

# The Idea of Human Rights

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MORE THAN any administration in decades, perhaps in our history, the administration of Ronald Reagan has been characterized by its ideological orthodoxy. Not that its practice has always conformed to its principles—that is more than we should expect. But from the inception of the “Reagan Revolution” in the election-eve speech of the Goldwater campaign, Ronald Reagan has set forth a clear conception of the American order as envisioned by the Founding Fathers: limited but effective government, both at home and abroad. Speaking on Human Rights Day in the first year of his administration, he stated the matter plainly:

Mankind's best defense against tyranny and want is limited government—a government which empowers its people, not itself, and which respects the wit and bravery, the initiative, and the generosity of the people. For, above all, human rights are rights of individuals: rights of conscience, rights of choice, rights of association, rights of emigration, rights of self-directed action, and the right to own property. The concept of a nation of free men and women linked together voluntarily is the genius of the system our Founding Fathers established.

By contrast, Jimmy Carter promised us “government as good as its people.” Whatever touchstone there may be in that wonder-

ful formulation, any similarity between it and the ideas of the Founders is doubtless coincidental. Nonetheless, this was the theoretical springboard of the Carter presidency—what one observer has called a campaign that never became an administration—all of which helps to explain the election of 1980, and all of which is to say that in the end ideas matter, good and not-so-good ideas alike.

It is a central thesis of Joshua Muravchik's splendid study of Jimmy Carter's human rights policy that “a crucial determinant of the state of human rights in the world is the state of the *idea* of human rights.”<sup>1</sup> Although Carter is widely credited with placing that idea on the world agenda—especially as against the *realpolitik* of the Nixon-Kissinger era—it is well to remember the efforts of the Jackson Democrats of the early 1970s in the matter of Soviet and East European emigration, the UN addresses of Ambassador Daniel Patrick Moynihan in the mid-1970s, and various of the speeches of candidate Ronald Reagan leading up to the bitterly-contested Republican primary of 1976, all of which raised the banner of human rights, albeit not from the pulpit of the American presidency. It fell to Jimmy Carter to do this. But so inartful was his administration's execution, because so confused its understanding of the idea, that Muravchik is driven to conclude that in this age, when

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<sup>1</sup>Joshua Muravchik, *The Uncertain Crusade: Jimmy Carter and the Dilemmas of Human Rights Policy* (Hamilton Press, \$18.95).

the enemies of human rights all proclaim themselves to be its most ardent champions, . . . there is much less danger that the phrase, "human rights," will be forgotten or rejected than that its meaning will be lost. It follows that the highest task in the struggle to strengthen the idea of human rights is to defend it against impostors and to keep its meaning clear. At this task the Carter administration failed: indeed it may justly be accused of having added to the muddle.

This is a conclusion as provocative as it is trenchant, not least because it challenges the conventional wisdom, which would have us believe that whatever the failures of Carter's foreign policy generally, his human rights policy was not among them—indeed, that only lately has Ronald Reagan discovered the wisdom and use of a concern for human rights. Never mind that the human rights theme has been at the core of the Reagan administration's statements and has guided its practices from the outset. These "new revisionists," as Jeane Kirkpatrick has recently remarked, would attribute Reagan's successes in foreign policy to his having at last adopted the Carter human rights policy. Yet how could this be if Muravchik is correct—and he is—that Carter's human rights policy only added to the international muddle on the subject? From muddle one hardly expects to derive successes.

The answer is close at hand. It is that the human rights policy that Reagan has pursued is hardly the same policy that Jimmy Carter pursued, notwithstanding its invocation of the same label. Far from incorporating and continuing the muddle that was the Carter idea of human rights, the Reagan administration has returned to the wellsprings of the American order and formulated a policy consistent with that order.

The Reagan themes—limited government, the rights of individuals—are not to be found in the anthology of the Carter administration—not, at least, in so unambiguous and confident a fashion. No, these would never sell in the Third World, Carter's people believed, much less in the Soviet empire.

This is not the stuff of accommodation and respect abroad, they thought. It is rather the stuff of the classical American ideology.

