

Human Rights and Politico- Economic Systems

by Roger Pilon

Cato's Letters

"The apolitical approach to human rights sends precisely the wrong signal to the international community of nations, namely, that the violations of human rights we see around the world today are a function primarily of individual, aberrant behavior, correctible by hortatory efforts, and not a function of systemic or institutional arrangements."

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In October of 1986, as he approached his meeting in Reykjavik with Mikhail Gorbachev, President Reagan made it clear that among the four issues on his agenda—equal in importance to arms control, exchanges, and regional conflicts—was human rights. A month later, delegates from the 35 European and North American nations that had signed the 1975 Helsinki Accords gathered in Vienna for their third general review of compliance with those Accords, including compliance with the human rights provisions that figured centrally in the Accords. That review is still going on. Meanwhile, the 44th Session of the United Nations Human Rights Commission, which began in Geneva on February 1 of this year, has just drawn to a close. Clearly, human rights is on the international agenda, at least as a matter for discussion, if not always for action.

This was not always so. One hundred years ago, even 50 years ago, we would not have found this focus on human rights. From time to time a vague call for "morality" in international affairs could be heard, of course; and Woodrow Wilson's efforts "to make the world safe for democracy" come easily to mind. But it was not until the aftermath of World War II, the Holocaust, and the creation of the United Nations that human rights became an issue in international affairs. Still, despite the initial attention that understandably flowed from the carnage of that war, human rights

Roger Pilon is the director of the Asylum Policy and Review Unit of the Department of Justice. This essay is a slightly revised version of a speech he delivered at the Cato Institute on March 12, 1987, and at the Baltimore Council on Foreign Affairs on March 11, 1987, when he was the director of policy for the Bureau of Human Rights and Humanitarian Affairs of the Department of State. The views expressed in this essay are those of the author, not necessarily those of the administration.

languished for the most part on the back burner of the international agenda. Only with the advent of the Carter administration, after prodding in the 1976 primaries from both the Jackson Democrats and the Reagan Republicans, did the issue come into its own. Since that time, human rights has been a staple of American foreign policy in general and, after a halting beginning, of East-West relations in particular. And with this increased American attention has come increased world attention as well, however uncertain, confused, or plain disingenuous.

"The problem with democratic socialism is not simply that it replicates all the inefficiencies of nondemocratic socialism but that even at its theoretical best—where majorities actually do decide, rather than special interests—the individual is consigned to a vast public undertaking in which he has no meaningful say, but to which he is bound all the same."

On balance, I would argue, the emergence of human rights in international affairs has been beneficial. Quite obviously, it has benefited those individuals who, but for that attention, might be languishing in unspeakable conditions in countless places around the world today. But at a deeper level, at the level of ideas, which inevitably shape events, the emergence of human rights as an international issue has raised the promise of more lasting benefits as well, not least because talk of human rights directs our attention to the moral dimensions of international affairs and does so in the name of rights rather than other possible terms of moral discourse. The potential here should not be underestimated: indeed, it is not too much to say that the idea of human rights is the modern West's unique contribution to moral and political thought, from which the West has benefited immensely. Nevertheless, the benefits that could flow from a continued focus on human rights will remain largely a promise if the confusions and misunderstandings that have surrounded the idea for the

past 40 years are permitted to go unchallenged. In fact, the press for human rights, misunderstood, can have disastrous results, as has already happened more than once over this period.

In the brief scope I have here, I want to focus upon three of those misunderstandings. The first is the belief that a concern for human rights must be neutral as between political and, especially, economic systems, failing which the concern will be "politicized" and hence less than credible. "We are not criticizing your system," this approach often says, "just your practices." The vision underlying this approach is fundamentally mistaken, I shall argue; indeed, it belies a profound confusion about the nature and source of human rights and about the intimate connection between human rights and politico-economic systems. After sketching the foundations of these issues, I will argue that only in a system of democratic capitalism can rights be respected, whereas nondemocratic or noncapitalist systems, in all their variations, are inherently antithetical to human rights.

