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The Lawful Rights of Mankind: An Introduction to the International Legal Code of Human Rights

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THE LAWFUL RIGHTS OF MANKIND: AN INTRODUCTION TO THE INTERNATIONAL LEGAL CODE OF HUMAN RIGHTS. By *Paul Sieghart*. New York: Oxford University Press. 1985. Pp. xix, 252. Cloth, \$15.95; paper, \$10.95.

Imagine a world where the international community placed no constraints on how rulers treated their subjects, allowing them to cast aside human values such as life and liberty. A ruler in such a world could lawfully exploit, mistreat, and even exterminate entire strata of the state's population. International law would confront concerned nations with an unseemly choice: follow the law and allow millions to die, or break the law to intervene directly in the sovereign affairs of another state.

That world is easily imagined, for, as Paul Sieghart¹ explains in his new book, *The Lawful Rights of Mankind*, we only left such a place in 1945. In the book's preface, Sieghart evokes the possibility of Chancellor Adolf Hitler dismissing a commission of concerned foreign representatives with the claim — quite correct according to principles of international law in effect at the time — that the commission's interest

1. Paul Sieghart, an English barrister, is an international arbitrator and consultant, with a special interest in human rights law. He also wrote *THE INTERNATIONAL LAW OF HUMAN RIGHTS* (1983), a much more comprehensive examination of the international code of human rights. Sieghart suggests using this book as a companion to the larger work. P. viii.

in his subjects constituted an "illegitimate interference in the internal affairs of the sovereign German State" (p. vii). Sieghart maintains that an international code of human rights would at the very least strip the legal clothing from a Hitler or a Stalin and lay bare his monstrous crimes. Although Sieghart elegantly achieves his limited goal of providing the lay reader with a highly accessible overview of the international human rights code — what lies behind it, how it was made, how it works, and what it says — he enjoys less success in dispelling the lawyer's doubts that the code provides the "hard law" necessary to dent the global abuse of human rights.

As the book is geared to the legal novice, Sieghart begins with an entertaining allegory on the birth of rules of law (Chapter One). He creates a mythical village at the beginning of history — "Adamsville" — and leads the reader through its first encounters with the need to establish a legal system. Sieghart thereby outlines the key concepts of "laws" as binding rules on all community members, and "rights" as claims entitled to succeed under those laws (p. 13).

Most interesting to the international lawyer is Sieghart's allegorical treatment of enforcement and newcomers. Because the villagers are afraid to put enforcement powers in the hands of any individual, they choose to allow aggrieved parties to resort to reasonable self-help. Should that fail, the community as a whole will treat the offender as an "outlaw" and deny him or her the protections and benefits of being a part of the community. In the same vein, newcomers must accept the rules and obligations of the community before they may be considered as equals with those who formed the rules. Thus, Sieghart shows how individuals in Adamsville must accept and follow the community's rules to obtain the community's benefits. This allegory softens the lay reader's natural resistance to the notion that the community of nations can implement international rules without a legislature or a police force.²

Sieghart leaves the allegorical for the real world, and sketches centuries of legal history in three brief chapters. His central purpose in this ambitious historical discourse is to trace the development of the idea that a state's legitimacy springs from its people, and that individuals hold inalienable rights which come not from the state, but inhere in their individual humanity. Beginning with the Renaissance and culminating in the American and French Revolutions, these new notions of state legitimacy and individual rights laid the foundations for the post-World War II revolution in international human rights. Sieghart maintains that the horrors perpetrated by Stalin and Hitler shocked the world into establishing obligations external and superior to the

2. Sieghart does not explore an important difference between Adamsville and the community of nations: unlike Sieghart's newcomers, new nations cannot pack up and leave if they disagree with the community's established laws.

state's previously uncontested sovereignty over human rights. The international community achieved this the only way it knew how: through declarations, resolutions, and, most importantly, binding treaties.

The code itself consists of three global treaties (the U.N. Charter, the U.N. Covenant on Economic, Social, and Cultural Rights (ESCR), and the U.N. Covenant on Political and Civil Rights (CPR)), four regional treaties (the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the American Convention on Human Rights, and the African Convention on Human and People's Rights), approximately twenty specialized treaties on more specific areas, and two nonbinding declarations (the Universal Declaration of Human Rights and the American Declaration of the Rights and Duties of Man). Sieghart uses the rest of the book to explain how these instruments operate, what obligations they create, and which rights they define and protect. He emphasizes that this code establishes a standard against which government behavior can be measured, much as scientists agree to international units of measurement (p. x). He thus divorces the code from any perceived philosophical or ideological underpinnings, as one need not meditate on the "true" meaning of "right" if each right is carefully defined in treaties ostensibly accepted by all parties as binding.

