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Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights

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It is regularly argued that human rights are not a Western discovery and that non-Western societies have long emphasized the protection of human rights. Such claims, however, are based on a confusion of human rights and human dignity. A concern for human dignity is central to non-Western cultural traditions, whereas human rights, in the sense in which Westerners understand that term—namely, rights (entitlements) held simply by virtue of being a human being—are quite foreign to, for example, Islamic, African, Chinese, and Indian approaches to human dignity. Human rights are but one way that has been devised to realize and to protect human dignity. Although the idea of human rights was first articulated in the West in modern times, it would appear to be an approach particularly suited to contemporary social, political, and economic conditions, and thus of widespread contemporary relevance both in the West and the Third World.

An intimate link between human rights and human dignity is frequently noted in the literature. For example, the International Covenant on Civil and Political Rights states that the rights enumerated "derive from the inherent dignity of the human person." With respect to other cultures, Abdul Aziz Said argues that "[i]n Islam as in other religious traditions, human rights are concerned with the dignity of the individual." (1979, p. 63) Many authors go so far as to treat human rights and human dignity as essentially equivalent concepts (e.g., Pollis and Schwab 1980, pp. 4, 8; Legesse 1980, p. 132; Harkin 1979, p. 15; Said 1977).

However, it will be argued here that human rights present only one path to the realization of human dignity. Although there are indeed close connections between the two concepts, I shall argue that there are conceptions of human dignity which do not imply human rights, and societies and institutions which aim to realize human dignity entirely independent of human rights. This view, which was once rather common, seems to be ignored or rejected in most of the recent literature specifically devoted to the topic.

The argument that "human rights are not a Western discovery," (Manglapus 1978), that "all societies have human rights notions" (Pollis and Schwab 1980, p. xiv), and that "all societies cross-culturally and historically manifest conceptions of human rights" (Pollis and Schwab 1980, p. 15), is a common feature of contemporary discussions of human rights in non-Western settings. I shall argue to the contrary that most non-Western cultural and political traditions lack not only the practice of human rights but the very concept. As a matter of historical fact, the concept of human rights is an artifact of modern Western civilization.

It does not necessarily follow, however, that human rights are in any important sense arbitrary, wrong, misguided, or in need of basic rethinking. Rather, human rights represent a distinctive approach to the problems of human dignity which deserves to be fully and fairly evaluated on its merits, not its parentage. The historical character of the concept must be taken seriously, but more importantly, we must move beyond a limited genetic perspective to the important substantive issues raised by human rights. In this paper, I attempt to specify the special character of the human rights approach to human dignity, to demonstrate its historical uniqueness, and to begin to explore some of the issues it raises.

Defining the Topic

The Concept of Human Rights. Mention of the Western concept of human rights is likely to raise visions of yet another discussion of the relationship between civil and political rights and social and economic human rights. However, my argument is cast at an entirely different level.

The question, "What are human rights?" generally is taken to be a request for a *catalogue raisonné* of human rights; i.e., a question about the list of valid human rights. For the most part we will not be concerned here with this level of analysis. Instead we will be dealing with the con-

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ceptual question: "What is the meaning of 'human rights'?" "What kind of 'thing' is a human right?" rather than "Is this a human right?"

Clearly the two questions are interrelated; one's definition of the concept prescribes the content of one's list. However, in the deviation of a list from the concept, there is a crucial intermediate level that needs to be distinguished by developing further the distinction between concept and list.

Ronald Dworkin distinguishes a *concept,* what something means, from a *conception,* a particular and more concrete specification of that concept. Dworkin argues that such principles as fairness or the constitutional prohibition of cruel and unusual punishment have a settled although rather abstract meaning (the concept), even though what is to be construed as cruel and unusual punishment (the conception) may vary with time and circumstances (Dworkin 1978, pp. 134-6, 226).[1]

With respect to human rights, we can say that at the level of the concept, human rights are rights one has because one is a human being (person); or as the Covenants put it, rights that "derive from the inherent dignity of the human person." The crucial ideas that need to be explicated at the level of conceptions are rights, persons, and (inherent) human dignity; once this is done, it is relatively easy, even if still controversial, to develop a list.

The familiar debates about the priority of civil and political or social and economic rights take place almost entirely at the level of lists and conceptions. I would argue that the concept of human rights as a matter of conceptual logic permits an emphasis on either set of rights, as well as more balanced approaches based on the interdependence or indivisibility of human rights. However, arguments for or against a particular conception of human rights will not be our concern here. Instead I will focus on the concept of human rights, as defined here, and on non-Western approaches to the realization of human dignity, which amount to challenges to the idea that there are rights one has merely because one is a human being.

Defining Human Rights. Human rights are *rights,* not benefits, duties, privileges, or some other perhaps related practice. Rights in turn are special entitlements of *persons.* Although a thorough analysis of rights and human rights is not possible here, at least a brief explanation is required.

Not just any benefit is a right; only those benefits to which one is entitled are, or rather may be, rights. Not even all benefits that another person is obliged to render to one are one's rights. For example, A may be obliged to confer a benefit on B out of considerations of charity, without B having a right to that benefit. Although I am morally obliged to aid the needy, a particular destitute person does not, ipso facto, have a right to my money or even a right to assistance from me. I may be obliged to aid him, but he is not entitled to that aid from me; i.e., he does not have a right to it from me.

The distinction between duty and obligation, the right thing to do, and entitlement, i.e., rights, is crucial. We speak of right in both instances but in quite different senses, which need to be kept distinct.

Elsewhere (Donnelly 1980) I have argued that these two senses of right are marked by different characteristic locutions. The sense involving moral duty or righteousness I have called right in the sense of "right that" as in "It's right that you. . . ." The sense involving entitlement can be called right in the sense of "right to," as in "I have a right to. . . ."

Another way to mark these two senses is by the verbs with which they are used. When we talk of righteousness, the verb characteristically used is to be: It is right for you to help her; What is right here?; It wouldn't be right to leave now. However, when we talk of rights, of entitlements, to be is rarely if ever used. Instead we talk of having or holding rights, and various ways of putting rights to use, all of which are based on possession of that right. Thus we might distinguish these two senses of right as right in the sense of what is right (or right in the sense of being right) and right in the sense of having a right.[2]

Having a right places one in a protected position. To violate someone's right is not merely to fail to do what is right but also to commit a special and important personal offense against the right-holder by failing to give him his due, that to which he is entitled. To violate a right goes well beyond merely falling short of some high moral standard.