The second misunderstanding that needs to be addressed is a corollary of the first, namely, the belief that a concern for human rights must be equally critical of regimes of the right and left, so called. In fact, a systematic approach will show these terms "right" and "left" to be of dubious taxonomic value. More appropriate to a concern for human rights, I will argue, is a continuum of regimes that runs from free to less free to unfree, which in turn can serve to order our criticisms more rationally.

Finally, I want to call into question the idea that human rights is primarily or even exclusively an international or foreign policy issue. On the contrary, it is a domestic issue, at bottom, and only derivatively a foreign policy issue.

Politico-Economic Systems

Let us begin with the fundamental question about the relation between human rights and politico-economic systems. Is the concern for human rights primarily a moral concern, separable from political or economic considera-

tions? Or are human rights intimately, even inescapably, bound up with political and economic issues?

The Moral and the Political

It is widely believed today that if one's concern for human rights is to be credible it must be neutral as between politico-economic systems. Although this belief has many sources, let me suggest that it stems at least in part from the rise of the human rights "movement," constituted by a wide array of private, and in the case of communist fronts, pseudo-private organizations, each with its own broad or narrow interests and constituency. Whether Amnesty International, or Americas Watch, or the National Conference on Soviet Jewry, or organizations speaking on behalf of Cubans, or Ukrainians, or South Africans, or whomever, each of these and countless other such organizations has as its agenda—at least its surface agenda—the business of helping those individuals on whom the group largely focuses. There is thus a certain "humanitarian" or "missionary" quality about this work, which takes it "above" the world of politics, as it were. Moreover, as a practical matter, taking a tough, principled stand can often be counterproductive to the immediate concern of helping individuals in need.

Now I do not mean to suggest, of course, that these groups do not sometimes, even often, take principled stands. Indeed, the stands they sometimes take are considerably more principled than those that governments sometimes take. Nor do I mean to suggest that there is not great variety among these groups. What I am suggesting, rather, is that the apolitical, humanitarian approach these groups often take, coupled with the practical necessities that frequently surround their efforts to assist individual victims of repression, precludes them often from making broad, systemic condemnations. This apolitical approach is not without its larger costs, however, which are compounded when governments take the same approach, as they too often do, even in multi-lateral contexts. For the apolitical approach sends precisely the wrong signal to the inter-

national community of nations, namely, that the violations of human rights we see around the world today are a function primarily of individual, aberrant behavior, correctible by hortatory efforts, and not a function of systemic or institutional arrangements. "If only we had better men," the apolitical approach seems to say, when in fact it is better institutions that are called for in the end, institutions that reflect a basic understanding of the moral order described by our human rights.

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In his recent volume entitled *The Uncertain Crusade: Jimmy Carter and the Dilemmas of Human Rights Policy*, Joshua Muravchik put this point well:

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.

If Muravchik is right here—and he is, for he follows, by implication, the insights of our own Founding Fathers about human nature and institutional restraints, as set forth in our Constitution and in the *Federalist Papers*—then a concern for human rights entails, in the end, a concern about those systems that tend to the protection of human rights and those that tend to their violation. Far from trying to separate the moral from the political or economic, then, far from trying to avoid "politicizing" one's moral concern, those with a deep and abiding interest in human rights must come in the end to the realization that human rights constitutes precisely that nexus between the moral and the political and economic that theorists of the 17th and 18th centuries, theorists of the classical liberal tradition, recognized so well and ar-

ticated so clearly. They must come to realize, in short, that human rights are what political and economic systems at bottom are all about.

Democratic Capitalism

We turn, then, to those origins, by way of amplifying these points. And where better to turn than to the American experience, as captured, in its ideal form, in our Declaration of Independence? Those of us who trace our political heritage to the Enlightenment, and to the writings of such classical liberals as John Locke, William Blackstone, and Adam Smith, begin our reflections always with the individual. It is the individual who is the focus of our attention, the individual whose dignity and integrity are our concern, the individual who is the fundamental unit of both the private and public spheres of society. Most important, it is the individual who first has rights—and the business of government to secure or protect those rights.

“Government does not give people rights; on the contrary, whatever powers government legitimately has are given to it by the people.”

