The Universality of the Concept of Human Rights

By LOUIS HENKIN

ABSTRACT: Debate about the universality of human rights requires definition of "human rights" and even of "universality." The idea of human rights is related but not equivalent to justice, the good, democracy. Strictly, the conception is that every individual has legitimate claims upon his or her society for defined freedoms and benefits; an authoritative catalog of rights is set forth in the Universal Declaration of Human Rights. The rights of the Universal Declaration are politically and legally universal, having been accepted by virtually all states, incorporated into their own laws, and translated into international legal obligations. Assuring respect for rights in fact, however, will require the continued development of stable political societies and of the commitment to constitutionalism. Virtually all societies are also culturally receptive to those basic rights and human needs included in the Universal Declaration that reflect common contemporary moral intuitions. Other rights, however—notably, freedom of expression, religious and ethnic equality, and the equality of women—continue to meet deep resistance.

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DISCUSSION of the universality of the concept of human rights begs for definition and interpretation of terms. I offer a word about the concept of human rights, another about universality.

HUMAN RIGHTS

Human rights are not the equivalent of justice, or "the good society," or, as some think, democracy, although the human rights idea is related to all of these. Briefly, the human rights idea declares that every individual has legitimate claims upon his or her own society for certain freedoms and benefits. Few, if any, human rights are absolute; they are prima facie rights and may sometimes bow to compelling public interest. Ronald Dworkin suggested that human rights ordinarily "trump" other public interests.

These claims upon society are not for some general and inchoate category of what is good; they have been authoritatively defined. They are specified in the Universal Declaration of Human Rights and in various other international instruments. The rights specified are commonly divided into two categories. Civil and political rights include rights to life and physical integrity; freedom from torture, slavery, and arbitrary detention; and rights to fair criminal process; as well as rights of personhood and privacy; freedom of conscience, religion, and expression; and the right to vote and participate in government. The other category comprises economic and social rights. These are essentially those associated with the welfare state: the right to work, to eat, to obtain health care, housing, education, and an adequate standard of living generally. A people's rights to self-determination and sovereignty over natural resources have been appended to the human rights catalog in two international covenants. Controversial candidates for inclusion as human rights are rights to peace, economic development, and a healthy environment.

The idea of human rights is a political idea with moral foundations. It is an expression of the political relationship that should prevail between individual and society. It implies that there are limitations on government, including limits on what can be done to the individual even for the welfare of the majority, the public interest, the common good. There are even limitations on law; one may think of human rights as a kind of higher law. The human rights idea implies individual entitlement and corresponding obligations on society. Our rights are not granted by society; we enjoy them not by the grace of society and not only because it may be good societal policy to respect them. Rather, we are entitled to them.

Implicit in the idea of human rights is a commitment to individual worth. The individual counts, and counts independently of the community. The idea suggests equality of human beings, not hierarchy among them. It implies that values of liberty and autonomy are sometimes more important than values of order. Justice Cardozo wrote of "ordered liberty."

Where the idea of human rights comes from is not agreed upon. In the contemporary world, human rights claims are justified rhetorically as required by human dignity, and by goals of freedom, justice, and peace.

UNIVERSALITY

The term "human rights" suggests the rights of all human beings anywhere and anytime. The principal contemporary articulation of human rights, the Universal Declaration of Human Rights, claims and prescribes universality.
The universality of human rights has been challenged from several perspectives. The idea has had an uphill struggle for political and philosophical acceptance. The strongest challenge has been to claims of cultural universality.

The political and philosophical idea of human rights has not always been universal, and it has not been universal for very long. It finds its authentic origins in the seventeenth century in the natural rights of John Locke. In America, we tend to proclaim Thomas Jefferson’s restatement of Locke in the Declaration of Independence. But the idea was rejected by traditionalists such as Edmund Burke. It was rejected by progressives, even such eminent progressives as Jeremy Bentham. Bentham said: “Natural rights is simple nonsense: natural and intranscendent rights, rhetorical nonsense—nonsense upon stilts.” An American thinker once wrote that natural rights have been as much “the shield of conservatism as the sword of radicalism.”

In the nineteenth and early twentieth centuries, the idea of natural rights was challenged by positivists. It has been denied by utilitarianism, which implies that one can sacrifice individuals to achieve the greatest good of the greatest number or the maximum of total happiness. The idea of human rights has been attacked by socialists. Communitarians generally see human rights as egocentric, egotistic, and divisive. The human rights idea has also been challenged as undemocratic when claims to individual rights conflict with the will of the majority.

This political idea, so self-evident to Americans, took root in very few places. It found fertile soil in the United States in 1776 when Jefferson proclaimed it and the states included it in their constitutions; in 1789 Congress adopted what became the Bill of Rights. It is sobering to note, however, that while we amended the Constitution to include the Bill of Rights and continued to recite the Declaration of Independence, we maintained slavery for another eighty years, maintained racial discrimination for a hundred years more, and limited suffrage until recently. Minorities and women continue to claim invidious discrimination.