Furthermore, rights, especially basic rights, have a special priority where they come into conflict with other action-justifying principles. This is

[1]Pitkin (1972, Chapter VIII, especially pp. 186-192) draws a similar distinction between the substance and the form of a concept, its meaning and its institutionalization. Pitkin's analysis is particularly interesting for her discussion of divergences between form and substance.

[2]This way of making the distinction seems preferable because, for example, when one says "It is right to do x for him," one means right in the sense of 'right that,' whereas when one says "I have a right that you do this for me," the sense intended is right in the sense of right to.

nicely captured in Dworkin's simile of rights as trumps. (1978, pp. xi, 81-105 and *passim*) Rights are not just one type of social or moral goal co-equal with others; rather, in ordinary circumstances, rights have prima facie priority over utilitarian calculations or considerations of social policy. In fact, one of the basic purposes of rights would seem to be to insulate right-holders from claims based on such principles, which otherwise would be not only appropriate but decisive reasons for political and even individual action.

However, this priority is only prima facie. Rights are defeasible; i.e., in particular cases they may be justifiably overriden by other rights, considerations of right in the sense of what is right, necessity, scarcity, or some other principle. Nonetheless, it is essential to rights that they have this special status of taking priority over all but the most pressing non-rights demands and interests.

One also can do many things with rights beyond what is available by virtue of right in the sense of what is right. Rights serve as the basis for special claims against those in relation to whom the right is held.[3] One may exercise, assert, claim, press, demand, waive, or transfer rights, as well as put them to many other uses.

Thus rights are under the control of the right-holder, who in large measure manages the use of the right and thereby the consequences of having that right. The right-holder is not only placed in an advantageous position vis-à-vis the obligee; he is placed in charge of the relationship insofar as it is based on his right.[4] The duties imposed by rights not only operate at a different level but in a different way. Both what is demanded of the obligee and how those demands are imposed are crucially different, depending on what sense of right is involved.

It is clear that the Western tradition of natural or human rights, which goes back at least to Locke, has conceived of human rights in this way.[5] In fact it is precisely this conception that distinguishes this modern tradition from the Greek, medieval, and Stoic natural law theories and competing modern theories such as utilitarianism.[6] The guarantees of life, liberty, and property (and increasingly, since the late eighteenth century, beginning with Paine, guarantees of such rights as education and social security) are treated as more than merely right in the sense of what is right, more than simply the righteous demands of God, morality, conscience, or social policy. Rather, they are viewed as the rights of man, as human rights.

Here we will take this tradition to be stipulative of the meaning of human rights. At the very least, this is the sense present in the classic documents and philosophical defenses, as well as in ordinary usage. For our purposes this usage must suffice.

Of course human rights are but one type of rights, namely the rights one holds by virtue of being a person. Not all rights held by human beings are human rights. Legal, contractual, promissory, and constitutional rights are held by human beings without their being necessarily human rights; that is, they are rights of persons without being among the rights of man.

Human rights are conceived as naturally inhering in the human person.[7] They are neither granted by the state nor are they the result of one's actions. In Hart's (1955) well-known categorization, they are general rights, rights that

[3]Claim theories of rights (most notably Feinberg, 1980) usually are distinguished from, and viewed as incompatible with, entitlement theories such as the one presented here. However, a claim theory can be more profitably seen as a complementary approach that highlights different parts of the practice of rights. A crucial element of being entitled to something is being in a position to make claims. However, the claim theorist tends to ignore the fact that there are other sorts of claims than claims to rights. What distinguishes and grounds claims to rights is the special entitlement of the right-holder.

[4]Discretionary exercise of rights is crucial. The best-known account that stresses discretionary control is Hart, 1973. Whether *all* rights share this feature is debatable—e.g., discretionary control of an inalienable right would be in some way limited—but in most standard cases it is central to the rights-based relationship that exists between right-holder and duty-bearer.

[5]I use the two terms more or less interchangably, despite subtle differences in connotation. Defending such a usage, though, is beyond our scope here. However, compare Beitz (1979, pp. 53-61), who argues that a natural rights model of human rights is inadequate, and Bay (1980), who advances an argument for the derivation of rights from needs.

[6]Of course, this is but one tradition of modern Western political thought, as Burke and Bentham, for example, so clearly indicate. There are today, and have been in the past, other Western as well as non-Western approaches to human dignity. In fact I would argue that pre-modern Western political theory lacks the notion of human rights. See Donnelly (1980).

[7]Exactly how nature creates or confers rights is rather obscure, at least in non-theistic theories. Nonetheless, such a natural basis seems essential to distinguish human rights from other types of rights, such as basic constitutional, legal, or moral rights. We should also note, however, that although the moral source of human rights is human nature, their institutionalization is crucial to their effective enjoyment. Therefore, the human decisions underlying this institutionalization and implementation may be seen as, in another sense, the source of the rights.

arise from no special undertaking beyond membership in the human race. To have human rights one does not have to be anything other than a human being. Neither must one do anything other than be born a human being.

Since they are grounded in human nature, human rights are generally viewed as inalienable, at least in the way in which one's nature is inalienable. Inalienability is a particularly difficult concept to analyze. However, at the minimum what is suggested is that in some moral sense one cannot fully renounce, transfer, or otherwise alienate one's human rights. To do so would be to destroy one's humanity, to de-nature oneself, to become other (less) than a human being and thus it is viewed as a moral impossibility.

There is also a strong and quite essential implication that human rights, as a particularly important class of rights, take priority over all but the most serious non-rights demands. If rights in general are trumps, human rights are the honor cards in the suit.

Sometimes this view is expressed in the claim that human rights are absolute. However, this is taking the point too far. For example, an absolute right to liberty would make unjustified even the jailing of criminals. Nonetheless, there are very few circumstances in which human rights might be justifiably overridden. Human rights are relatively absolute, at least in part because their natural and inalienable character is based largely on the attributes and potentials they protect, which are essential to a meaningful and fully human life.