As these remarks suggest, Muravchik has set out to tell more than the Carter human rights odyssey alone. His aim, more deeply, "is to identify the critical dilemmas of our human rights policy as they were revealed by the experience of the Carter administration," the fundamental dilemmas that "will have to be confronted by any U.S. human rights policy." Toward that end, he takes up (1) questions about the relationship of human rights to political systems—and in particular the question whether our policy should endeavor "to transcend the ideological conflict between the democratic and the Communist worlds"; (2) questions about the definition of "human rights," whether we should promote "those that are found in the American tradition or those that are embodied in international law and documents," in particular whether we should recognize so-called "economic and social rights"; (3) questions about consistency in the execution of our policy over myriad historical and factual circumstances; and (4) questions about the use of punitive measures in the administration of economic aid, security assistance, credits and financing, trade, or other forms of resource transfers.

Other reviewers will undoubtedly focus upon the third and fourth of these dilemmas since it is here that questions of policy are presented in their most concrete form. On the matter of policy generally, Muravchik is clear: "The principal medium of human rights policy must be words." Critical of a "heavy reliance on punitive measures," he observes that:

In most of the unfree world today, the idea of human rights holds insufficient force over the minds of elites and of the masses, and its requirements are insufficiently understood. The goal of human rights policy is to change this.

In service of that goal, he concludes that "our human rights policy should be aimed less at

governments than at people." Taking Muravchik's prescriptions at face value, it is imperative that we be clear about the ideas that are the base of our hortatory efforts. Accordingly, the focus of this review will be upon the first and second of the dilemmas Muravchik has delineated, upon the philosophical foundations of our human rights policy.

**B**EGINNING with a brief discussion of the origins and operations of the Carter policy—how it was thrust upon the Carter campaign by the 1976 Democratic platform as "a rare point of unity in a bitterly divided party," how the program was staffed, after the election, not by the Jackson wing that had pushed so hard for its inclusion in the platform but by the human rights "movement" representing the party's McGovern wing, how the policy was launched and institutionalized—Muravchik turns next to the dilemma that is his central concern, whether the promotion of human rights can or should transcend the ideologies of political systems. Driven by a "deep yearning for reconciliation, even friendship, with the traditional antagonists of the United States, a yearning given voice in the President's declaration that we had as a people overcome our 'inordinate fear of communism,'" the new administration, Muravchik argues, sought at first to have it both ways, to speak out on behalf of Soviet dissidents, to respond to Andrei Sakharov's letter to President Carter, to entertain the recently released Vladimir Bukovsky, while at the same time pursuing "the overriding priority of its foreign policy," a new SALT agreement. "The key point," Muravchik notes,

was that the administration rejected what had come to be called "linkage." It would protest Soviet misbehavior, such as violations of the Helsinki Accords, but it would not make any other aspect of U.S.-Soviet relations conditional on improvements in Soviet behavior.

In short order, history indicates, the Soviets put the new administration on notice:

while the U.S. may not insist upon linkage, the Soviets were prepared to press for a linkage of their own, making U.S.-Soviet relations conditional on our not complaining about their misbehavior. Because the Soviets were thus prepared, the first mission to Moscow of Secretary Vance in late March of 1977 ended in "acrimony and complete failure," Muravchik contends. "From that moment, the administration was much more cautious in the application of its human rights policy to the Soviet Union." Not only did it move toward a "quiet diplomacy" reminiscent of the Kissinger era; more generally, it "took special pains to emphasize that its human rights policy was not an anti-Soviet policy"—indeed, that its concern to promote human rights transcended ideology. How better to profess perfect disinterestedness, to dissociate human rights concerns from our global interests? Thus the new assistant secretary for human rights, Patricia Derian, testified that "human rights violations do not really have much to do with the form of government or the political ideology or philosophy." In the same vein, UN Ambassador Andrew Young said that he sought to "break the sterile impasse between 'capitalism' and 'Socialism' that has for several generations served as an anesthetic to imagination as we are all caught up in one rigidity or another." And the president himself, upon his arrival in Poland in December 1977, remarked that "old ideological labels have lost their meaning," an assertion that First Secretary Gierek seemed to go out of his way to refute on the following day.

