

Human Rights and “Globalization”

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Put briefly, when we talk about human rights we are talking about those claims or entitlements which we believe all people—each and every one of us—possess simply by virtue of being human. “Human” rights, then, are distinct from (although related to) “civil” rights, or rights that states choose to grant their citizens. Human rights are rights that we consider somehow “higher” and more fundamental than those. In fact, human rights are rights we feel ought properly to constrain state action. The basic idea of human rights is old, and can be traced back to “natural law” philosophy in the West and its equivalents in several world cultures. But the incredible carnage of World War II gave birth to a global human-rights movement, dedicated to breathing institutional life and political force into what had been only a vague moral program. Today, that movement sets the terms for much of the moral and political discourse of our “globalized” world.

Specifically, we can trace the modern, international human-rights movement to the Nuremberg trials conducted by the victorious Allies in Germany after World War II. At Nuremberg, a special Tribunal assembled by the allies put high-ranking officials of the National Socialist Party and the German armed forces and government on trial for crimes against the peace; war crimes; and, most controversially, “crimes against humanity.” The defendants argued that the Tribunal was engaging in “retroactive” law, penalizing them for acts that were not crimes by the lights of National Socialist Germany. Their claim was that, like state functionaries everywhere, their highest loyalty could only be to their own state, and they could not legitimately disobey or question orders that originated with duly-constituted state authorities. But in one of the most significant judicial actions in history, the Tribunal rejected that “statist” defense in its entirety. Instead, it held that certain actions perpetrated by the National Socialist regime constituted so egregious a violation of both explicit and tacit international norms as to outrage the common decency of humanity at large. The real complaining party at Nuremberg, said one of

the American prosecutors, was “civilization itself.”¹ This formal assertion that certain internationally-recognized moral standards were binding even on fully sovereign states inaugurated the modern human-rights movement.²

The Nuremberg Tribunal was organized largely at the insistence of the American government. Building on that precedent, the U.S. then attempted to more fully institutionalize the notion that, at least in certain circumstances, conventional “reasons of state” are properly trumped by higher norms. To that end, it actively promoted the creation of the United Nations, and especially the extensive listing of political, social, and economic rights (the Universal Declaration of Human Rights, or UDHR) which that body submitted for member states’ ratification in 1948.³ That ratification wasn’t completed until 1976, but in the interim a number of specific covenants and treaties committing smaller numbers of signatory nations to various items among the UDHR’s broad array of rights were formalized (e.g., the European Convention for the Protection of Human Rights and Fundamental Freedoms).

Legal and political analysts now recognize that, with these developments, a loose but tangible “human rights regime” came into existence: a network of institutions,

1 See Taylor Telford’s *The Anatomy of the Nuremberg Trials: A Personal Memoir* (New York: Knopf, 1992).

2 Prior to the meeting of the Tribunal, considerable care went into the preparation of a Charter for it, which would specify the kinds of offenses that fell within its jurisdiction and establish the basis in international law for its own existence. The Charter’s authors were very explicit that “the very essence of the Charter is that individuals have international duties which transcend the national obligation of obedience imposed by the individual state.” (*Law of the Charter, International Military Tribunal, Nuremberg, 1946*; extracts reprinted in Henry J. Steiner and Philip Alston, eds., *International Human Rights in Context: Law, Politics, and Morals*, New York: Oxford University Press, 2000, pp. 115–118; citation, p. 117).

3 The UDHR included prohibitions of torture and slavery; prohibitions of arbitrary arrest, deprivation of property, and invasion of privacy; a number of procedural safeguards for people accused of crimes, including the presumption of innocence; specific minority rights; guarantees of the right to political participation; a number of provisions relating to economic and social well-being, including a “right to work;” and the right of all peoples to self-determination. See Mary Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001).

with overlapping agendas and varying degrees of power and influence, dedicated to the preservation and/or the extension of human rights. Alongside the regional, treaty-based systems, this “human rights regime” includes a number of non-governmental organizations or “NGO”s (e.g., Amnesty International; Human Rights Watch; Doctors Without Borders; the International Red Cross); various UN agencies (especially its Commission on Human Rights); and several international judicial bodies (e.g., the World Court, the European Court of Justice). In fact, the last thirty years have witnessed significant steps toward the creation of an international order aiming at the enforcement of human rights.

It may be precisely because so much effort and hope have gone into the modern human rights movement that its failures—in particular, the failure to prevent overt genocide in Rwanda—are so demoralizing to people committed to it. But those failures should be weighed against the movement’s real successes. The fall of the apartheid regime in South Africa, even the fall of Soviet communism, were certainly hastened, perhaps decisively influenced, by the agitation of human-rights activists. Less spectacular but no less real interventions occur every day, on behalf of political prisoners, mistreated minorities, women denied citizenship rights, and many other individuals and groups. Is the glass half-empty or half-full? And what is likely to happen to that glass in the future?

