

ADDRESS

THE CURRENT TENDENCIES OF HUMAN RIGHTS

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The theme of human rights is recurrent in the history of humanity because it is closely related to human dignity. It was strongly enhanced a little more than two centuries ago with the corresponding American and French declarations, but became especially important after World War II. In the last four decades, the pursuit of human rights has become internationalized. The horrors and atrocities of Fascism and Nazism provoked worldwide revulsion. It was clear that our planet faced a choice either to live in a civilized manner under democratic and representative regimes where human dignity is respected or under savage regimes where the law of "survival of the fittest" prevails.

The horrors of the World War II death camps spurred a new appreciation for the importance of human rights. The war demonstrated that barbaric conduct towards the innocent is never confined to the borders of a single country. The isolationist view that savage conduct against a regime's own people is "none of my business" was revealed to be a dangerous delusion by the wholesale slaughter of civilian citizens of countries bordering the fascist regimes, and even those of countries far removed. The reach of modern weapons has rendered national borders irrelevant where human rights are concerned.

Despite the new awareness and the human rights victories of the last four decades, there is still a long, hard way to go. Human rights violations continue unabated in many countries. Atrocious practices such as torture and illegal executions are still the norm for far too many countries. We must do better in the next two decades than we have done in the last four.

The preeminence of the idea of human dignity is not questioned. It is accepted in the most diverse theories and philosophies and is a supreme value. That is why, as Héctor Gros Espiell has nicely put it, human rights will never be extinguished, because "by being consubstantial with the idea of mankind itself, they will always exist ontologically and will be reborn in

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the realm of political existence, because liberty will never be eliminated, since man is, in essence, his own liberty.¹ The interest over human rights is not a passing fad. Human rights are the central theme of today because they are the most precious thing that man has; they are his dignity.

To try and predict the future is very difficult, and one can easily go astray. Notwithstanding, it is possible to point to certain tendencies concerning human rights if one observes its development since 1945, and especially since 1965. It is possible, if one analyzes recent world events, to see that most societies aspire to the human rights necessary for human dignity. Of course, one can only speak of tendencies, and these can be modified or altered depending upon multiple circumstances which cannot be known beforehand. What one can be sure of is no matter how many perils and dangers, the fight for human dignity will be triumphant, it must be triumphant if mankind is to continue living on this planet.

I. HUMAN RIGHTS HAVE BECOME INTERNATIONALIZED

The member States of the United Nations collectively recognize that human rights are an essential part of the international world. They are not an exclusive worry of individual members. This collective view is behind the universal and regional declarations promulgated since 1948 and why multiple pacts, agreements and protocols on human rights have been signed. All of these are important, in fact, extremely important. They provide for continued human rights consciousness and make these rights more precise.

International controls are the key to compliance with these agreements. In fact, the efficiency of the international system depends upon its ability to impose its guaranties upon individual states.² That is why international and regional commissions and courts exist.

These commissions and courts, however, are plagued with problems. Their jurisdiction must first be approved by the country, which can include any reservations it considers necessary. In many cases, individuals cannot proceed directly to these bodies, but must go through an intermediary, and frequently the activity of these bodies are inhibited by economic obstacles.

One can observe two very important tendencies:

- a) More countries are accepting the jurisdiction of the Commissions and Courts; we have seen this happen in Western Europe and in the Americas, although in North America the process appears slower and more reluctant.
- b) Increasingly, individuals can go directly to these international organizations, although they are usually required to first exhaust internal

1. HÉCTOR GROS ESPIELL, *ESTUDIOS SOBRE DERECHOS HUMANOS II. CIVITAS* 292 (1988).

2. Pedro Nikken, *En Defensa de la Persona Humana*, EDITORIAL JURIDICA VENEZOLANA 47 (1988).

remedies. This is a significant change. Classically, international law was accessible only by states, not individuals.

The internationalization of human rights and the creation of international and regional commissions and courts challenges the classic idea of sovereignty. This is an appealing theme. It revises traditional theories of sovereignty, even if all of the organizational pieces are not yet in place to complete the revision.