Our partner in the idea of rights in the eighteenth century, France, proclaimed its great Declaration of the Rights of Man and of the Citizen in 1789, then shelved it for about 150 years. Great Britain, our mother-in-law, continues to reject the idea of rights in constitutional principle, in favor of parliamentary supremacy. One hardly need mention countries in the twentieth century that rejected the idea of human rights in principle as well as in fact, in the name of fascism, national socialism, and Stalin’s socialism.

Religions, too, have challenged the idea of rights. At various times, almost every religion—including Protestantism, whose stress on the individual contributed to the idea—has not received the idea of human rights warmly. Religions have not tended to favor ideas that could be seen as essentially anthropocentric. Autonomy and liberty have not been religious values and have been seen as anarchic.

Finally, some cultural anthropologists have charged that natural rights is a Western idea and that imposing it on others is cultural imperialism. In any event, they insisted, there is little hope for human rights if the world’s cultures are not receptive to the idea.

EMERGING UNIVERSALITY

The human rights idea was not universal not too long ago. I believe it has now achieved universality in significant respects.

Political universality today can hardly be denied. World War II and the full realization of the enormities of Adolf Hitler ushered in what I have called “the age of rights.” Human rights has been accepted as the idea of our times; no other political idea—not socialism; not capitalism; not even democracy, however defined, usually undefined—has received such universal acclaim. All states have accepted the idea of human rights in some form. Universal condemnation of apartheid, for example, also implies universal acceptance of the idea of rights.

The second half of this century has given the idea legal universality as well. The concept of human rights has been enshrined in the U.N. Charter, to which virtually all states are parties. The Universal Declaration of Human Rights has been accepted by virtually all states. The international covenants and conventions on human rights have been widely adhered to, and there is a customary law of human rights binding on all states.

The concept of human rights has been incorporated in virtually all state constitutions. Where it has not been fully incorporated, there is continuous demand for its inclusion and for constitutional guarantees of rights. Even the Soviet Union, even China have included human rights in their recent constitutions.

Needless to say, universal political and even legal acceptance does not guarantee universal respect for human rights. Many will see such acceptance as rhetoric or even hypocrisy. I have been sometimes tempted to offer two cheers for hypocrisy in human rights. Two cheers—though not three—recognize that “hypocrisy is the homage that vice pays to virtue”; it is important that the concept of human rights is the virtue to which vice has to pay homage in our time. Acceptance, even hypocritical acceptance, is a commitment in principle to which one can be held accountable. Hypocrisy requires concealment that can be uncovered. This homage is reflected even in the phenomenon of emergency rule that prevails in many countries today. When a country declares emergency rule, it declares its situation to be abnormal. In principle, emergency rule is only temporary. Regardless of how long it lasts, it continues to be abnormal.

There can be little doubt about the fact of the constitutionalization and the internationalization of human rights in our time, and of the popularity of the idea—in all senses of “popularity.” With those political developments, even philosophical and religious opposition to the idea has been muted if not erased.

We may be approaching universality even among philosophers. Natural rights have had a rebirth. Philosophers who continue to eschew natural rights may nonetheless recognize a sense of common moral intuition that provides a basis for human rights. In any event, the human rights movement does not invoke natural rights with its historical baggage, and the battles with positivism are now moot since human rights are now established in positive national and international law. Philosophers, such as Professor Cranston in Great Britain, who continue to object to economic and social rights as rights do not challenge the concept of human rights and indeed reaffirm it, and other philosophers have shouted him down on economic and social rights, too.
The others I have mentioned—the utilitarians, the communitarians, the socialists—may continue to be opposed to the idea in abstract theory, but none of them is now prepared to submerge the individual completely. Utilitarians will not sanction slavery, or torture, even "for the greatest good." Communitarians increasingly recognize that a legitimate community can be maintained only with respect for individual human rights. Socialism recognizes that socialism is acceptable and viable only if it has a human face.

All the major religions have begun to emphasize their individualist, universalist, this-worldly—rather than other-worldly—elements. They have played down doctrines that are in tension with human rights, such as intolerance of other religions and subordination of women. Some fundamentalist actions taken in the name of Islam, however, continue to resist this trend. The rights of individuals now commonly are seen by all religions as a floor, a minimum requirement for the good society, especially in modern urban industrialized society. All societies and all religions today have accepted the notion of rights to have basic human needs satisfied. Modernization has brought the human rights idea even to the illiterate villager. In all parts of the world, it is increasingly recognized, the village will need law, institutions, education, organization, and human rights if it is to be part of modern society.

CULTURAL RECEPTIVITY

The core of the continuing challenge to the universality of human rights today is cultural. Essentially, the claim is that the concept of human rights is a Western idea, imposed on the rest of the world, and that many cultures are resistant and unreceptive to the idea. That the idea has been imposed by the West is debatable. The idea of human rights has been accepted by leaders in every country, embraced not only by the early Western-educated elites but also by contemporary leaders. The Third World has had its Nyereres committed to human rights, not only its Idi Amins. Much of the resistance to human rights is resistance not to the idea of human rights but to some of its politics in the United Nations, to external scrutiny rejected as interference, to the imposition of sanctions for human rights violations—for example, by the United States—but not to the idea of human rights.

