

Human Rights Minus Liberty?

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International agreements, of the United Nations as well as of the West European and Inter-American regional organizations, affirm commitments to such personal liberties as freedom of thought and religion, of opinion and expression, of assembly and association, and of emigration. But these liberties, until recently considered central to the concept of human rights, are under increasing threat within the U.N. system.

In 1948 the Universal Declaration of Human Rights was adopted, followed in 1966 by the Covenant on Civil and Political Rights. Both focused on these values. Forty-eight nations have ratified the Covenant, including nearly all the Communist and some radical leftist Third World states—but not, paradoxically, the U.S., even though this, more than any other U.N. convention, reflects the Western civil liberties tradition. The Universal Declaration was conceived initially as only a statement of moral goals, but U.N. members agreed in the 1968 Teheran Proclamation that it “states a common understanding of the people of the world concerning the inalienable and inviolable rights of all members of the international community.” Thus, some international lawyers hold it to be legally binding.

Today, there are repeated and blatant violations of these historic agreements, and even the philosophical assumptions of these agreements are being challenged. Besides the persistent and skillfully orchestrated Soviet attack, developing countries with authoritarian regimes of the Left and Right increasingly assail the libertarian intent of these agreements. The danger also comes from moral relativists, who believe that concepts of right and wrong stem from a cultural setting. Arguing that it is unjust and arrogant to impose “Western” human rights standards on other peoples, they would exempt developing countries from them. And assaults come from those who would broaden the concept of human rights to encompass human needs, conceived in largely economic terms, but give too little attention to personal freedoms.

Prominent among those challenging the emphasis on personal liberty—especially in the current human rights policy of the U.S.—is Iran, whose representative to the World Bank wrote in a *New York Times* “Op-Ed” piece earlier this year that Western libertarian ideals are “ethnocentric,” “one-sided,” “abstract,” and “negative” because they overlook economic and social rights requiring positive state intervention. People in developing countries need and want economic and social rights more than they do political rights and personal freedoms, it was argued, and since values, including human rights, depend on political, economic, and social factors, they cannot be universal and inalienable.

It may be true, as he and others contend, that concepts of political and individual freedom have roots in intellectual currents prevalent in seventeenth and eighteenth-century Western Europe. But it does not follow that people living today, even in different cultures and under different social systems, do not share these human rights aspirations and values; that they do not yearn for these rights and would not demand them if they could. Nor is it true that similar values, diversely expressed, were absent from earlier cultures.

The relativist perspective, challenging the right to the personal freedoms guaranteed in the U.N. agreements, endangers the foundation of the international human rights system.

The Covenant on Civil and Political Rights already provides for suspending the rights it guarantees to accommodate special circumstances like war, pestilence, or famine, but it does so in such a manner that it upholds the assumption of universally applicable fundamental rights. Thus the Covenant allows contracting states to limit particular rights on specified grounds, namely national security, public order, health, morals, and protection of the rights and freedoms of others. This means that governments may “balance” some rights against other rights—for example, rights to religious expression must not be applied to permit human sacrifice, and freedom of expression may be balanced to limit pornography. However, moral relativism is rejected: Selected, absolute moral standards are established. For

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example, the human right not to be killed arbitrarily, not to be tortured or enslaved, not to be held guilty of a crime for an act not criminal when committed, or not to be denied the religion of one's choice—these rights may not be limited, according to the Covenant.

For if moral relativism were accepted, as a delegate suggested in the last General Assembly, "a murder committed by a savage living in a state of nature could not be considered a violation of the victim's human rights because it would have been committed precisely on the basis of the savage's cultural and religious values." Of course, murder is not relative; it is always a violation of human rights. On the other hand, to Saudi Arabia's irrepressible Ambassador Jamil Baroody, "elections," "trade union rights," and "slavery" were only matters of cultural differences. "If lifestyles were radically different among countries, why should the Third World countries necessarily accept the interpretation given to human rights by Western countries?" Baroody asked.*

Political and civil human rights alone may be inadequate to solve the Third World's urgent economic problems, but it is just not true, as some Third World spokesmen and Western sympathizers contend, that concern with political and personal freedom is simply a Western ideological conviction. "Human rights are irreducible and cannot be set one against the other," as another U.N. delegate put it in the same Assembly discussion. Without freedom of expression, assembly, and association, without forms of political participation and democracy, who will persuade rulers to reverse poorly conceived policies or practices, including those that perpetuate poverty? If freedom is not relevant on an empty stomach, neither is the man on the rack, or one threatened with execution or incarceration, likely to enjoy his food. The impoverished, illiterate people of India voted for pluralist democracy with political and personal freedom last year. It is an insult to that people and others in developing countries to say that only Westerners need or want these freedoms.