Finally, human rights are conceived as being held primarily in relation to society and particularly to society in the form of the state. As the natural rights of persons, they are seen as logically and morally to take precedence over the rights of the state and society, which are viewed as major contributors to the realization of these rights but also the greatest potential violators of basic human rights.

Non-Western Political Cultures and Human Rights

Having sketched this conceptual benchmark, let us look briefly at the ways in which several traditional cultures and one modern non-Western society have approached the issues we consider in terms of human rights, i.e., the social and political ideals by which these cultures aspire to realize human dignity. In each case I will show that the substantive issues discussed today in terms of human rights, such as life, speech, religion, work, health, and education, are handled almost entirely in terms of duties that are neither derivative from nor correlative to rights, or at least not human rights. These societies recognize that guarantees in these areas are essential to a fully human life and the realization of inherent human dignity. They have elaborate systems of human duties, which are designed for the protection of human dignity. However, human rights are quite foreign to their approaches.

Human Rights in Islam. Numerous authors assert that human rights have an important place in Islam.[8] For example, Abul A'la Mawdudi argues that "Islam has laid down some universal fundamental rights for humanity as a whole, which are to be observed and respected under all circumstances . . . fundamental rights for every man by virtue of his status as a human being" (1976, p. 10). Diplomats as well as scholars have argued that "the basic concepts and principles of human rights had from the very beginning been embodied in Islamic law."[9] Nadvi (1966, pp. 14-15) and Tabendeh (1970, pp. 1, 8) have even claimed that contemporary human rights doctrines merely give recognition to 1400-year-old Islamic ideas, but on examination, these claims prove to be almost entirely without basis.

For example, Khalid M. Ishaque argues that "Muslims are enjoined constantly to seek ways and means to assure to each other what in modern parlance we call 'human rights' " (1974, p. 32). Ishaque admits that "human rights" cannot be translated into the language of the Islamic holy works but nevertheless suggests that something very much like human rights lies at the core of Islamic doctrine. He even lists fourteen "human rights" recognized and established by Islam.

However, when we look at these alleged human rights, we find that virtually all of them are only duties of rulers and individuals, not rights held by anyone. The scriptural passages cited as establishing a right to protection of life in fact are divine injunctions not to kill and to consider life as inviolable. Likewise, the right to justice proves to be instead a duty of rulers to establish justice, whereas the right to freedom is merely a duty not to enslave unjustly. In fact, economic rights turn out to be duties to earn a living and to help to provide for the needy, whereas the right to freedom of expression actually is an obligation to speak the truth; i.e., the right is not even an obligation of others but an obligation of the alleged right-holder! Although Moslems are regularly and forcefully enjoined to treat their fellow men with respect and dignity, the bases for these injunc-

[8]Piscatori (1980) makes a similar argument in the case of Islam. For a brief, more general, discussion along the lines developed here, see Pagels (1979).

[9]Mr. Makki, representative of Oman to the Third Committee of the General Assembly, speech of 25 October 1979, UN document number A/C.3/34/SR.27.

tions are not human rights but divine commands which establish only duties, that is, which deal only with right in the sense of what is right.

In a similar fashion, Majid Khadduri (1946, pp. 77-78) lists five rights held by men according to Islam: rights to personal safety, respect of personal reputation, equality, brotherhood, and justice.[10] Again, what little evidence is presented shows that Islam treated these subjects entirely in terms of right in the sense of what is right.

Khadduri's discussion makes it clear just how far the Islamic precepts he mentions diverge from the notion of human rights. For example, he claims that "human rights in Islam are the privilege of Allah (God), because authority ultimately belongs to Him." This is, quite literally, incoherent: "human rights" that are not rights of human beings but privileges of God. In another vein he argues that "human rights in Islam, as prescribed by the divine law, are the privilege only of persons of full legal status. A person with full legal capacity is a living human being of mature age, free, and of Moslem faith." Human rights, then, would be the privileges of free, male Moslems, not the rights of man qua man. Infidels receive only guarantees of life, property, and freedom of religion, and slaves only a right to life.

Similarly, Abdul Aziz Said claims "to identify precepts that establish human rights in the Islamic tradition" (1979, p. 64). He argues that in Islam, "human beings have certain God-granted rights, and right by definition is the exercise of power" (Said 1980, p. 92).[11] However, he does not present a single piece of evidence in direct support of this claim, whereas the discussion he offers once more demonstrates the absence of the concept of human rights in Islam.

For example, Said lists nine basic precepts regulating the operation of an Islamic political system which it would appear that he takes to be human rights (1979, pp. 65-68). In every case, though, either there is merely a rights-less duty or the rights that exist are not human rights but legal rights, rights held not simply as human beings but as a result of one's legal or spiritual status.[12]

In fact, Said, much like Khadduri, implicitly admits these sorts of counterarguments without seeming to recognize their significance.

> The essential characteristic of human rights in Islam is that they constitute obligations connected with the Divine and derive their force from this connection.
>
> Human rights exist only in relation to human obligations. Individuals possess certain obligations towards God, fellow humans and nature, all of which are defined by Shariah. When individuals meet these obligations they acquire certain rights and freedoms which are again prescribed by the Shariah (1979, pp. 63, 73-74).

In other words, in Islam, in the realm of human rights (read human dignity), what really matters is duty rather than rights, and whatever rights do exist are a consequence of one's status or actions, not one's nature.

There can be little objection to claims that in Islam "it is the state's duty to enhance human dignity and alleviate conditions that hinder individuals in their efforts to achieve happiness" (Said 1980, p. 87). It may even be plausible to argue that "there is no aspect of human need but Islam, in its ethical, social and liturgical precepts, has made provision for it" (Tabandeh 1970, p. 10). Without a doubt the social and political precepts of Islam reflect a strong concern for human good and human dignity, but although such concern is important in itself and would appear to be a prerequisite for human rights notions, it is in no way equivalent to a concern for, or a recognition of, human rights.

