

HUMAN RIGHTS, DEMOCRACY, AND MULTIPOLARITY

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Human Rights and democracy, like love and marriage in the old song, go together like a horse and carriage. Also like love and marriage, however, human rights and democracy don't always blend perfectly. They should reinforce, complement and correct each other. But correction implies that either rights or democracy will sometimes go too far and need to be restrained. And in these remarks I suggest there are five points in history—five revolutions of rights—where this has happened.

The first revolution established procedural or narrowly political rights such as free speech or free assembly. That first rights revolution was spread over three actual revolutions—the Glorious, American and French revolutions of 1688, 1776, and 1789 respectively. Since 1688 was not a democratic revolution, even if it advanced towards democracy, we can argue that rights preceded democracy in time. Indeed, democracy gradually advanced in part because it was seen as specific example of rights—the equal right of citizens to participate in collective decision-making.

From the first human, however, rights were seen as needing protection. They were not self-enforcing. They needed to be defended against all forms of government, including democracy, as early as the American Bill of Rights. So temporary political majorities were restrained by liberal constitutions from attacking or removing the rights of citizens. It was not always clear what institutions would restrain majority governments from these actions. Constitutional courts might do so in theory; but judges were to remain largely deferential to political majorities for several hundred years. Voters might presumably be the final court of appeal in an unqualified majoritarian democracy. The Turkish Army has traditionally protected the values of secularism in Kemalist Turkey. And so on.

That remained the situation as democracy advanced until the end of the Second World War.

It was felt following Nazism that these political or procedural rights needed stronger support. They were therefore codified and given the moral support of the international community in the UN Declaration of Human Rights, signed in 1948 by almost all the existing states. This was the high water mark of the identity between democracy and human rights. The political rights protected seemed all but identical with democracy—or at least necessary for its honest functioning. In fact there were always hidden tensions between them that were soon to emerge.

What, after all, is a human right? It is a claim on others that I possess simply by virtue of being a human being. If I have a right to life, then you have an obligation to respect that life. So-called "negative" rights require only that people should not obstruct the opinions expressed or religions practiced by others. Thus my right to life is an obligation on you not to murder me. Government enters the picture when criminals or others violate that right. Its task *inter alia* is to ensure that they do not.

In very modest ways, however, almost unnoticed, the UN Declaration of Human Rights went beyond a purely negative concept of rights to include a handful of social and economic (a.k.a. "positive") rights, such as the right to paid vacations. Such rights place a much more onerous obligation upon someone else -- in this case the employer or the government -- to

pay for the benefit granted. But it's fair to say that this burden was not seen as onerous—or even really glimpsed as a burden at all. Throughout the fifties rights continued to be discussed mainly in terms of freedom from torture, free speech, religious freedom, etc.

By the 1970s, however, the Soviet Union and Third World, embarrassed that their political practices always relegated them to the low end of any human rights ranking, pushed a new charter of social and economic rights through the United Nations. A Second Rights Revolution was in the making. This was intended to show that the Soviet Union and other countries with universal social benefits, such as free medical care, really enjoyed far more rights than the citizens of advanced Western democracies with capitalist systems and selective systems of welfare or, worse, "workfare."

To the advocate of positive or social rights, it is illegitimate to demand that someone should make a payment or perform a service in return for receiving health or welfare benefits since those things are their "right." There is some logic here. A right is absolute and cannot be encumbered by an obligation—at least not by an obligation on the recipient. If we ask where the obligation lands, then the usual answer is "the community" or, more candidly, "the state." Again, there are obvious snags with this notion. It might make sense in a prosperous political community such as Sweden. But it would require heavy taxation on most the citizens who already enjoyed access positive rights even without state welfare policies.

So this second rights revolution revealed a second tension between human rights and democracy. Just as negative rights imply a limitation on the right of a majority of citizens to choose certain policies designed to protect national or citizen security—e.g., internment to combat terrorism—so positive rights imply a limitation on democratic choice of economic and social policies. If all citizens have a right to a high level of welfare, then a small limited state or policies of low taxation might be considered simply illegitimate—until a high level of economic welfare has been universally attained. If so, governments making economic policy must do so within this straitjacket. Within a single state, then, rights are likely to give rise to controversial political disputes.

This is not simply a theoretical problem. When resources are not available to finance them, social and economic rights are simple fictions. In some Third World countries that had agreed to provide their citizens with free medical care, patients had to bring their own drugs, bed linen and even bandages into hospitals. Indeed, most of mankind lived in societies that had not ability to pay for the positive social or economic rights their citizens supposedly enjoyed according to the United Nations.

That led to the third rights revolution: namely, the international rights revolution. If we enjoy rights by virtue of being human rather than by virtue of being American or French or Czech, that the obligation to support such rights crosses national frontiers and falls on the citizens of the other states that already enjoy high levels of welfare and prosperity. So, in the 1970s the UN became the forum for ideas of policies of international redistribution under a "new international order."