It is here that Muravchik launches into his sharpest attack on the Carter approach: "What Carter and his colleagues seemed to miss, indeed to deny," Muravchik claims, "is that the distinction between democracy and dictatorship is the 'great divide' when it comes to human rights." Whereas democracy is premised on the idea of human rights, "at least on that most basic right, the right of self-government," dictatorship is premised on the belief that some have authority over others: "the system itself is an inherent denial of

human rights." In its attempt to "transcend" ideology, however, the Carter policy only obscured this distinction:

It focused insistently on individual abuses rather than systemic deformities. It spoke always of "violations" of human rights, rather than of their "denial." What does it mean to say, for example, that the Soviet government "violates" the right of free speech? The Soviet government simply does not recognize that right. It denies it both in theory and in practice, and has done so for the better part of a century.

What can we say here? Muravchik's charge that the Soviet system is evil *by design* is absolutely correct. It is a system that from the very outset subordinates the individual to the group; the system begins not with the individual and his rights but with the group and its "rights." As the Soviet Constitution makes plain, speech, association, artistic freedom are all "guaranteed"—provided these "rights" are exercised "in accordance with the interests of the people and in order to strengthen and develop the socialist system." Speech in defense of the system, yes; in opposition, no. That is the very inversion—the very perversion—of what we mean by "a right." Indeed, coupled with other provisions of Soviet law, the idea of "a right" is made to stand on its head: a *right* becomes a *duty*, to support the system.

Yet the Carter administration was all but oblivious to this reality. In its attempt to achieve a pristine neutrality, in its attempt to rise above ideology, it failed to see that

the struggle for human rights, far from being . . . indifferent to political systems, is fundamentally a struggle about political systems. It cannot sensibly be merely an endless chase after an infinite number of individual "violations." It must aim instead to erect political systems which have the idea of human rights, and the means for their protection, built in.

Clearly, Muravchik has reached a profoundly important conclusion here, hardly original, but one that bears repeated restatement all the same, for the "pragmatists" among us are

perennially unable to give ideology its due in its bearing on human events. Whether and to what extent the Soviet rulers are any longer driven by Marxist-Leninist ideology is an open question, of course. That they are driven by the institutional constraints of their system, however, is not open to question; and those constraints are themselves the product of ideology. If we are to understand the struggle for human rights that is taking place in the world today, therefore, we have to address not simply the behavior of individual rulers but the systems that drive that behavior. In the case of the Soviet system, violations of rights are not aberrations; they are systemic imperatives.

**Y**ET IT WAS not the pragmatists who were principally responsible for the Carter muddle, Muravchik suggests, but the "movement" ideologues, especially those who pressed for recognition of "economic and social rights"—the "right" to a job, food, shelter, medical care, education, even "period holidays with pay," as called for in Article 24 of the UN Universal Declaration of Human Rights. We move then to the second of the dilemmas that concern Muravchik, how to define "human rights," which is intimately connected, of course, with the question of political systems. In fact, it is here—on this connection between the two issues—that Muravchik's thesis is at its most uncertain, wavering between rights theory, on one hand, and democratic theory on the other. They are not the same, of course, notwithstanding that the political philosophy that finds its roots in Benthamite utilitarianism and its flourishing in Progressive Era democratic theory has tended to conflate the two.

As Muravchik makes clear, these "economic and social rights" are not in the Anglo-American tradition. In the end, however, arguments from tradition will get us no further than the Carter administration's prudential argument, that by recognizing and promoting these rights we would better position ourselves to curry favor with the Third

World, where such "rights" often seem to be the central concern. Indeed, in what must be dubbed a quintessential bootstrapping operation, the Carter State Department went so far as to assert: "First popularized by socialist thinkers, the [economic and social rights] eventually won universal approval."

Recognizing the limits of these "arguments," Muravchik lays out his own doubts. In the first place, governments often use the pursuit of such "rights" as an excuse to deny citizens their civil and political rights. Taken to its theoretical foundations—a sketch of which will be drawn shortly—this is a trenchant criticism; but Muravchik never takes his argument there. Instead, he simply denies that poverty necessitates the denial of freedom and political participation. He then goes on to note that "of all the desirable things in the world, there are only a few that we call 'rights.'" Moreover, "economic and social rights" depend on available resources; and they are enforced by different means than those used to enforce civil and political rights. Again, calling more and more things "rights" tends to cheapen the very idea, undermining respect for civil and political rights in the process. Yet again, recognizing that these rights entail "a government that is activist, intervening, and committed to economic-social planning," Muravchik notes that many economists believe "there are limits to the welfare state." Finally, a "more profound problem" arises when we realize that citizens, exercising their political and civil rights, may refuse to enact the legislation necessary to secure these "rights"; but if we insulate these "economic and social rights" from majority will, much as we insulate such "basic" rights as free speech, "then democracy will have been significantly truncated."