Nowhere, perhaps, have those principles been set forth more simply, more clearly, more compellingly than in the American Declaration of Independence, where the Founders, out of a decent respect for the opinion of mankind, set forth their theory of man and government: first, that all men are morally equal, are born with equal moral rights; second, that they create government to secure those rights; third, that only those powers of government that are consented to are just; and fourth, that the people retain the right to alter or abolish their government when it becomes abusive of those powers. Government, then, does not give people rights; on the contrary, whatever powers government legitimately has are given to it by the people.

These founding principles were set forth more fully in the Constitution, of course. Because I will want shortly to talk about eco-

nomie systems, let me cite two such principles that bear critically upon economic arrangements. But let me note here that although I will not be talking about economics in any explicit way for some time, the remarks that follow immediately will deal, by implication, with little but economics, broadly understood as the pursuit of happiness. Those two principles, then, are found in the Fifth and the Fourteenth Amendments to the Constitution: first, that government may not deprive a person of life, liberty, or property without due process of law; second, that no private property may be taken for public use without just compensation. Through these two principles, along with several others, the Founders sought to limit the size and scope of government by requiring government to proceed according to law if it was going to take what belonged to a private citizen—his life, his liberty, or his property—and by requiring government to pay for what it took to use for public purposes. By implication, these principles presumed that what belonged to the individual was his by right. Moreover, if it became necessary for the government to violate that right by exercise of the “awful power” of eminent domain, as it has been called, then the requirement that the government fully compensate the individual whose right it was necessary to violate served not only to limit the exercise of the power but to pay honor to the right being violated.

Now what I want to note here in particular is how these political and legal principles, as found in our supreme political document, reflect the underlying moral principles set forth in our Declaration of Independence. For in limiting what the government may do and how it may do it, these principles imply that the individual and his right to what is his come first. In essence, the individual is presumed to be free to pursue his own ends, provided only that in doing so he does not violate the rights of others, which it is the business of government to prevent him from doing. This means that the individual may pursue his own values, may live his own life as he thinks best, may chart his own course through life, alone or in association with others, free

from government dictate or interference.

This means also that different people will chart different courses through life—that, after all, is what freedom is all about. And it means that some will be more successful than others—whatever one's measure of success, which also is a personal matter. The free society, then, is not an egalitarian society. Different people will start and end at different levels as they work their way through life; some will improve their situation, others will go in the opposite direction. For those few who are unable to handle the vagaries of life, for whatever reason, private and, if necessary, public assistance is available—this last not by right but, indeed, in violation of the rights of those forced to assist, the hope being that the violations will be *de minimis*. For the vast majority, however, the challenge of freedom is not only possible but preferable to a life of dependence.

"It is not too much to say that the idea of human rights is the modern West's unique contribution to moral and political thought."

We come at last, then, to an explicit, and crucial, economic point, which will come up again when we examine shortly how socialist societies go about ordering their affairs, namely, that in a free society, economic and social development is not something that government plans. Rather, development occurs simply as a function of millions of individuals and institutions making billions of decisions every day. Every individual, every family, every partnership, corporation, or association of whatever kind decides what to do with his or its life, liberty, or property in countless ways, countless times every day. Through these countless private, individual decisions, countless private holdings of time, labor, risk, and resources get traded and moved to higher-valued uses; thus wealth is created, development takes place, and all with no central plan or government dictate. Indeed, as economists of the Austrian school such as Ludwig von Mises and F. A. Hayek have demonstrated, no

one could possibly plan this development because no individual, no central committee, no supercomputer has all the knowledge reflected in these countless decisions by countless individuals about their individual needs, wants, and values, which are what keep the whole process going.

Nor in all of this is there any need to talk of any "right to development," which in United Nations parlance entails a call for a "New International Economic Order," including obligatory wealth transfers from developed to less developed nations. Indeed, one hardly knows what a "right to development" would mean in a free society, where development is not planned but merely happens. Nor is there any need to talk of the so-called economic and social rights that have dominated the human rights discussion of the past 40 years, if by that is meant rights not to what belongs to the individual—his life, liberty, or property—but rights to what does *not* belong to the individual—someone *else's* life, liberty, or property. Indeed, enforcing such "rights," by taking from some to give to others, would *violate* the rights secured in a free society. For this would amount to taking from some not for public but for private use and doing so without compensating those from whom the property is taken. It would amount, in short, to a naked, forced transfer, to violating the rights of some, to creating "rights" in others that they never had in the first place, and to a regime of unequal rights—all in the name, most often, of egalitarian redistribution. Indeed, these so-called economic and social rights undermine the very idea of what it means to have a right, what it means to respect the integrity of the individual, his integrity in his life, liberty, and property.