Human Rights in Traditional African Societies. "The African conception of human rights was an essential aspect of African humanism." (Asante 1969, p. 74). "It is not often remembered that traditional African societies supported and practiced human rights." (Wai 1980, p. 116). As in the case of similar claims about Islam, such assertions prove to be not only unsupported, but actually undercut, by the evidence that is presented on their behalf.

For example, Dunstan M. Wai, the author of the second quoted passage, continues by writing that "traditional African attitudes, beliefs, institutions, and experiences sustained the 'view that certain rights should be upheld against alleged necessities of state' " (1980, p. 116). Clearly he is confusing human rights with limited government in this claim.

[10]Compare Mawdudi (1976, pp. 17-24), whose "Charter of human rights granted in Islam" (p. 19) is similar in substance and shares the same features as the lists of Ishaque and Khadduri. Compare also Tabandeh (1970), where the approach is the reverse, attempting to show that the rights in the Universal Declaration of Human Rights are anticipated and recognized by Islam.

[11]Exactly what the appended definition of "right" means here is hard to say, but I take it to be something like what I have called here right in the sense of having a right.

[12]Compare Tabandeh (1970, p. 17) who claims that the preferential treatment of Muslims in certain criminal cases is "quite free of difficulty" in terms of human rights because "people who have not put their reliance in conviction and faith, nor had that basic abiding-place nor believed in the one Invisible God, are reckoned as outside the pale of humanity."

There are many bases on which a government might be limited—divine commandment, human rights, legal rights, and extra-legal checks such as a balance of power, to name a few. Simply having a limited government does not in any way entail that one has human rights. Yet Wai and others base their arguments on little more than a demonstration of the existence of limited government.[13]

"There is no point in belaboring the concern for rights, democratic institutions, and rule of law in traditional African politics" (Wai 1980, p. 117). To this we can only add that it is particularly pointless in a discussion of human rights, given the form such concerns took. Even in the many cases where Africans had personal rights vis-à-vis their government, those rights were not based on one's humanity per se but on membership in the community, status, or some other ascriptive characteristic.

Asmarom Legesse argues along similar lines that "many studies have been carried out that suggest that distributive justice, in the economic and political spheres, is the cardinal ethical principle that is shared by most Africans" (1980, p. 127). This is quite true. It is also, once again, irrelevant.

Distributive justice and human rights are quite different concepts. One might have a theory or conception of distributive justice based on human rights, but one might as easily base it on some other principle. Plato, Burke, and Bentham all had theories of distributive justice, yet no one would ever think to suggest that they advocated human rights. Although giving to each his own (distributive justice) will involve giving a person that to which he is entitled (his rights), unless the definition of one's own takes place in terms of that to which one is entitled simply as a human being, the rights in question will not be human rights. In African societies, rights were assigned on the basis of communal membership, family, status, or achievement.

As with human rights in Islam, we see here an attempt to establish that the differences with the West lie only in the words used, not the concepts. "Different societies formulate their conception of human rights in diverse cultural idioms" (Legesse 1980, p. 124). In fact, though, as we have seen, the difference is not simply one of idiom, but one of concept. Although many of the same ideas are valued, the ways in which they are valued are quite different. Recognition of human rights simply was not the way of traditional Africa, with obvious and important consequences for political practice.

Human Rights in Confucian China and Hindu India. The available literature on China and India is of much the same sort. For example, Chung-Shu Lo, after noting that the Chinese language lacked even a term for rights until one was coined in the late nineteenth century to translate the Western concept, nonetheless insists that the absence of the language of rights "does not mean that the Chinese never claimed rights or enjoyed the basic rights of man" (1949, p. 186). However, the evidence presented demands the reverse conclusion.

One wonders how the Chinese managed to claim rights without the language to make such claims. Likewise, the assertion that basic human rights were enjoyed seems implausible. Did the Chinese have these rights, exercise them, assert them, or *only* enjoy them? One suspects the latter, in which case Lo's claim collapses, because of the confusion between enjoying a benefit and having a right. Simply because acts that we would say involved violations of human rights were not considered permissible does not necessarily entail that people were viewed as having human rights.

Lo claims that "the idea of human rights developed very early in China" and he examines one particular human right, the right to revolt, which "was repeatedly expressed in Chinese history" (1949, pp. 186-87). However, the passages he quotes from the classic texts show only that the ruler "has a duty to heaven to take care of the interests of the people." Thus the only particular human right he advances proves not to be a right at all, for a duty of the ruler to heaven is quite a different matter from a right of the people vis-à-vis the ruler.

Shao-Chuan Leng also argues that "Chinese political theory sanctioned the people's revolts against oppressive rulers" (1980, p. 84). However, he fails to show that this sanction was based on human rights. Instead he simply assumes that democracy, in a very loose sense of the term, can be equated with human rights (1980, pp. 82-85). For example, after showing the elitist, hierarchical, and station-based character of traditional Chinese social relations and Confucian political and social philosophy, Leng adds that "there were also democratic traits in Chinese civilization," apparently taking this to be a demonstration of the existence of the concept of human rights (1980, p. 82). We have already discussed this conceptual error above.

As before, the problem lies in a confusion of ethical and political duties with human rights.

[13]See Wai (1980, pp. 115-118), e.g., "This chapter will argue that authoritarianism in modern Africa is not at all in accord with the spirit and practice of traditional political systems," and Legesse (1980, pp. 125-127). For non-African examples, see Said (1979, p. 65) and Manglapus (1978). Most generally, see Pollis and Schwab (1980).

Undeniably there were elaborate duties imposed on rulers. Obligation, though, is only one side of a rights-based relationship. In itself, it does not even suggest, let alone establish, the existence of rights on the part of those in whose interests one is obliged to act. Lo notes that traditional Chinese doctrine is expressed almost entirely in terms of duties of rulers. However, he refers to this only as a "different approach to the problem of human rights" (1949, p. 188). In fact, it is an approach to the problem of human dignity which involves no human rights.

Moving from China to India, particularly traditional Hindu India, one would imagine that there would be no question about human rights being present, given the central place of the caste system. For example, Ralph Buultjens captures nicely the essential implications of the caste system for human rights.