Furthermore, it is not true that Western democracies are unconcerned about economic and social rights. They are all welfare states to some degree. It was Franklin Delano Roosevelt, in his historic "Four Freedoms" address, who spoke of "freedom from want"; and it was Western democracies that helped formulate the succession of international agreements recognizing economic and social rights. The Carter administration's definition of human rights, spelled out by Secretary of State Cyrus Vance in a speech at the University of Georgia Law School in April of last year, specifically emphasized as one of three essential kinds of "rights" the "right to the fulfillment of such vital needs as food, shelter, health care and education," which "could be violated by a Government's action or inaction." The other two "rights" involved political and civil rights, and sanctity of the individual from physical abuses such as torture.

can be implemented most effectively, and at what expense to other rights.

Under the Covenant on Civil and Political Rights, torture and slavery are prohibited, and freedom of expression, assembly, association, and movement are required. The Covenant on Economic and Social Rights guarantees jobs and vocational guidance, just and favorable remuneration, the highest attainable physical and mental health standards, the benefits of scientific progress, rest, and leisure. The difference between the two kinds of rights is reflected in the way the obligations are conceived in the respective agreements: Civil and political rights are stated as immediately enforceable and justiciable rights, while economic and social rights are described more as social goals, which a contracting state obligates itself to pursue progressively "to the maximum of its available resources" [Art. 1(2)]. Comparable differentiation is made in the international measures of implementation for the two categories of rights: complaint procedures for civil and political rights, and only governmental reporting for economic and social rights.

All countries should strive to fulfill all these rights. But if, as spokesmen for Communist and many developing countries urge, the economic and social rights have priority over the civil and political rights, comprehension and support for freedom and liberty will suffer.

Some explain the plight of developing countries by attributing their misery and poverty to economic exploitation by the industrialized countries. It is argued that the alleged denial of the Third World's economic and social rights can be remedied only by "cooperative efforts between the rich North and the poor South," as set forth in a "New International Economic Order."

One can endorse the general idea of a New Economic Order as well as many of its specific elements already contained in United Nations resolutions, even if some are controversial (like cancellation of debts owed industrialized nations, indexing of prices of raw materials and manufactured goods, or legitimization of primary commodity cartels). However, to present interstate demands in human rights terms and assign them priority in the U.N. human rights program usurps the shrinking space available for civil and political rights, which enjoy precious little attention lately in U.N. forums. If interstate claims for global distributive justice are to be considered human rights, whether as reparation for past injustice or on the basis of a shared humanity, the practical implications will be far-reaching. Consider the Assembly's resolution on the future human rights program in December, 1977, entitled "Alternative Approaches Within the U.N. System for the Effective Enjoyment of Human Rights and Fundamental Freedoms": "The realization of the New International Economic Order is an essential element for the effective promotion of human rights and fundamental freedoms and should be accorded priority."

Moral relativism and almost exclusive concentration

The real issue in economic and social rights is not whether the Western democracies recognize them—they do, in the main—but how they

*Saudi Arabia was among the abstainers, together with South Africa and the Soviet bloc, when, on December 10, 1948, the General Assembly proclaimed the Universal Declaration by a vote of 48 to 0, with 8 abstentions.

on economic rights are not the only strategies of the antilibertarian elements in the international human rights debate. Both the Right and Left try to dilute the freedom principles in U.N. agreements by stressing clauses that permit ratifying states to limit them on certain grounds—in effect, giving the permissible limitation a higher standing than the right itself, or treating the right as the exception to the limitation. When the USSR announced its ratification of the Covenant on Civil and Political Rights (whose clauses restricting the permitted limitation it simply ignores), it openly declared that the national security and other exceptions in the agreements justified its restrictions on emigration, assembly, and other freedoms.