A number of arguments were advanced to justify these policies. In particular there was discerned "a right to development." Now a right to development is not unlike a right to maturity. It can be helped to emerge by outsiders, but it cannot be simply granted by them. It has to emerge at least partly through the efforts of oneself or one's society. Some poorer societies were indeed developing through their own efforts at this point—the so-called Newly Industrializing Countries or NICS. Others were held back by several factors, including the corruption and unconcern of their own governments. For the moment, though, these arguments were sterile since there was no means of enforcing the supposed rights of poorer countries anyway—no equivalent of the democratic elections or constitutional courts that

held theoretically governments to account within individual nations.

And as it happened, theory was becoming practice: within individual nations governments were increasingly being held to account over their protection of rights. There was a slow-motion collapse of judicial deference in Western democracies. Minority groups were becoming more vocal in pursuing their rights and interests. And the argument began to be heard that contrasted minority rights with majority government. That is a somewhat bogus argument, incidentally, since the opposite of majority government is in fact minority government, not minority rights. If a minority—even a minority composed of judges—is the final arbiter of government policies, then it rather the People is the sovereign power. Human rights then become an excuse for a judicial oligarchy—something seen clearly when the minority is an Army as in Turkey but clouded when it is the U.S. Supreme Court. But such skepticism was rarely heard and still more rarely acted upon as the 1970s wound into the eighties and nineties.

For with the end of the Cold War and the revival of international organizations crippled by it, we were entering the fourth rights revolution: namely, the rights enforcement revolution. A whole series of changes now combined to make international rights enforcement a live political issue. I have already mentioned the rise of judicial power within the West and the revived confidence of the UN system. In addition there was the emergence of new global and regional bodies such as the European Union that challenged the existing international order of sovereign states, new international legal institutions such as the ICC, the emergence of a UN Treaty and Conference process that set a world political agenda at Beijing, Rio, and Kyoto, and finally the NGO revolution.

Together these changes amounted to the rise of post-nationalism AND of post-internationalism, weakening the sovereign nation-state, empowering new non-state actors, moving towards a new structure of trans-national order—and in particular creating new enforcement mechanisms for human rights.

Whereas previously rights could be enforced only internally within the nation-state by parliaments, voters, courts or conventions, now UN monitoring bodies and NGOs could enforce the provisions of international human rights treaties on signatory countries (and according to some lawyers, even on countries that had refused to ratify the treaties.) Yet, as the Hudson Institute scholar John Fonte has pointed out, the UN monitoring bodies often demand changes in law and practice that are the basic material of domestic democratic debate. Thus, the monitoring agent for the Convention on Discrimination Against Women told the British government to implement gender preferences or quotas, to amend the Equal Pay Act to institute ideas of “comparable worth,” and to compel gender equality of parental leave. These may be sensible ideas or not, but they represent an intrusion into democratic politics and the attempted imposition of external priorities on a self-governing democracy. Human rights monitoring of this level of intrusion can even attack basic rights. Thus, UN bodies are critical of the U.S. for adhering to the First Amendment right of free speech when it obstructs the criminalization of “hate speech.”

So internationally enforceable human rights are likely to be hostile to democracy until we get something like universal agreement on what rights are and what they should protect. And that is where the fifth rights revolution inconveniently comes in—namely, the multipolar rights revolution.

In addition to the ambiguous status of democracy in this proposed new post-national order, there is another embarrassing flaw in all this. As the political theorist Kenneth Minogue has pointed out, there was more than a little moral imperialism in all this. Because of its superior wealth and power, the West has been able to hold other cultures to its own

standards. This transnational order is a Western liberal order, standing on the shoulders of Christianity and the Enlightenment. It bore

As long as it did so cautiously, by penalizing truly egregious violations of human rights such as torture, recognizable as such by men of goodwill in almost all cultures and religions, there was no great problem. But when "human rights advocates" take to advocating proportional representation of minorities in government and the rights of Islamic women to have access to abortions, real problems arise. These are not rights recognizable in all cultures, but the political agenda of the more 'advanced' sectors of Western liberalism. As such many such proposals are offensive to people in other cultures—and those cultures in the form of powerful states are now emerging to insist that the international rules should reflect their own rules and values. We have seen this in the talk of "Asian values," in the attempts of the OIC to delegitimize criticism of religion, in such episodes as the Danish cartoon rights.

The first response of Western lawyers to the challenge of multi-polarity to the UNDHR is to deny that there is any problem other than misunderstanding. According to Tony Blair among others, some probably here, there are "universal values" underlying international human rights law to which all adhere once people of goodwill can adhere.

It cannot be too clearly stressed that this argument is false, condescending, and dangerous. There may be universal truths—as a Catholic believer in natural law, I think there are. For these truths to be universal values, however, they would have to be universally accepted. And that condition clearly does not apply.