> The essential feature of caste was the assumption that there are fundamental and unchangeable differences in the status and nature of human beings.[14] These differences make it necessary for people to be governed by different norms of behavior appropriate to their station in life. . . . Caste divisions . . . were the framework of society. . . . Progression of birth and rebirth, with different rights attached to each step, enable access to different gradations of rights. The universal application of a common set of rights for all people in a given society, at the same time, is not part of the cosmology (1980, pp. 112-13).

Yet half a page below this clear, if implicit, denial of the presence of the concept of human rights, Buultjens talks of "Hindu orthodoxy, including the more traditional, multidimensional views of human rights" (1980, p. 113). The denial of human rights is thus transformed into a "multidimensional" view! Such uses reduce the term human rights to little more than a fashionable hurrah and need to be vigorously resisted.

The Soviet Union and Human Rights. Moving from traditional to modern non-Western societies, we can consider human rights in the Soviet Union. The differences between the Soviet and Western approaches usually are presented as lying at the level of conceptions and lists and are concerned with the Soviet emphasis on social and economic rights in contrast to the Western emphasis on civil and political rights. However, the differences reach to the level of the concept as well.

Central to the Soviet approach is the fusion of rights and duties. The Preamble of the 1977 Constitution states that the USSR "is a society of genuine democracy, whose political system ensures . . . the combination of real citizen's rights and liberties with their duties and responsibilities to society."[15] Article 59 states that "the exercise of rights and liberties is inseparable from the performance by citizens of their duties." We see this same characterization in semiofficial accounts: "The linkage of rights and duties [is] the special quality of socialist law" (Sawczuk 1979, p. 89); "The most important feature of the Soviet citizen's legal status is the organic unity between their rights and their obligations" (Chkhidvadze 1980, p. 18); and even in human rights activist Valery Chalidze's account of Soviet doctrine (1974, p. 21).

The correlation of rights and duties is a standard topic in the theory of rights. As ordinarily conceived, A's right to x with respect to B implies duties of B with respect to A's having or enjoying x; i.e., A's right entails B's obligation.[16] However, in Soviet doctrine it would seem that A's right to x is correlated with substantively parallel obligations on the part of A.

For example, Article 40 of the Constitution states that "USSR citizens have the right to labor . . . including the right to choice of occupation, type of employment and work. . . ." However, in Article 60, labor is a citizen's duty: "Conscientious labor in one's chosen field of socially useful activity and the observance of labor discipline are the duty of, and a matter of honor for, every able-bodied USSR citizen." Soviet diplomats have been quite open and explicit in noting that "it [is] considered the individual's duty, as well as his right, to work for the benefit of society."[17] How, though, can rights and duties be conceptualized as coincident?

It is sometimes suggested, not just by the Soviets, that this is just the way rights are and work, that the conceptual logic of rights entails that A's rights imply duties for him.[18]

[14]In fact, these differences are so extreme that it would appear that the notion of the human person, which is so central to the concept of human rights, is quite foreign to such a way of thinking.

[15]In the initial public draft of the Constitution, this reads "human rights" in the official English translation. I am unsure what, if any, significance to attach to this.

[16]For a thorough discussion of the correlation of rights and duties, see Donnelly (in press).

[17]Mr. Ivanov, the Soviet representative to the Economic and Social Council Working Group on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN document number E/1980/WG.1/SR.14.

[18]For recent official diplomatic statements of such a position, see the speeches of the representatives of Rumania, Ecuador, and Iraq to the Economic and Social Council Working Group on the Implementation

> Rights and duties are two facets of the same picture. Whoever demands a right to liberty has to respect a similar right in others which circumscribes his right to personal liberty very considerably. If an individual thinks it his right to be fed and clothed and maintained in proper health and if he has a right to work, it is also his duty to work according to his energies and skill and accept the work which the welfare of the community demands from him. (Hakim 1955, p. 3).

However, these duties, which we certainly do recognize, are not conceived of as arising from the possession of rights, or rather, not from one's own rights.

The duty to respect another person's liberty is imposed on me by his right to liberty, not mine, and he has such a right not because I have a right to liberty but as the result of a particular pattern of distribution of rights. Likewise, I can have a right to work or a right to health care without being under an obligation, as a result of that right, to work for, or to contribute to, the welfare of the community. It may be an unjust or immoral society which gives me such rights without these duties, but that is another matter altogether.

If the logic of rights does not render rights and duties coincident, the only way I can see to accomplish this is to treat rights as social grants. If A (society), having a right to, or control of, x (jobs), transfers x to B (citizens), conditional on B accepting certain parallel or reciprocal duties (work), the right to x would be simultaneously a duty, as a result of the manner in which the right was invested.

Such a transfer may be seen to benefit both parties to the transaction and thus is easily defended. The individual in this situation would benefit from the guaranteed access to suitable rewarding work, whereas society would benefit if all able-bodied citizens worked. The individual would, as a result of the transaction, have a right to a job, coupled with a non-rights-based duty to work, whereas the state would have a rights-based duty to provide jobs and a (contractual?) right to have citizens work in a socially productive field.

Such an analysis is particularly attractive because it is consistent with the basic philosophical and ideological precepts of the Soviet system. The focus is unambiguously social, and the state is given prominence of place, with the individual conceptualized as not actually subsidiary to the state but capable of realization only in his social capacity. This analysis also places the emphasis, as the Soviets always do, on objective and concrete rights, which the individual enjoys only through state agency, rather than subjective, abstract or formal rights inhering in the individual per se.

A full system of such rights would indeed involve the organic unity of rights and duties, and such a system would be full of rights, in the sense of having a right. However, human rights would be entirely absent, for human rights are not grants, either conditional or unconditional, of state or society, but are inherent to man.

Even in the Constitution, the Soviets rather clearly treat rights as contingent on the performance of duties; in Article 59, which states that "the exercise of rights and liberties is inseparable from the performance by citizens of their duties," and in Article 50, where civil rights are held to be granted "in accordance with the people's interests and for the purpose of strengthening and developing the socialist system." As one Soviet commentator has tellingly put it, "the significance and worth of each person are determined by the way he exercises his rights and performs his duties" (Egorov 1979, p. 36).