For now we can only acknowledge that in reality, countries have either delegated or subordinated, in differing degrees, some aspects of their sovereignty. They have done so in response to a variety of conditions: a) by volunteering b) by participating in an international organization; c) by developing supranational activities; d) by accepting supranational jurisdiction in some instances; and e) by creating regional organizations of a political nature, such as the European Parliament. Some countries have actually delegated sovereignty to regional organizations and have accepted the superiority of international law over national law.

However, it cannot be overlooked that the basis of these developments is the legal equality of countries and the observance of international law. Sovereignty continues to be the defense of small, weak countries against large, powerful ones.³

It is clear that the internationalization of human rights is not a new form of imperialism, where a powerful nation is getting involved in the internal affairs of another country. It is not an excuse for dictating policy. The internationalization of human rights is, and must be, first of all, the acceptance of regional and international organizations and their jurisdiction over human rights matters. These organizations are comprised of independent, upright judges who will apply international law, or the most applicable law, without pressure from any country.

Another tendency is the progressive strengthening of human rights through the increasing efficiency and control of national, regional and international organizations. This is the same idea that René Cassin expressed as the impressive expansion of the concept and its contents.⁴

Certain rights progressively become recognized and defined. Such is the case of economic and social rights, where it is fundamental that material resources exist, in part, to satisfy those rights. Examples of such rights include the right to work and to lodging. In addition, there are derivative rights, such as the right to form unions and to go on strike.

In this progressiveness, customary international law has been and will continue to be of great importance. Through this form of law, international

3. JORGE CARPIZO, CURRENT ISSUES OF CONSTITUTIONAL LAW 264-65 (Half Century Commemorative Edition of the Law Faculty of Mexico) (1991); Jorge Carpizo, *The Sovereignty of the People in Domestic and International Law*, 46 MEXICAN BULLETIN OF COMPARATIVE LAW 62, 62-65 (1983).

4. René Cassin, *Recueil des cours*, 140 LES DROITS DE L'HOMME 326 (1974).

organizations focused on protection have made the procedural norms more flexible. In this regard, one must not forget that this evolution was not primarily due to the political willingness of individual states. International organizations have often had to act against the interests or positions of individual countries to advance the cause of human rights. The pressure of the international public voice has been of utmost importance to this progress. What has also contributed are the new, comprehensive telecommunications systems. They inform large sectors of the world population with ease and speed.

II. REGIONALIZATION OF HUMAN RIGHTS

Another tendency involves the process of regionalization as well as universalization. At present, along with the universal protection of human rights, there exist three large regional systems of protection: the European, the American and the African. Of course, the three systems have many points in common as well as differences. Aspects of one system that prove to be useful should be incorporated into the other system. For example, the general and unconditional jurisdiction of the Interamerican Commission to receive individual petitions, peculiar to the Interamerican Commission, has been most effective. Another power, specific to the American System, is the right to direct petitions, not only for the victim, but also for any person or nongovernmental entity involved.⁵

Another new trend is the recognition that *in situ* investigations are often better than remote inquiries. This is often difficult, requiring the cooperation of state officials. Sometimes the *in situ* investigation is reduced to no more than an interview with state officials but the interest shown by personal presence can have a profound effect on the attitudes of those states officials towards human rights.

Still another tendency is the recognition that in serious human rights violation cases, responsibility transcends the state structure and falls upon the individual. This is particularly true in genocidal situations. The movement towards indicting individuals in the remaining Yugoslavian state for war crimes is one such current example. It further illustrates the principle that international law belongs to the individual as well as the state, and individuals will be held accountable to that law.

III. EDUCATION IS THE KEY TO SUCCESS

Violations of human rights will probably exist on this planet as long as man exists, because man is a complex being, capable of unimaginable atrocities as well as extraordinary acts of heroism and kindness. The law

5. THOMAS BUERGENTHAL, ET AL., MANUAL INTERNATIONAL DE DERECHOS HUMANOS 99 (1990).

must serve to influence man towards admirable conduct and away from yielding to violent passions and fears. It is important that government officials are held personally accountable to the law for human rights violations. It will not only provide a large measure of deterrence to other government officials, but also an example to private individuals. There must be a minimum standard of conduct and that standard must be maintained by the credible threat of swift, sure punishment for transgression.

