

The politics of human rights; Rethinking human rights. (Brief Article)

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Does it help to think of poverty or inadequate health care as violations of basic rights?

"NONSENSE upon stilts"--this was Jeremy Bentham's assessment of the French revolutionaries' Declaration of the Rights of Man and of the Citizen, which deemed that all people had certain natural and unalterable rights. Bentham felt that rights were man-made, and could not spring from mere assertions of principle. As he put it, "Right...is the child of law; from real laws come real rights; from imaginary laws, from laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights, a bastard brood of monsters."

After the second world war, members of the United Nations produced two successors to the French declaration. The first, the International Covenant on Civil and Political Rights, might have met with Bentham's approval. The rights listed in it, such as the right to vote, the right not to be tortured, and the right to free speech, found wide support in real laws, at the national and the international level. The second, the International Covenant on Economic, Social and Cultural Rights, asserted that all humans have the rights to health, food and employment. This looks the sort of bastard brood that would put Bentham in a pickle, were he not so already. Lacking anything approaching universal legal support, these "rights" are routinely violated in all corners of the world.

But that is exactly why such rights, without the inverted commas, need to be moved further up the world's political agenda--or so, increasingly, it is argued. Up to now, claims to such rights have received short shrift from governments and lobbyists. Human-rights groups who campaign against violations of civil and political rights have often ignored the economic and social kind. Today, some of these organisations are thinking about bringing rights to food, health care and fair wages into their remit. The policy-making body of Amnesty International, the largest and most important of these groups, is meeting in Dakar to decide if it should expand its mandate (). Does it make sense to accord the status of rights to demands of this sort?

Ought implies can

Philosophically, and with all due respect to Bentham, it is difficult to make clear-cut distinctions between the traditional "first-generation" rights and the newer "second-generation" variety. The idea that only first-generation rights lend themselves to legal codification is wrong. Certainly, they lend themselves to it far more

easily, because the adjudications they require are simpler. But in many countries, the reach of national law has already extended far into the social and economic realm. So the question is not whether it is possible to expand the concept of human rights but whether it makes sense to, especially in the developing countries where these new rights either do not exist or are widely ignored.

A few other broad-brush distinctions also get fuzzy when you examine them more closely. First-generation rights are said to be "negative liberties" (freedoms from, rather than freedoms to). Negative liberties, since they call for acts of omission rather than commission, tend to be cheap to protect, and also have the handy property that they cannot clash with each other: nobody is ever forced to choose between not being a torturer and not being a slave-owner. In contrast, it is argued, "positive liberties", such as the right to health care, may be very expensive to provide, and governments will often have to choose to recognise some and ignore others simply as a matter of economic necessity.

There is a lot of truth in all that, but again the issue is not as clear-cut as one would wish. The right to vote, a first-generation right, is a positive liberty not a negative one, and it costs something to honour. There are fiscal limits to the protection of negative liberties just as there are to the protection of positive ones (think of the cost of national defence, or of the police and criminal-justice systems). And arguments that deem any given positive liberty too expensive to protect are really saying, in part, that the property rights recognised in the existing distribution of income must take priority over any new rights. Perhaps they should take priority--but advocates of the new rights are at least entitled to ask, on what grounds?

Perils of inflation

The simplest and most telling arguments against the adoption of universal economic and social rights are not philosophical, but practical. The new rights will have to be defined in the vaguest, most general terms if they are to be plausibly universal in scope. These rights will either mean nothing, if they are regarded only as empty platitudes; or, if the intention is to move from stating rights to enforcing laws, they will be constitutionally dangerous. Vague laws would invite, and indeed require, courts rather than governments to settle arguments about social justice. Advocates may not mind this: the courts, they imagine, will give them an extra lever to use in pushing policy in their desired direction. But they must recognise that in practice this amounts to subordinating the popular will to the rule, not of law, but of judges. A further risk, in practice, is that trade and other international agreements may be framed

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(not always disinterestedly) to punish countries that violate the new rights--leaving the people whose rights have been violated even poorer than they were to begin with.

Lastly, there is the question of tactics. Amnesty International, especially, owes much of its moral authority to its defence of freedoms that are recognised across nearly all of the ideological spectrum, a stance that has lifted the organisation above the ordinary political fray. This would have to change: arguments over social and economic policy are the very stuff of party politics. Rather than investing demands for social reform with the moral authority of their campaign for basic liberties, as they may hope to, human-rights watchdogs run the risk of doing the opposite: tainting their defence of basic liberties with an overtly political platform on social and economic policy. That would be a pity. Alas, there will be enough injustice of the traditional sort to keep the watchdogs usefully employed for many years yet.