Economic and social rights as well as civil and political rights are treated as contingent and are forfeited when the duties that accompany them are not discharged. For example, despite the apparently unqualified character of the right to work mentioned in Article 40, jobs in their fields are regularly denied dissidents and Jewish activists, in accordance with Soviet law and administrative practice, on the grounds of the individuals having failed to discharge their social duties. The right to education, according to Article 45, "is ensured by the free nature of all types of education." Nonetheless, emigres may be required to buy back this "free" education as a legal condition of exit.

Admittedly, any right, even a basic right, has its limits which are specified by law. For example, in this country the right to freedom of speech is limited by laws of slander and libel and by the general requirement that the right not be exercised so as wrecklessly to endanger others such as by yelling "Fire!" in a crowded theater. However, one's possession and exercise of a basic human right like the right to freedom of speech are not conditional on accepting either these limits or some parallel duty.

For example, the slanderer is fined for the damage done and yet continues to be able to exercise his right to freedom of speech. As a human or constitutional right in this country, the right to freedom of speech is conceived to be inherent to the individual and independent of his merit or the discharge of civic responsibilities.[19] In contrast,

of the International Covenant on Economic, Social and Cultural Rights in UN documents number E/1980/WG.1/SR.4 and E/1980/WG.1/SR.7..

[19]The connection between human and constitutional rights presents difficult analytical problems that are

the rights of Soviet citizens are treated as grants of the state which are held only contingently. Thus although there are numerous rights held by men and women in the Soviet Union, among these rights are not the "rights of man." Even though there are major substantive parallels between the rights of Soviet citizens and internationally recognized human rights, Soviet citizens do not have and enjoy these rights as human rights, with important practical consequences for the way in which they work.

The Individual, Society, and Human Rights

One of the key differences between the modern Western and the non-Western approaches to human dignity is the much greater individualism of the Western human-rights approach. Rights held by individuals will of course tend to be more individualistic in their operation and effects than group rights or substantively similar non-rights protections because of the special claims justified by rights-based entitlements and the substantial discretionary control of the right-holder. When these rights are at the basic level of human rights, this individualism will be accented by the rarity of the social claims that will justifiably override rights.

Non-Western writers often stress this difference. For example, Asmarom Legesse writes that a

> critical difference between African and Western traditions concerns the importance of the human individual. In the liberal democracies of the Western world the ultimate repository of rights is the human person. The individual is held in a virtually sacralized position. There is a perpetual, and in our view obsessive, concern with the dignity of the individual, his worth, personal autonomy and property (1980, p. 124).

He further suggests the way in which Africans would seek to redress this imbalance.

> If Africans were the sole authors of the Universal Declaration of Human Rights, they might have ranked the rights of communities above those of individuals, and they might have used a cultural idiom fundamentally different from the language in which the ideas are now formulated (1980, p. 129).[20]

Writing from an Islamic perspective, Ahmad Yamani likewise argues that the West "is so overzealous in its defense of the individual's freedom, rights and dignity, that it overlooks the acts of some individuals in exercising such rights in a way that jeopardizes the community" (1968, p. 15).

Throughout the Third World—and for the sake of simplicity and ease of exposition we will focus on the developing Third World in what follows—this general orientation seems to be overwhelmingly predominant. The question, though, is what conclusions are to be drawn from the undeniable fact of such differences and what, as a practical matter, ought to be done about human rights in the face of such fundamental divergences.

Legesse, like many others, argues that "any system of ideas that claims to be universal must contain critical elements in its fabric that are avowedly of African, Latin American or Asian derivation" (1980, p. 123).[21] In practice this would mean the inclusion of group or peoples' rights along with individual human rights. However, the issues at stake in such a move demand a substantive, rather than a geographical, argument.

Human rights, as we have been discussing them, are held by individuals and are exercised primarily in relation to society, usually in the person of the state, against which they are most characteristically claimed.[22] Peoples' rights, though, are held by society (again, usually in the form of the state) and directed against the individual (or other states) in their operation. If social rights and duties are both extensive and take priority over individual rights, as for example in the USSR, human rights are likely to be largely formal in practice. In such circumstances, although one might be said to have a human right, in those instances in which one would be inclined to assert or claim it, namely where the right is threatened,

beyond our scope. There certainly is some relationship, at least in most countries. However, the two types are by no means equivalent, and thinking about them as equivalent can lead to serious problems. This is implicitly illustrated in Brown and MacLean (1980), pp. 1-82.

[20]Such an assessment seems to be confirmed by the Organization of African Unity's recent African Declaration of Human and *Peoples'* Rights (my emphasis).

[21]It is ironic that those most attuned to Western neocolonialism and who would correctly reject with contempt an argument that an idea was correct or even applicable because of its Western origin, show the same basic error in such a geopolitical approach to the question of the truth, defensibility, or utility of the (Western) concept of human rights.

[22]The exceptions to this, in the realm of internationally recognized human rights, represent a clear and rather explicit redefinition of the concept along the lines approved of in Legesse's argument. This is particularly evident in the case of the right to self-determination, which is included in the Covenants but not the Universal Declaration, and in the emerging "third generation" of human rights, such as the rights to peace and development (see, e.g., UN documents number E/CN.4/1334 and HR/GENEVA/1980/BP.1-4 and Alston 1980).

challenged, violated, or frustrated, it would be largely useless. One might be said to have the right, but it would not serve as much of a trump, for where one would be likely to want to claim it, the claim would be rather easily overridden by the rights of society and associated individual duties.

In fact, as a practical matter, one would be able to enjoy the right only at the discretion of the state, and yet the state would not be violating one's rights in denying that enjoyment. This approach looks much more like being granted a benefit than having a right. In other words, it would appear as if human rights could be combined with peoples' rights in any substantial way only with great risk to their essential character.

In any case, having that kind of a human right would be rather different from having a human right as that has been interpreted until now. Restoring the balance between the individual and society in this fashion thus comes dangerously close to destroying or denying human rights as they have been understood. Therefore, incorporating Third World views would be likely to have major costs for human rights.

Such costs may or may not be justified. A society which regularly balanced human rights against the rights of society may or may not be preferable to one based on a Western concept of human rights. However, the issue must be addressed in substantive terms, not simply on the basis of anthropological and historical differences.