Sieghart's exposition illustrates three points of particular importance. To begin with, some treaties vary the degree of obligation depending on the attainability of the protection sought (pp. 73-75). Most treaties impose obligations which are "absolute and immediate" (p. 73); but the U.N. Convention on Economic and Social Rights and the European Social Charter establish "progressive" obligations that bind states to "take steps . . . to the maximum of [their] available resources, with a view to achieving progressively" the realization of rights set forth in the treaties.³ These treaties establish rights such as the right to work, the right to adequate housing and health care, and the right to vocational programs. As Sieghart explains in subsequent chapters, negotiators imposed progressive obligations in recognition of the difficulty many countries face in raising the standards of living of their citizens. The other treaties go further than simply using language that implies "immediate" obligations; they require countries to adopt domestic measures (such as legislation) to ensure compliance with the provisions (p. 74). Sieghart makes the important point that such obligations are objectively verifiable, in that states may ascertain treaty compliance by comparing one another's laws with the rights established in the relevant treaty. However, he fails to indicate that

3. This language is taken from Article 2(1), U.N. Convention on Economic, Social, and Cultural Rights, quoted at p. 74.

the same reasoning reveals the difficulties involved in verifying compliance with treaties imposing progressive obligations.

Secondly, Sieghart shows that the code establishes remedies on the national and international levels (Chapters Nine and Ten). The CPR and three regional treaties require parties to pass domestic legislation providing individuals with effective remedies against the state. States thus surrender a surprising degree of sovereignty. Unfortunately, to be effective such provisions require institutions (namely independent judiciaries) that can only take root in certain confluences of circumstance and history, and that cannot be mandated into fruition by treaties or proclamations.

The treaties also establish international remedies for human rights violations. International law typically recognizes only the rights of states, forcing individuals to go through the state to seek redress, and then only for those claims which the state, as the aggrieved party, can advance. By specifically establishing international remedies for individuals, the code makes a radical departure from international practice, seeking to free the individual from relying on the state. Unfortunately, Sieghart explains, these international remedies (*e.g.*, petitioning U.N. bodies for relief, bringing cases before regional councils) have been notoriously ineffectual, which, in the case of the U.N., is very much in keeping with the international clout it wields.⁴ Sieghart's discussion leaves the reader with the uneasy impression that the individual's only effective remedy is to hope that nongovernmental organizations, such as Amnesty International, can mobilize international political pressure against the regime. The treaties' bold remedies may therefore have done little more than raise expectations and excite legal theorists.

Thirdly, Sieghart maintains that human rights can be neither classified nor prioritized. He believes attempts to classify rights as "civil and political" and "economic and social" merely reflect cold war attitudes (Western countries favor the former, Socialist countries promote the latter) (pp. 81-84). The CPR shares rights and objectives with the ESCR, although the latter may impose different obligations. In fact, each recognizes that the rights established in the other are on a par with its own (p. 83). According to Sieghart, "While it may be intellectually stimulating to attempt such distinctions, one must be constantly aware of the danger of seeking to *rank* human rights in some kind of order of importance, reflecting one's own political or ideological prejudices" (pp. 82-83; emphasis in original).

Sieghart devotes the final fifty pages of his book to an overview of the substance of the code. Because the entire international code lists

4. Not only do such organizations lack the enforcement capability necessary to alter states' behavior, they also lack the political will to make the initial findings that human rights are indeed being violated on the scale necessary to justify condemnation or other action. Pp. 95-96.

forty to fifty distinct rights and freedoms (p. 79), Sieghart limits his examination to those rights he considers most representative of the code as a whole. This section of the book familiarizes the reader with the code's ambitious scope and far-flung objectives.