Muravchik is on to something very important with this final point, but unfortunately he has taken it in the wrong direction. He has drawn out a potential conflict between the democratic right of self-rule and these "economic and social rights," but he has simply assumed that the former is more "basic." Why is this? Why are these "economic

and social rights" not on a par with the free-speech right—*both* insulated from majoritarian will? Alternatively, why is the free-speech right not itself subject to majority will? Indeed, if our right of self-government is our "most basic right," as Muravchik argued in his discussion of political systems, why is the free-speech right *not* subject to majority rule?

Answers to these questions would take Muravchik more deeply than he has gone in this essay. Yet answers are necessary if we are to get clear about some of the important and fundamental issues he has raised. In particular he has pointed, by implication, to the inherent tension between rights theory and democratic theory, which he has resolved without argument in favor of the latter. This resolution is all the more surprising because at several points he traces his views to the Declaration of Independence, where the issue is resolved, at least implicitly, in the other direction. As a corollary, and again by implication, by no means is it clear whether Muravchik thinks himself a legal positivist, in the democratic tradition, or a natural rights theorist, in the tradition of the Declaration. If the former is the case, as his emphasis on democracy suggests, then appeal to the natural rights tradition is misplaced—unless that tradition is so misconceived as to hold that our one natural right is the right to self-government, understood as majoritarian rule.

LET US BEGIN, in the American tradition, with the Declaration, where it is clear that rights come first, democracy second. Indeed, not for several lines in that seminal writing do we get to any political or democratic considerations. The first considerations are of rights—more precisely, of the epistemological underpinnings of our rights, in the theory of reason, as self-evident truths, derived from a theory of moral equality and, implicitly, a principle of universalization. It is not from governments, the Declaration says, that we get our rights—no legal positivism here; rather, we have them prior to the existence of any government. Indeed, and

now we come to the political derivations, it is in exercise of our rights that we *create* governments in the first place: the powers of the association we call "government" are "just" only if derived "from the consent of the governed." But there precisely, of course, is the rub; for majority will, even when achieved (and decision theorists have shown how rare this is *in principle*), will no more serve to bind the nonconsenting minority than the will of any other fraction of the whole—not, that is, if we take consent seriously. Nor will arguments from the fiction of prior unanimous consent to the process or the reality of "tacit consent" carry the day, this last because the argument comes down, in the end, to putting the individual to a choice between two of his entitlements—his right not to be subject to the will of the majority and his right to stay where he is.

What this all amounts to, then, is an insight the Founders seem keenly to have appreciated when they established *limited* government, but which modern democratic thinkers, including Muravchik, seem to have lost sight of: namely, that government, no matter how "democratic," is by definition a forced association—a "necessary evil," in classical parlance—with an air of illegitimacy that surrounds everything it does—at least with respect to those who do not consent to its doing the particular thing it is doing, either to or on behalf of them. Democratic theory, in short, gives us a decision process—admittedly, one that recognizes to a greater extent than all other forms of political association our right to self-government; it does not give us a legitimating process—not, at least, when the governmental act that ensues from the process involves those who would wish to be left in peace.

With this brief sketch of the connection between rights theory and democratic theory, we can return to the dilemma we left above. Clearly, if the democratic right of self-government, understood as majoritarian rule, is basic, then there is no reason *in principle* for treating the free-speech right any differently than any other "right." Indeed,

every other "right" becomes a function of the democratic right—which is to say *no* rights are safe save this one right to vote. That, surely, cannot be what Muravchik or any other advocate of human rights would want. Yet it is the ineluctable implication of those theories that put democracy first, individual rights second. This is hardly an original point, of course—its origins, by implication, are in Plato and Aristotle, its modern formulations in Montesquieu and Tocqueville; but it is easily forgotten. Nor is this to argue that democracy necessarily entails majorities running expansively over the rights of minorities. But the potential is always there; and in principle—save for the rare case of unanimity—the problem is always with us.