Yet another strategy, in which the Soviet Union excels, is to propose new and ambiguous rights that obfuscate issues and divert attention from individual freedoms. For example, the endlessly reiterated, seemingly reasonable request for priority attention to “the right to peace” is actually intended to justify curtailment of freedom in the name of security and order. The Soviets would introduce under this rubric an array of difficult issues like the arms race, the multinational companies, and others that are already being studied intensively in other international forums.

The Assembly’s “Alternative Approaches” resolution affirms the interdependence, inalienability, and equal urgency of both civil and political and economic and social rights. Though the resolution is commendable for stressing both kinds of rights, it also opens the door to mischief by tilting the balance to say that “the full realization of the civil and political rights without the enjoyment of economic, social and cultural rights is impossible.” There is no statement affirming the converse.

The resolution mandates that the U.N. give priority to “mass and flagrant” human rights violations stemming from racial discrimination and apartheid, colonialism, foreign occupation, and domination; threats against national sovereignty; national unity, and territorial integrity; refusal to recognize the rights of “peoples” to self-determination and of nations to full sovereignty over their wealth and natural resources; and to the New International Economic Order. Priority for any individual civil and political rights (except, by implication, those connected with the struggle against racial discrimination and apartheid) are conspicuous by their omission.

At first glance it may seem reasonable to give “mass and flagrant” violations priority over “mere” isolated individual cases. But it is evident in the drafting history of the resolution that the sponsors’ intent was to exclude or minimize both individual rights and individual cases. For the original wording referred to the rights of “peoples,” and only at the insistence of the Western and several other delegates was “and persons” added. The

Soviets would consider Andrei Sakharov and other dissidents, if they were considered at all, individual cases, although the flagrant human rights violations reflected in their cases certainly occur on a mass scale. From the priorities in the resolution, which are centered on preserving the authority and prerogatives of the state, it is clear that this is what they intended.

The resolution should cause concern not because these priority goals are undesirable; they are in fact agreed international moral and legal norms. The concern involves their use—and the intention of their instigators in proposing them—as criteria for determining the nature and direction of the human rights work of the U.N.

For, except for racial discrimination and apartheid, these priorities have little to do with personal liberty within national societies. It is unlikely, therefore, that they were seriously intended for any purpose other than to complicate efforts to deal with issues of civil and political rights, and to narrow—if not crowd out—the space reserved for these issues.

Thus there are no agreed criteria for the meaning of the “right of peoples to self-determination” sanctified in U.N. resolutions and in both Covenants. This right is reserved mainly for Namibia and the Palestinians and often conflicts with claims of “national unity” and “territorial integrity.” Some states use “national sovereignty” as a shield against criticism of their human rights policies. In the U.N. “foreign occupation” means Israeli rule in Arab territories, and “colonialism” means Western rule in Third World lands—but not Soviet practices in Eastern Europe or colonial-type policies by African or Asian states. Would the U.N. majority endorse Andrew Young’s recent characterization of the Cuban military presence in Africa as “a new kind of colonialism”?

In sum, the intrusion of essentially political issues into the U.N. human rights program is bound, by a kind of Gresham’s law, to depreciate the currency of clearly established, traditional principles of human rights, especially the individual freedoms. True, it is possible to exaggerate the dangers in the General Assembly’s “Alternative Approaches” resolution—if only because the resolution itself, as well as many other U.N. resolutions, contains many expressions that support personal freedom. But it does reflect a definite trend within and outside the United Nations that is inimical to the idea of universal and inalienable individual freedoms, one that can undermine the international consensus on these values achieved in the Universal Declaration and other international agreements over the past thirty years. If this trend is not reversed, we may find ourselves with a U.N. system that is disinterested—or worse—in personal liberty, and an internationally sanctioned definition of human rights that does not include it. The quest for personal liberty is central to humanity. To sever, or severely limit, the libertarian content of “human rights” would scrap millennia of mankind’s moral and political achievement.