an intense interest in political participation and strong human rights provisions in the constitution. On their own initiative, the Cambodian groups used the UN meeting room for closed sessions (with no international presence). At the conclusion of these meetings, they had formed a coalition of 14 groups called Ponleu Khmer (Cambodian Illumination) and defined a strategy for lobbying the Constituent Assembly in to press for strong human rights provision, especially with respect to the rights of women. The strategy was implemented with a remarkable degree of courage, initiative, and perseverance. This coalition of indigenous groups was taking charge of its own strategy to promote human rights, thus advancing both the end and the means of human rights education.

After the departure of UNTAC, the UN continued the human rights education work through the Cambodian Office of the High Commissioner for Human Rights. The post of special representative of the secretary general for human rights in Cambodia was created and filled by individuals who continued to encourage the promotion and protection of human rights in collaboration with local human rights NGOs.

The emergence of civil society organizations

The proliferation of NGOs, independent of the state and party structures, has been called the “first step towards a civil society in Cambodia after its destruction between 1975 and 1978.” During the transitional period, UNTAC handled the

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83 The first item on the office’s list of activities was “to manage the implementation of educational and technical assistance and advisory services programmes and to ensure their continuation.” UN Commission on Human Rights Resolution 1993/6 adopted in February 1993.

84 “Report of the Special Representative of the Secretary-General, Mr. M. Kirby (Australia), on the situation of human rights in Cambodia, submitted in accordance
registration of associations and was quite liberal in accepting applications. Henry Kamm considers the human rights NGOS “one of UNTAC’s commendable by-products, noting, “they are courageous but are confined to protests that the politicians ignore and noble efforts to instill among the humble basic ideas of respect for human dignity that the power elite of all descriptions defile daily.”

Among the NGOs promoting human rights, five were functioning in Cambodia during the transitional period, with combined membership claimed to be over 150,000. After UNTAC’s departure, at least a dozen more human rights NGOs emerged. From the perspective of local knowledge, one of the most interesting is Ponleu Khmer and its role during the constitution drafting process. After its creation under conditions described above, Ponleu Khmer developed its own critique of the constitution drafting process. For example, its spokesperson stated that the draft of August 1993 was contradictory in that it specified human rights fairly clearly and stipulated a separation of powers but also concentrated the state’s decision-making power in the hands of a few people. “While the principles stipulated in the constitution are good, for example that ‘power comes from the people,’ there is no check on the power of the president. . . When power is concentrated in the hands of only a few people, how can human rights be protected?” Ponleu Khmer’s critique of the constitution-drafting process from a human rights perspective stands out as an interesting example of the adaptation of local knowledge to universal principles.

The NGOs favored detailed human rights provisions based on international standards with effective enforcement procedures and were disappointed. Nevertheless, after the constitution was proclaimed and UNTAC departed, Ponleu Khmer continued to educate the population about participatory democracy and to push for a sense of accountability on the part of elected officials and civil servants. In June 1994, nine human rights NGOs founded the Cambodian Human Rights Coordination Committee to strengthen links and improve exchanges of information. Several groups, such as the Cambodian Institute of Human Rights, focused its work further disseminating human rights thinking through training for the local population, especially teachers, government officials, and members of the National Assembly.

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86 J. C. Brown, “Khmer democracy: Where’s the participation?,” Phnom Penh Post (August 27-September 9, 1993) 8. In Akashi’s reply, he supported their “democratic right to lobby the members of the Constituent Assembly and the political parties to which they belong, on any matters of concern relating to the Constitution,” but noted that the process was the responsibility and prerogative of the Assembly.
The Buddhist clergy

The Buddhist clergy constitute a particularly effective vehicle for reconciling local knowledge with universal ideas. Monks were severely victimized during the Khmer Rouge period. According to a leading authority on the period, “Khmer Rouge policy toward Buddhism constituted one of the most brutal and thoroughgoing attacks on religion in modern history.”87 The population of monks was reduced from about 60,000 to less than 1,000.88 The Vietnamese-installed government in Phnom Penh tolerated the monks, although the National Front for Construction and Defense, an organ of the party, supervised them closely.89