Here is not the place to assess the relative merits of claims of human and peoples' rights. However, I do want to suggest that writers like Legesse seem to base their proposals on a rather wistful social vision of limited applicability to contemporary circumstances and aspirations.

The social model they seem to have in mind is the small community based on groupings of extended families, the type of community so characteristic of traditional societies, both Western and non-Western. In particular, a relatively decentralized, non-bureaucratic, communitarian society seems to be the ideal.

In such a society, the individual lacks many, if not most, of the rights that are so highly valued in the liberal democratic state. However, he has a secure and significant place in his society and has available a wide range of intense personal and social relationships which provide him important material and non-material support. He also has available regularized social protections of many of the values and interests which in the West are protected through individual human and legal rights. One might argue that introducing individual rights would diminish his prospects for achieving a dignified life worthy of a human being. In any case, such a society is undeniably morally defensible, is in many ways quite attractive, and can be said to protect basic human dignity.

Along somewhat different lines, one might argue that only such a society is defensible in conditions of extreme scarcity (Keenan 1980, pp. 80ff). If extremely limited resources or environmental severity make survival precarious, the individual, in the absence of the close-knit community whose interests take priority, would be doomed to death, if only through accident or disease. Certainly our anthropological evidence suggests that such a communitarian solution appears to be natural to most peoples.

However, if we remove the pressures of necessity and, even more importantly, if we remove the social support and protection provided to the individual by the traditional community, things appear in a different light. Now it would be difficult to justify the continued absence of individual human rights while still having a system that could be said to protect and give prominence to human dignity, in any plausible sense of that term.

Westernization, modernization, development, and underdevelopment—the dominant contemporary social and economic forces—have in fact severed the individual from the small, supportive community. Economic, social, and cultural intrusions into, and disruptions of, the traditional community have removed the support and protection which would "justify" or "compensate for" the absence of individual human rights. These intrusions have created a largely isolated individual who is forced to go it alone against social, economic, and political forces that far too often appear to be aggressive and oppressive. Society, which once protected his dignity and provided him with an important place in the world, now appears, in the form of the modern state, the modern economy, and the modern city, as an alien power that assaults his dignity and that of his family.

In such circumstances, human rights appear as the natural response to changing conditions, a logical and necessary evolution of the means for realizing human dignity. The individual needs the protection of individual rights, barring the implausible, and generally undesired, reemergence of the traditional order. And given the power of modern institutions and the demonstrated inclinations of the individuals and groups that control them, not just any type of individual rights will do, but only rights with the moral force and range of universal human rights. In Marxist terms, the bourgeois economic revolution brings with it the bourgeois political revolution and bourgeois rights; capitalism and industrialization bring in their wake natural or human rights, which represent a major advance in the protection of human dignity in such circumstances.

From this perspective, then, the individualism of human rights appears as a response to objective conditions. Therefore, to rail against the individualism of human rights in the absence of an alternative solution to the very real problems of protecting the individual and human dignity, is at best utopian or shortsighted.

This is admittedly only a functional, rather than a moral, defense of human rights, and a defense based on a limited, largely Western, historical experience. Nonetheless, it does suggest that serious consideration be given to the argument that the underlying concerns and needs in the area of human rights and human dignity are, for objective, historical reasons, essentially the same today in the Third World as they were two or three centuries ago in England and France. This requires, though, that we put aside questions of the origins of concepts, practices, and institutions—not to mention the awarding of credit or praise for discovering them—and focus instead on their applicability to the problems we face today in protecting and realizing human dignity. The real question is whether the concept of human rights has contemporary relevance outside the West.

The Relevance of Human Rights

The claim that the Western concept of human rights is in some way irrelevant to Third World needs is a recurrent theme in the contemporary literature. Adamantia Pollis and Peter Schwab present an extreme version of this argument. They write that "it is evident that in most states in the world, human rights as defined by the West are rejected or, more accurately, are meaningless" (1980, p. 13) and refer to the Western concept as "inapplicable," "of limited validity" and "irrelevant" (1980, pp. 13, 8, 9). These are strong claims. I shall argue that for the most part they are not justified.

Admittedly, human rights are likely to appear to be foreign to the average person in most developing countries. People in these countries may even have the greatest difficulty comprehending what is meant by human rights. However, this is no more evidence that human rights are meaningless than similar difficulties in comprehension are evidence that dharma or tao are meaningless in Iowa or that anti-proton or neutrino telescope are meaningless most everywhere. Pollis and Schwab simply confuse meaning with understanding.

Inapplicable or irrelevant seem closer to what they have in mind. However, even these terms are ambiguous, having at least three important possible interpretations: that human rights objectively have no applicability; that their applicability is not recognized; or that the applicability of human rights is (or would be) rejected. Clearly the differences among these three senses are crucial, and all of them raise serious problems.

Determining the objective relevance of human rights would be a difficult matter. However, it is clear that a simple demonstration that most people in a country have been, and continue to be, unaware of the concept, or that they have adopted alternative mechanisms for realizing human dignity, will not establish that human rights are (objectively) irrelevant. A head count might be part of such a determination, although even that is not obvious. However, it certainly would not be definitive. A positive, substantive, probably even empirical argument would be necessary to establish objective inapplicability.

The two subjective senses of irrelevant raise problems of a different sort. For example, we are forced to ask what weight we ought to give to such subjective decisions and preferences. Also, we need to determine who is to speak for the society, and how, which is especially important given the basic political implications of such decisions.

In answering such questions, we find ourselves faced with at least partially competing intuitions. We must recognize the validity of claims of traditional values and institutions, as well as the rights of modern nations and states to choose their own destiny. At the same time, though, we feel a need to keep these choices constrained within acceptable bounds and reject an anything-goes attitude.

Certainly Louis XIV found the revolutionary rights of man to be inappropriate—and today's historians seem to be not altogether certain that the majority of his subjects, especially those outside of Paris, did not agree with him. More recently, "Emperor" Bokassa and Idi Amin have found human rights concerns to be irrelevant while Pol Pot and his successors alike have determined that human rights are inappropriate to Cambodia's needs and interests. Although there is widespread agreement that these men were and are wrong in their judgments, elucidating the bases for such a conclusion and then applying the resulting principles to less extreme cases raises serious difficulties.