It is not difficult to make a checklist of the matters on which the Cairo Declaration of Human Rights either directly contradicts or heavily qualifies the 1948 Declaration. Here are a few:

- i, The 1948 Declaration guarantees equal human rights to everyone—Cairo limits this greatly, guaranteeing merely equal human dignity;
- ii, the 1948 Declaration guarantees equal rights between men and women—Cairo offers women different and inferior rights appropriate to the different female role in life;
- iii, the 1948 Declaration guarantees freedom of religion—Cairo guarantees only those rights compatible with Islamic sharia law;
- iv, Cairo is even ambiguous about the right to convert to another religion or to atheism, protecting only the right not be converted forcibly;
- v, 1948 guarantees an almost unqualified freedom of speech—Cairo states with brutal plainness: "Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah."
- And vi, whereas traditional international law placed the responsibility for the enforcement of rights on sovereign nation-states and the new transnational order foresees that human rights treaties will be enforced by a combination of global courts, NGOs, and in the last resort national judiciaries acting with quasi-independent extra-national legal authority, the Cairo Declaration maintains that enforcement of rights it is the responsibility of the entire Ummah—namely, the worldwide community of Muslim believers. And as the controversy over the Danish cartoons demonstrated clearly, there are Muslims everywhere who take such responsibilities seriously.

Now, let me stress right away that there are many admirable things in the Cairo Declaration. If it were enforced throughout the Muslim world, it would improve the practical lot of many people, including most women, even as it denies them in theory some Western rights they don't possess in practice anyway. A Christian conservative, indeed any moral conservative, must also appreciate the way in which the Declaration seeks to strengthen family life and maintain public decency. But there is no escaping the blunt truth that the

Cairo Declaration is incompatible with the 1948 Declaration, with the liberal rights it embodies, and most of all with the post-national structure of international law that is being constructed.

If Cairo also faithfully represents the sentiments of most Muslims, then the human rights revolution in international law is also incompatible with democracy in the Muslim world. We have seen the mayhem created by the Danish government's defense of free speech in Denmark. Imagine the mayhem that would ensue if some international court sought to enforce the right to publish something critical of Islam or the Prophet in a Muslim country. The more democratic the Muslim country, the less possible it would be to impose religious, civil, free speech, and gender freedoms on such societies. The only way that the full extent of the human rights revolution could be sustained in the new conditions of multipolarity is through the establishment of a liberal world moral dictatorship. And that would be intolerable not only democratically; it would also violate the ur-liberal principle of live-and-let-live.

What therefore can be done? Let me suggest that there are three possible ways forward.

The first is a gradual surrender by the new transnational order to ideological pressure from both Muslim states and Muslim communities in the West to limit freedoms offensive to Muslim and perhaps other non-Western traditions. Unfortunately, this solution is all too likely. We already see it in the willingness of Western governments to consider making disparagement of religion an offense that would lose protection under international human rights law. Blair's British government sought something similar four years ago. Those in NGOs and international legal bodies might well consider such a sacrifice worthwhile if it were to consolidate their power on other matters. For their principal concerns are restraining the sovereign power of Western countries and establishing new governing institutions internationally. But the result would be a corruption of law internationally, a loss of freedom in Western countries, and the degradation of democracy as national governments (e.g. Denmark) were compelled to implement the corrupt compromises of the international courts.

The second option is to accept that different legal traditions, being rooted in different religions, are genuinely incompatible on key points and to encourage the development of several international legal regimes, each corresponding to a particular civilization. Thus, there might be an Islamic international law, a legal regime rooted in Asian and/or Confucian values, a post-Christian liberal order based on the European Union, and a Christian liberal order built around the United States and some of the Latin American countries. Each international regime would evolve its own standards. Conferences between them would seek to harmonize these different traditions—but the process would be open and un-coercive and capable of living with unresolved conflicts. In effect conflicts would be resolved as different national choices were shaped by the facts of cultural geography—namely, that some nations have Muslim majorities and others Christian ones. All this would reflect a rational and tolerant Huntingtonian acceptance of civilizational differences. The only difficulty is that it is hard to see such a solution being adopted since the kind of people who would need to craft it are passionately committed to global uniformity on such matters.

That leaves the third option: namely, returning to earlier concepts of international order, human rights, legal treaties, and democratic accountability. International human rights treaties would be modest in scope. They would be interpreted closely. Their power would be largely rooted in moral influence. And their enforcement would be a matter for national governments rather than for NGOs or transnational bodies. Many of the social and economic rights now covered by recent treaties would be determined by democratic debate (and budgetary possibilities) in particular societies. Basic political or "procedural" rights, such as

free speech or freedom from torture, would be justiciable in domestic courts perhaps. In most cases, however, the protection of human rights would be enforced by democratic pressures at home—governments would act virtuously largely because of media attention—and diplomatic pressures from democratic nations and human rights groups. This option would meet resistance from the same “human rights” lawyers and organizations that would oppose the second option. But it has a slightly better chance of success because it might attract the support of rising powers such as China and India which place a higher value on their sovereign independence than do European countries now entangled in EU structures.

That said, the most likely result is option one: the gradual corruption of human rights protection and democracy in an attempt to blur the different views that different cultures hold on human rights. To avoid that we need a revival of the democratic spirit within Western countries—and especially within Western Europe. And that is currently a higher priority than the continued multiplication of human rights and human rights enforcement mechanisms.

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