After the arrival of the UN in 1992, Buddhism flourished, and several monks who returned from exile became leaders in the human rights movement. For example, the Venerable Maha Ghosananda, the Supreme Patriarch and cofounder of the Inter-Religious Mission for Peace in Cambodia, served as head of Ponleu Khmer. Through marches, teaching, lobbying with governmental and parliamentary leaders, and spiritual guidance to the population, which is 90-95 percent Buddhist, the clergy has popularized constitutionalism and human rights, even in remote areas. As with previous constitutions, the constitution adopted in 1993 established Buddhism as the state religion. This statement is listed in the same article of the declaration of rights that also affirms freedom of religious belief and worship, subjecting those rights to limitations against proselytizing and for the protection of public order and security.90

During the first year of UNTAC, the Phnom Penh authorities resisted the Component’s attempts to set up systematic training for this category. The monks’ participation in the human rights associations, including the regular provision of meeting and office space in the Wats (pagodas), nonetheless allowed the Component to work with them in human rights education. In early 1993, it became possible to implement a more systematic strategy through a project that educated “masters trainers” who, in turn, prepared hundred of monks to teach human rights in their Wats.

The experience with the monks has implications for human rights education in other peace-building contexts. With the exception of societies where organized religion is subservient to repressive government, the main religions provide both a source of understanding of prevailing values and a cultural context in which learning takes place. Religion is thus a vehicle for reaching widely and deeply into society. No doubt, intolerant interpretations of major religions influence politics in many countries and are not conducive to a human rights culture. Furthermore, several practices, particularly relating to the treatment of women, by many religions

88 Ibid.
89 Mysliwiec, op. cit., note 52, 47.
90 Art. 43, Constitution.
are, at best, problematic for human rights and more often clearly violate those rights. Nevertheless, there is support for the claim that “faith in human rights reflects a convergence of the religious wisdom of the world.” The Cambodian example appears to be a positive one for the hypothesis that religion, as a major mode of local knowledge, can be effective at embracing and disseminating universal ideas of human rights.

CONCLUSION

A scholar of legal anthropology has written “every culture will have its distinctive ways of formulating and supporting human rights. Every society can learn from other societies more effective to implement human rights. While honoring the diversity of cultures, we can also build toward common principles that all can support.” Cambodia’s transitional period offers several lessons concerning how this learning takes place. When the interactions were at the elite level, the local political culture of deference to power prevailed, notwithstanding lip service to constitutional and treaty obligations relating to human rights. The weight of the past, and especially the recent past of a one-party state with a strongman at the helm, hampered the absorption of international human rights standards, and facilitated the patterns of corruption and political violence that preceded the international participation in the transition.

The complex mix of the cultural foundations of society molded over time by the introduction of new ideas and practices creates local knowledge. Within traditional beliefs and behaviors lie many attitudes that correspond with what we today call human rights. At the same time, we may also see attitudes that run counter to the twenty-first century catalogue of these rights. Human rights have been clarified and codified internationally as a result of the complex process of transforming human suffering and needs into claims, which, in turn, become part of social change, either through legislation and judicial and administrative remedies (the democratic/rule of law loop) or through social mobilization (the regime change loop). Philip Allott insightfully observed, “The idea of human rights having been thought, it cannot be unthought . . . . There are tenacious individuals and non-statal societies whose activity on behalf of the idea of human rights is not part of international relations but is part of a new process of international reality-forming.”

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Cambodians are engaged in such “reality-forming” and democratic empowerment. A human rights culture is more likely to emerge from such activity of citizens than from token compliance by political elites.

Compliance with international human rights law implies both popular sovereignty through democratic processes and a human rights regime. Cambodia’s attempts over the past dozen years since the departure of the UN continue to falter in both respects. Indeed, the Cambodian experience appears to confirm the view that human rights emerge in response to human suffering and need, mediated by a political and legislative process. Thus, local knowledge provides the basis for making human rights claims through an effective human rights regime or, in the absence of such a regime, through mobilization against repression and oppression. This process of local claims against the power structures took shape during the transition, especially in relation to the human rights provisions of the Constitution, and has continued through three flawed electoral moments and the constant vigilance, monitoring, and reinforcement of social networks. The combined strength of the progressive inclusion of human rights within local knowledge and the support mechanism of social networks and international institutions have laid the foundation in Cambodia for establishing a human rights culture. Building a functioning human rights culture on that foundation is the work of the next generation.