We might begin by suggesting that extreme cases such as Amin or Bokassa can be criticized on the basis of the concept of human dignity alone. The practices of such regimes evidence not an alternative conception of human dignity but the denial of the very concept. For example, killing schoolchildren who protest school rules simply is incompatible with any and all plausible conceptions of human dignity. Although claims of human rights would substantially increase the force of our condemnations of these regimes, we can both forcefully and appropriately condemn such practices on the basis of the concept of human dignity alone.

Problems arise, though, when we are faced in-

stead with competing conceptions of human dignity such as we have been considering here. In such more common cases Pollis and Schwab and many others advocate an attitude of extreme toleration for variations, coupled with an attempt to resolve differences at the international level through compromise or even a lowest-common-denominator solution (1980, pp. 1, 14-17).

However, lowest-common-denominator and compromise approaches seem to assume: (1) that the claim of human rights advocates and theorists that human rights are universal rights is false; and (2) that the human rights approach is not a better one and therefore does not deserve to be more widely or even universally applied. Neither of these assumptions seems obvious, or even correct.

If we are to try to assess whether human rights is a better way to approach human dignity and organize a society, we need to ask, "Better for what?" This is a question of means, not ends. Human rights are not ends in themselves; or rather they are not entirely ends in themselves. Among other things, as we have seen, they are means to realize human dignity. To the extent that they have instrumental value we can, in principle at least, assess their merits largely empirically. I would suggest that for most of the goals of the developing countries, *as defined by these countries themselves,* human rights are as effective or more effective than either traditional approaches or modern non-human rights strategies.

For example, if our concern is with the realization of human dignity, one could argue, along the lines suggested above, that the conditions created by modernization render the individual too vulnerable in the absence of human rights. If the concern is with development and social justice, a strong case might be made that the recognition and protection of human rights will increase participation and therefore popular support and productivity, open up lines of communication between people and government (thus providing greater efficiency and important checks against corruption and mismanagement), spur the provision of basic services through the recognition of economic and social rights, and provide to dispossessed groups regular and important channels for demanding redress. If one is concerned with stability, an argument might be advanced that a regime that violates or does not recognize basic human rights engenders destabilizing opposition, especially where the government is weak and does not have at its disposal substantial, effective modern mechanisms of political repression.

Certainly such suggestions are not even outlines of the arguments that would be necessary to establish such conclusions. However, I think they show that we cannot simply assume that other strategies are as good or as valid merely because they are widely advocated. Furthermore, they suggest most clearly the need to move beyond the level of demonstrating differences in values, which is the level of most current discussion, to assessing the relative merits of competing approaches which, as we have suggested, can be done largely empirically in many instances.

The case against the other assumption of those who would approach differences in ways to realize human dignity by compromise or seeking a lowest common denominator, namely the assumption that human rights are not in fact universal rights, would have to be largely normative. The issue involved here is whether there are human rights, since non-universal human rights simply would not be human rights as they have been conceived even in such documents as the Universal Declaration of Human Rights. The compromise approach thus involves abandoning human rights as we have understood them largely without even presenting arguments.

At the very least it must be noted in response that if we take seriously the idea of human rights, we must recognize them as both a historical product and of universal validity. As the rights of man, as human rights, they cannot be treated as merely a historical product without destroying the concept. In fact, the idea of human rights would even seem to demand of us a concern for their realization universally, even though we know that the concept was first formulated and institutionalized in a particular civilization at a particular time. Such a demand is a difficult one to be sure, but it is one that seems unavoidable if we are not to renounce human rights in the name of avoiding cultural neo-imperialism. And it is not much more difficult than taking seriously any major moral claim, which we know arises out of values that are genetically contingent but which by their very nature must be taken to apply universally or nearly universally.

However, even if, for the sake of argument, we grant the assumption that human rights are not universal, the most important result will be to increase the importance of the questions of relevance and instrumental value we have just discussed. Simply establishing that human rights are not universal would not show that an alternative or competing approach to human dignity is necessarily defensible, let alone preferable. Rather, we would be left with several competing approaches which, unless we accept the crudest sort of value-relativism (e.g., emotivism), not only can but must be evaluated comparatively.

The differences between Western and non-Western approaches to human dignity certainly are large. In fact, one of my major aims here has been to show that they are far greater than seems to be generally recognized in the contemporary

literature. However, these differences do not, in themselves, entail the necessity of a laissez faire approach. Neither do they establish the substantive merits of any particular approach, let alone the inferiority of the Western human rights approach.

Conclusion

The belief that there are important practical consequences to the ways in which we think and talk about human rights and human dignity underlies the foregoing analysis, which has attempted to show that there are important differences in approach and that these differences can influence political practice in significant ways. If the alternative approaches to human dignity we have been discussing are accepted as legitimate conceptions of human rights, the practice of human rights is likely to suffer. For example, not only would it become easier for a repressive regime to cloak itself in the mantle of human rights while actually violating them, thereby turning "human rights" into an instrument of oppression rather than liberation, but in those countries with established human rights practices, the conceptual bases of the concept are likely to be eroded, thereby weakening the practice.

Of course, there is nothing inherent in the concept of human rights which assures that it won't, let alone shouldn't, change or evolve. Strong arguments can even be made that it would be desirable to reduce or minimize the place of human rights in political doctrine and practice, or even to replace human rights with entirely different organizing principles.

However, such arguments rarely are made today. Instead, human rights is used as roughly equivalent to "our approach to human dignity" and just about anything that is good or highly valued is transformed into a human right.

As a result, the distinctive and distinctly valuable aspects of a human rights approach are insidiously eroded. Human rights thus are attacked through their apparent advocacy in a covert linguistic operation which is not only particularly difficult to handle but which frustrates rather than encourages the discussion demanded by issues of such importance. Pressing the distinction between human rights and human dignity should not only clarify what is at stake but should improve the general level of discussion and perhaps even improve political practice. Admittedly, it is probably utopian to expect that any of this analysis will have a real effect in more than a handful of instances. Nevertheless, it seems mandatory to perpetuate the discussion if for no other reason than to preserve the human rights approach as a distinctive option; if we lose the concept, we stand in greater danger of losing the practice as well.

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