Education is the key to success. There must be a strong, consistent, continuing effort to educate everybody on the importance of human rights. This applies equally to developed as well as developing countries, government officials as well as private individuals. The need for this education will always be there. We will never achieve the desired level of consciousness and sensitivity in all, but we can develop a process designed to achieve that goal in many if not most of our global population. I mentioned earlier how the death camps of Germany in World War II shattered the illusion of isolationists that human rights was a purely internal matter. It is well to remember that Germany was one of the most cultured and educated countries in the world. They were world renowned for their art, music, literature, philosophy and science. Their people were educated, skilled and industrious. They were a developed country in every sense of the term, yet they were responsible for some of the worst atrocities in human history. As educated and developed as the German people were, they had never internalized a deep respect for human rights in their culture. Without that internalized respect for human rights all of their education and development provided no defense, no bar to the most horrific violations in human history. Economic development is not enough. Science and technology are not enough. There must be a deep respect for human rights inculcated in the society. Only a deep and abiding respect for human rights will inoculate a society against the disease of hatred and violence.

IV. COMPLIANCE WITH HUMAN RIGHTS IS AN OBLIGATION

Many of the first human rights declarations in this century were formulated as limitations on government officials. They were mainly American and British declarations. Human rights define the minimum requirement for human dignity and must be respected by government authorities. In personal relationships, conflicts are resolved according to the law between presumed equals. The law equalizes social and economic differences. However, the relationship between a governmental official and private citizen is not one of equality. The state has invested the government official with significant discretion. The law must protect the individual from this imbalance. The citizen's rights must be preserved and government officials must act according to the principle of legality. That is, it must not be a discretionary choice by the government official to obey the law, but an absolute obligation for which he will held personally liable.

In some countries a system of indirect support of illegal activities by government officials has developed. Sometimes the support is covert but active, other times merely passive acceptance or tacit approval. Regardless of the type of support, direct or indirect, active or passive, violations of human rights occur as a result of state power. Our international system for controlling human rights violations must deal with this type of violation as well. It must deal not only with official government backing of violations but with the quasi-government organizations that directly inflict the violations.

Civil, political, economic, social and cultural rights are a unified whole. Dignified life requires liberty, equality and juridical security. But these rights mean little if at least the bare minimum of material needs are not met. The right to food, shelter and work is well recognized in international law. These rights impose an affirmative duty on the state to provide for at least the minimum material needs of its citizens. In this area of affirmative state action to provide minimum material needs, Europe has the most advanced system. The European system, the European Commission and the Court on Human Rights, have declared that their jurisdiction includes economic and social rights.

Human rights necessarily includes social justice. Defining and achieving social justice is one of the greatest challenges of our time. Men of good will can and do differ at the margins at exactly where the line should be drawn defining minimum material needs. But there is no dispute that the heart of the matter is achieving human dignity. There is no dispute that much of the world lives without human dignity. Before quibbling about where the exact line should be drawn demarcating minimum material needs, we should first alleviate the suffering of those who everybody agrees falls below the line. They should at least be brought up to the vicinity of the line before time and effort is spent defining the exact location of that line. To raise those in abject poverty, we must do a better job distributing the world's wealth. The developed, wealthy countries of the world, including the richest, the United States of America, have a special responsibility to lift those who all agree are so impoverished as to be living without human dignity. There must be a new relationship between rich and poor countries.

V. THIRD GENERATION HUMAN RIGHTS

A new area of human rights, generally referred to as tertiary or third generation human rights, include the right to peace, economic development, a clean environment, ecological balance and cultural continuance. These rights are only beginning to be juridically recognized on the national and international scene. Some have had reservations about recognizing these areas as part of human rights. The criticism sounds very much like that of previous decades over the inclusion of economic and social justice as human rights concerns. Like economic and social justice, it is only a matter of time

before these third generation concerns penetrate the international conscience and become accepted as genuine human rights concerns.