In any event, many contemporary ideas in the political world are Western—the concept of the state, socialism, the idea of the United Nations. Development is a Western concept, universally acclaimed. No one claims that these ideas are anything other than Western, yet no one claims that they are therefore culturally foreign and unacceptable.

Human rights may be a Western idea, but the West has not been more receptive to it than have other regions and cultures. The idea hardly flourished in the West before World War II, and it was in the West that Hitler perpetrated his monstrous deeds. The political idea of human rights is rooted in interpersonal morality. The issue, I believe, is not the universality of the political idea but of the underlying morality. The question is whether the moral values of human rights are universal, whether the specifics in the catalog of rights in the Universal Declaration of Human Rights respond to that common morality. The important issue, moreover, is not even whether human rights reflects a common morality, but whether the morality it reflects, now universally politically prescribed, is culturally acceptable or will be rejected as foreign matter.
I am persuaded that there is, universally, a common contemporary moral intuition that responds to, and will not reject, most of the provisions in the Universal Declaration, those that constitute the core of human rights. I think there is universal cultural receptivity to the right to life and physical integrity; to freedom from torture, slavery, and arbitrary detention; to due process of law and the right not to suffer cruel punishment; to a right to property. These rights correspond to those alluded to in the phrase "consistent patterns of gross violations of internationally recognized human rights," a term of art in both U.N. doctrine and U.S. legislation. There is no reason to assume cultural resistance to universal political participation. There is surely no cultural resistance to societal responsibility for meeting basic needs for food, housing, health care, education, and the care of children and the aged.

On the other hand, some rights in the Universal Declaration are not universally favored and may meet cultural resistance. I cannot conclude that freedom of expression is universally accepted or even acceptable; I am not confident even about freedom of conscience and religion. Equality is not yet universally welcomed, and discrimination on grounds of race, ethnicity, or gender will be difficult to eradicate. The world has moved, but it has not yet moved far enough.

The world has been moved to accept new ideas, and in my view it is more receptive to the idea of human rights than to many others. The idea of human rights has been on the world scene for only some forty years. It has faced an uphill struggle in many countries, Western as well as Eastern, in the First and Second as in the Third World. Its political and legal acceptance has been universal, and philosophical and ideological resistance to it has subsided. The conception of human rights, and most of the rights in the authoritative catalog of human rights, I conclude, conform to a common moral intuition that is virtually universal today, and those rights are in fact congenial—or acceptable—to the principal cultures. Serious violations of these rights in many countries reflect, I think, not cultural resistance but political-social-economic underdevelopment and instability, and a still underdeveloped culture of constitutionalism, including an inability to keep the army in its barracks.

Some rights, on the other hand—freedom of expression, religious and ethnic equality, and the equality of women—appear not yet to be acceptable in fact in a number of societies. In that sense, those rights are not yet universal. I do not think that it is impossible to make them universal, but it will take dedicated effort by those who care.

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QUESTIONS AND ANSWERS

Q (Ben Freedman, New Orleans, Louisiana): Where is the line between human rights and chaos?

A: In theory, the respect for individual autonomy can be carried so far as to lead to chaos, but we are far from that; all societies today have substantial respect for individual autonomy—certainly all societies in the West—and they have managed to avoid chaos. A line has to be drawn. The human rights instruments have recognized limitations on rights, but the limitations themselves are articulated in an international standard, and the international stan-
standard is monitored by international institutions—governmental, intergovernmental, and nongovernmental. The international standard seems workable.

Q (Anwar Barkat, Commission of the Churches on International Affairs, New York City): I think there has been a certain amount of simplification of the reaction of the Third World to human rights. It is not the concept itself that is under attack as much as the Western aspects of it. I do not think the Third World is willing to give that kind of honor to the Western world or to reject its own traditions and history. In the beginning, the interpretation and the language of human rights were so individualist that the Third World protested the exclusion of communitarianism from human rights discourse. As a result, the rights of communities, the right to national existence, and the right to ethnic existence are now addressed. The Universal Declaration of Human Rights and other human rights covenants are problematic also. When these instruments were negotiated, the Third World was not a party to the negotiations. It is not that we reject the contribution of the West, but we want to make contributions from our own tradition, culture, and history as well.

A: Actually, it has not been the Third World that has charged cultural imperialism but Americans speaking on the Third World's behalf. I think the Third World has been as dedicated to the human rights idea as the First World and certainly the Second, and perhaps more so in some respects. The Universal Declaration has been accepted by everybody, First, Second, and Third World. The Third World has not liked some of the means by which the West has enforced human rights, but that requires political rather than cultural discussion.

I do not think that communitarianism is inconsistent with the idea of human rights. But when the community begins to impinge unduly—the critical word—on the individual, communitarianism begins to swallow human rights.