Sieghart, through his readable prose and thoughtful explanations, succeeds admirably in introducing the lay reader to the international human rights code. However, he is perhaps too eager to convey his optimism about the code, particularly in Chapter Five where, in discussing the code's standards, he nearly drowns the reader with his enthusiasm:

Nor are they naïve, starry-eyed, or idealistic, either about states or about their subjects. On the contrary, they are sober and pragmatic. Starting from the realistic assumption that there will always be tensions and conflicts between rulers and ruled, the code displays a practical respect for both, and sets out to strike a workable balance between them. . . . The code therefore now constitutes the highest rank of safeguards against tyranny [pp. 40-41]

This tone may strike the reader as somewhat misplaced, given the continuing horrors committed in open defiance of the code's safeguards. What the reader must remember is that Sieghart is discussing the code's content, and not its practical applications. Unfortunately, it is the latter that determines the code's effectiveness in shaping and improving government behavior. To the skeptical reader, his stubbornly positive tone smacks of self-delusion and therefore mars his credibility.

More important than the enthusiastic tenor of his descriptions is the substantive content of his reaction to criticisms that the code "amounts to no more than a lot of useless paper" (p. ix). He admits in the preface that "there are probably still no more than a couple of dozen or so countries where one can confidently say that [human rights] are reasonably well respected" (p. ix), yet in Chapter Ten he refers to cases involving those same countries to support his position that effective international remedies exist for aggrieved parties (p. 97). Thus, the only countries respecting the code's provisions and adhering to the remedy requirements are those that already have a consistently high record of respect for human rights. This says little for the code's global impact.

Sieghart maintains that outlawing offending states provides an effective sanction against human rights violations, and asserts that the loss of legitimacy that results from deplorable human rights records contributed to the downfall of various regimes (p. 95). However, a multitude of factors played greater roles in the collapses of the regimes he cites,⁵ and he fails to mention the many regimes existing today that consistently violate human rights, and yet are in no immediate danger

5. Sieghart cites, *inter alia*, the Shah of Iran and President Somoza of Nicaragua. P. 95. Although international isolation may have played a role in their respective downfalls, that isolation was as much politically motivated as it was motivated by a desire to "outlaw" serious human

of abdicating power (e.g., Vietnam, the USSR, Chile, South Africa). The level and impact of international condemnation may depend more on the role public opinion plays in the offending nation and its supporters than it depends on the nature and magnitude of the violations themselves. In fact, international condemnation in general has not approached what could be characterized as a concerted community effort to "outlaw" offending regimes. As Sieghart recognizes in Chapter Ten, states depend too much on one another to countenance rupturing diplomatic relations in order to safeguard the human rights of foreigners (p. 94). Thus, states often use human rights for ulterior ends, condemning violators only when politically expedient. These international realities cast a grim pallor over Sieghart's optimistic gloss.

Finally, Sieghart contends that offending countries' efforts to fit their offensive conduct into legal exceptions, such as "national emergency" or "state of war," indicate the extent to which countries accept the code as imposing binding legal obligations (p. ix). However, he stops short of drawing the opposite implication, that such continued and blatantly disingenuous attempts to justify widespread *treaty* violations demonstrate that most countries treat human rights obligations as "soft law": standards that provide common objectives but bind no one. Widespread violations may establish a dangerous international practice of noncompliance with human rights treaties, undermining the validity of the code as well as that of related treaties. Sieghart's survey of the multitude of human rights guaranteed by the code sets states' behavior in even starker contrast with the code's standards, and may further reinforce the skeptical reader's initial perceptions that the code strives to be law but remains only an admirable set of aspirations.

To Sieghart's great credit, he recognizes the force of objections to the code such as those advanced above. He realizes that gross violations of human rights still occur, and that the code has not yet reached anything like a consistent record of application. He emphasizes that the code is still very new in the span of legal history, and that the very existence of human rights standards is in itself cause for celebration. Even though horrors may continue apparently unabated, at least today we can legitimately refer to them as *violations* of law and not merely as immoral acts. By establishing new norms of international behavior, the code has provided the world community with the internationally recognized standard of measurement it needs to strip future Hitlers and Stalins of their legal trappings. Although Sieghart's optimistically legalistic approach may threaten some of his credibility, most readers will close his book convinced that he may not be far wrong when he says: "For, in various ways, [the code] *does* work: if it

rights violators. The violations perhaps mobilized internal opposition to the regimes more than they marshalled effective international condemnation of those regimes.

did not exist, there would today be far more violations of human rights than there already are” (p. 44; emphasis in original).

— *Alexander W. Joel*