VI. PROTECTION OF HUMAN RIGHTS

One method being used to protect human rights is the use of an Ombudsmen. An Ombudsman does not substitute for the monitoring and control mechanisms already in existence, but complements and enriches them. Due to their anti-bureaucratic ways, and their flexibility, they can be a priceless instrument for protecting human rights. Some of the recent Mexican cases provide good examples of this. In Mexico, there was no mechanism to compel the prosecutor's office to follow lawful procedure in criminal cases, or to compel the prosecutor's office to properly conduct or complete an investigation. That situation was ripe for human rights violations. The use of an Ombudsman to monitor the activities of the prosecutor's office has significantly reduced the likelihood of human rights violations.

A favorable trend is the increasing tendency of society to organize itself for the protection of human rights. Many private organization have been created in recent years to monitor various aspects of human rights. These organizations have largely been effective. The more effective organizations have focused themselves on humanitarian concerns. Those organizations who have focused on political or ideological concerns have been least effective because their credibility and independence are always subject to question.

Another favorable trend is the tendency to link human rights with human obligations. There cannot be rights without obligations because one's liberty stops when it impinges upon the liberty of someone else. Such is the meaning of paragraph 1 of Article 29 of the Universal Declaration of Human Rights, which establishes that: "All individuals have obligations with respect to their community, because only in the community can they develop their personality freely and fully." The American Declaration of the Rights and Obligations of Man, written in 1948, includes a number of obligations as well as rights, as reflected by the title. The American Convention on Human Rights, written in 1969 states that all people have obligations towards their family, their community and humanity and that the rights of each person are limited by the rights of others. The same theme is echoed in the African Human Rights and Peoples Convention of 1986. Education must not only inculcate human rights, but it must also imbue the idea of obligations, so that in a democratic society, a balance between liberty and order can be met.

VII. RESULTS IN MEXICO

On June 6, 1990, President Carlos Salina de Gortari created, for the first time in Mexico, an Ombudsman at the national level named Comision Nacional de Derechos Humanos. Its purpose is to strengthen the defense of human rights in Mexico.

Since its inception, I have worked at this National Commission, which, after January 1992, has been given Constitutional authority. As a member of that Commission, I cannot evaluate its performance; that is for others. Instead, I will provide some important statistical facts about the result of its activities during its two and a half year existence:

- a) It has received 15,644 complaints out of which 11,788 have been resolved.
- b) It has given 412 recommendations to diverse Mexican authorities, of these 160 have been totally accepted and executed.
- c) As a result of the recommendations issued, 723 federal, local and municipal public officials have been awarded due punishment.
- d) It has issued 177 "no responsibility" documents.
- e) It has given legal instruction to 5,111 officials who have been remiss in their human rights duties.
- f) Three reports on general problems of human rights have been presented.
- g) 2,645 people who were illegally imprisoned have been freed.
- h) 161 prisons and tutelary councils for minors have been visited and inspected.
- i) 77 cases of attacks against journalists have been reported. 55 of these attacks have been resolved.
- j) The whereabouts of 62 presumed missing persons have been clarified. In some of these cases the truth wasn't known for a decade or more.
- k) A report on Human Rights Violations of Migratory Workers (on both sides of the border) was published.
- l) It has submitted 19 legislative proposals to improve and defend human rights. Seven of these proposals are presently part of Mexican law.
- m) Texts on human rights have been written in order to be included in books for elementary schools.
- n) It has accomplished 532 training programs on human rights for 64,253 participants, most of whom were public officials.
- o) It has also carried out 52 congresses, symposiums, and conferences to discuss various aspects of human rights.
- p) It has created a documentation center and a specialized library on human rights.
- q) It has edited 177 publications, many of which have been translated into other languages.
- r) 2 videocassettes have been produced on human rights themes.
- s) It has produced 7 theater plays and cultural exhibitions on human rights.
- t) It has submitted 14 special reports on specific problems in human rights and four reports on the general accomplishments of this institution.

I have discussed the latest trends in human rights development and the specific results in Mexico. It is important to remember that human rights is about human beings living their lives in dignity. Nothing more, and nothing less.