If rights come first, however, that leaves us still with the question *which* rights. The simple answer is those rights that alone can be justified as held "by nature," consistent with everyone else's enjoying the same rights. Take it on faith (this is not the forum for the full answer), those rights turn out to be just the ones held to be legitimate by the theorists of classical liberalism: the rights to life, liberty, and property. By contrast—and here we come to the point that Muravchik was almost upon—the so-called "economic and social rights" entail, for their realization, both the expansive, redistributive, welfare state, with all its inherent illegitimacy, and the further violations that are entailed by the need to *use* people, against their will, for the benefit of others, which is precisely the point that democratic theory obscures. In other words, it is not simply that other rights are "cheapened" by expanding the list of "rights," or that these "economic and social rights" are dependent upon the available resources to redistribute (as if those "resources," including labor, were all collectively held), or any of the other reasons that led Muravchik to his skeptical doubts. More fundamentally, any attempt to secure these "rights" *violates* rights—not the right of self-government, as Muravchik supposed, but the right to be left alone. If individuals count for something, and have a right to pursue their

own peaceful ends, then we cannot use them for our own or even "society's" ends—not if we take seriously their right to independent lives. If it would not be right for an individual to so use another, why would it be right for a majority to do so?

So far-reaching are these conclusions that they would require Muravchik to recast his "great divide" between democracy and dictatorship. As a practical matter, this divide, for the most part, will do; for when we look at the world about us we usually see the more extensive violations of rights on one side, the less extensive on the other. As a theoretical matter, however, this divide is confused; for it subordinates the substantive rights of individual freedom to the process rights of democratic decisionmaking. This confusion becomes all the more striking when we realize that process rights are never ends in themselves: they are merely instruments, invoked to secure our substantive rights to life, liberty, and property. When these process rights are used by some as instruments to destroy the substantive rights of others, as can easily happen, then the rational order has been turned on its head.

**A**BETTER DIVIDE, then, would be between limited government and totalitarian government. Not only would this help us to focus directly on substance rather than process—which after all is what rights in the end are all about—but it would help too to clarify the muddle that is created by the terms "right" and "left," especially when used to connote "authoritarian" and "totalitarian" regimes, respectively. These regimes are not "opposites." One is simply a more extensive—often much more extensive—version of the other, usually because "justified" by an overarching ideology that extinguishes the place of the individual. On a continuum running from limited government to totalitarianism, then, authoritarian regimes, depending on the scope or extent of their authority, rest somewhere between the two. As such,

they are "better" than totalitarian regimes. But in either case, improvement in the enjoyment of rights will take place only if the regime limits its control over the individual, only if it moves toward becoming a more limited government.

As noted earlier, this is a small but fundamental correction of Muravchik's thesis, aimed at getting the presumptions right—on rights rather than on democracy—not at calling into account the entire edifice. Moreover, since modern democracies tend also to be limited governments, the practical effect of this correction will not often be great. Nevertheless, it is important to see clearly the foundations of our undertakings, especially if the idea of human rights, on the international scene, is a muddle, as Muravchik has charged. In the case at hand, it is important to see that all the democratic theory in the world will not make a socialist regime any less authoritarian. That some of the people in such a regime exercise their political power over the property and economic affairs of others may not seem as disturbing as their exercising political power over the persons of others, but it is no less real a violation of rights.

These points in mind, Muravchik has given us a study that will go far toward clarifying the international muddle on the idea of "human rights." This is a perceptive and thorough account not only of the Carter human rights policy but of the dilemmas any such policy must address. Muravchik has helped us to see the place of that policy in our recent history. More fundamentally, he has urged us to a keener appreciation of the place and importance of ideas—and of the idea of human rights in particular—in our practical affairs. By tracing the idea of human rights to its roots in classical liberalism, he has encouraged us to grasp its real meaning—as against the socialist aberration—and its real import in the world. This inheritance from the age of reason, and from our Founding Fathers in particular, is too important to be left unattended.