The answer to that latter question might well depend on how well the movement responds to a complex, interlocking set of political, moral, and philosophical questions confronting it.

Politically, the movement has always run counter to the principle of unfettered state sovereignty. But just how many traditional state prerogatives should be abrogated or qualified, in order to accommodate “human rights?” The question becomes particularly vexing when the state in question is democratically organized, so that its laws can legitimately be described as reflecting, for better or worse, the will of its people. What happens when the principle of “human rights” runs up against the principle of “democracy?”

An example is the question of capital punishment here in the U.S. Most human-rights activists across the world passionately oppose capital punishment. Their argument is that the right to life is the most basic human right of all, and must be considered absolutely inalienable (unrevocable) if the term “human rights” is to mean anything at all. Treating it as a privilege contingent on legal behavior and revocable by the states that define

that behavior is, therefore, utterly unacceptable to them. But in America, capital punishment holds impressively “democratic” credentials in a number of states, where it has been repeatedly demonstrated to rest on a solid basis of popular support. The issue is serious. The European Union, for one, has refused to extradite prisoners to the U.S., on the grounds that doing so would almost certainly result in that prisoner’s execution and thus violate the EU’s own human-rights covenant. At the same time, in America—the nation that originally spearheaded the human-rights movement—many people have grown increasingly impatient with what they consider to be the “undemocratic” or “elitist” direction the movement has taken. Those critics note pointedly that sovereign states, not international judicial bodies or NGOs, are the political arenas where “the people” express their own values and interests.

Underlying these political dilemmas are philosophical and moral ones. In fact, the definition and source of “human rights” have always been deeply contested questions. The movement was born just as the Cold War was getting underway, and in its early decades the debate on the meaning of human rights reflected the way each side in that struggle viewed both itself, and its antagonist. In Western societies, especially the U.S., the tendency was to conceptualize human rights in “negative” terms, denoting things that states simply could not do to individuals. Western human rights activists took special aim at state restrictions on people’s individual liberties and participation in political life. But in the socialist world, the tendency was to minimize the importance of those, and to stress “positive” rights instead. There, priority was accorded certain socio-economic benefits (employment, health care, education) that people could actively claim from their governments. The difference might be understood as the difference between rights denoting what governments *can’t* do to citizens vs. rights denoting what governments *must* do for them. Which are the “higher” rights?

This argument has certainly outlasted the end of the Cold War. If human rights entail protections against state-perpetrated genocide, torture, and willful slaughters of civilians in wartime, we now ask, why not protections against state-sanctioned poverty, illiteracy, racism, ill-health? Are not the latter just as obvious affronts to “the dignity of the human person?” For that matter, why should human rights be claimed only against states and state functionaries? How about private citizens who en-

gage in prohibited actions? What, exactly, are the horizons of human rights?

In fact, establishing those horizons may be thornier today than ever. Today, champions of human rights have to deal with the claim by many in the non-Western world that the original, Western framing of human rights represented a Western bias in favor of the maximization of individual liberty at the expense of community stability and social equality. Their argument is that “human rights” are, in a sense, a form of cultural imperialism, leading to the “Westernization” of cultures with very different traditions and values. How should we interpret, for instance, efforts by Western human-rights activists to end practices like forced marriages in parts of the world where they have been common for centuries and are, in fact, often supported by precisely those people Westerners consider most clearly victimized by them?⁴ How about efforts to end practices like the genital mutilation of women still practiced in some parts of Africa?

Some of the movement’s theoreticians have sought to bridge those cultural divides by grounding human rights on a foundation that all or most of the world’s cultures, enormously varied as they are, can accept. Some have put forth religion, or rather the core religious idea of “sacrality,” as the only conceivable linkage-point, the only possible interface among the bewildering variety of moral systems under which people live today. These theoreticians’ argument is that the idea of human rights is “ineliminably religious,” i.e., that without the belief that human beings are in some sense sacred, there is simply no persuasive grounding for the defense of human “dignity” with rights.⁵ But others insist that the idea of human rights is an essentially secular one, that to put it on a religious basis is invite precisely the sort of religious conflict that has been so destructive of human rights, and human life, in the past. To secularists, we may simply have to live without a common foundation for human rights, without a common notion of where they come from and what legitimates them. Their hope is that we may be able to agree that we need these rights, although we’ll never agree on exactly why, or on exactly which ones.

As you can see, then, there are few aspects of the human-rights movement that are uncontroversial. But in the very act of wrestling with these political and philosophical dilemmas—in taking the discourse of human rights seriously—we are in fact assuming precisely the kind of globalized citizenship our times seem to require.

⁴ See Michael Ignatieff’s discussion of this “Asian challenge,” and especially his consideration of responses to Western notions of human rights in the Islamic world, in *Human Rights as Politics and Idolatry* (Princeton, N.J.: Princeton University Press, 2001), pp. 53–77.

⁵ Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (New York: Oxford University Press, 1998), pp. 11–41.