Before continuing, let me note that to this point I have sketched certain fundamental moral and legal principles as these underpin the free society as envisioned by the classical liberal theorists; I have considered "political" principles, such as the constitutional principle of eminent domain, only insofar as these *are* constitutional, and hence to that extent are political, but at the same time approximate

the underlying moral order of human rights. What I have not yet taken up are those political principles that concern public decision-making, those principles that concern the processes by which "policy" is made and pursued. I will consider that aspect of the political only after I set forth, by way of comparison, the moral, political, and legal approach that stands opposite the one I have outlined here.

Nondemocratic Socialism

We needn't go far to find the approach that stands opposite democratic capitalism. In fact, it dominates the socialist world today. At the outset of these remarks I mentioned the meetings of the United Nations Human Rights Commission that have just concluded in Geneva. Last year I was privileged to attend the 43rd Session of the Commission as the political adviser to the head of the American delegation, during the course of which we heard nation after nation speak of "development in the socialist tradition." And in the first week of the Session we were told by the Soviet Minister of Justice, Boris Kravtsov, that in the Soviet Union "insuring human rights is one of the main aims of social, political, and economic development." Clearly, in saying this, Mr. Kravtsov was speaking of a very different conception of rights. Rights do not belong to individuals as such, on this view; rather, they are by-products, if you will, of development. Indeed, Mr. Kravtsov said, "Recently we gave certain collectives the right to participate in these developments." And again, "We are studying the possibility of giving unions the right to participate in state and social life." Like the *ancien regime*, the Soviet government gives rights. Individuals are not born with rights, on this view; rather, they get them from government. And "government," Article 6 of the Soviet Constitution tells us, means the Communist Party.

Clearly, this approach stands in polar opposition to the one just outlined. The socialist view begins not with the individual but with the group, as represented by the government, which invariably means the Party. The Party

then "determines the general perspectives of the development of society"—I quote here from Article 6 of the Soviet Constitution. As development progresses, presumably, "rights" to jobs, housing, and so on get distributed by the Party, all according to the plan. Development is thus a conscious undertaking, centrally directed by the Party, not an outcome unintended by any single individual or group but resulting nevertheless from billions of private, individual decisions.

"These so-called economic and social rights undermine the very idea of what it means to have a right, what it means to respect the integrity of the individual, his integrity in his life, liberty, and property."

As a matter of economic efficiency, the outcome of the competition between these two very different approaches to economic development is no longer in any doubt, of course. Everywhere we look around the globe we see that the planned economy is a very distant second to the free economy—and the gap is widening. The reasons have little to do with the failure of the "New Soviet Man" to appear, after 70 years of the socialist experiment; nor are they related entirely or even primarily to the different incentive structures in the two systems. Rather, the reasons relate largely to the points raised over a half-century ago by economists such as Mises and Hayek about the impossibility of having the requisite knowledge to plan an economy efficiently, knowledge that is yielded only by a market pricing system, and is useful only if yielded to individuals with the freedom to make use of it. This is a problem that all the "democratization" in the world will not address, however relentless or sincere Mr. Gorbachev's efforts in this direction turn out to be. Indeed, the Soviet economic problems are due in the end not to the lack of democratization but rather to the lack of privatization.

But my primary interest here is not with these considerations from economic efficiency, important as they are for those less developed

countries that are serious about wanting to improve their standards of living. Rather, I want to look more closely at the moral dimensions of "the socialist path to development"—and in particular at how those governments that follow this path necessarily trample on the rights of their citizens. The problem begins, of course, with the assumption that the individual has no rights that his government has not first given him—and the implicit assumption that government has rights to give out in the first place. We really need go no farther than this

"If our Declaration of Independence gets it right, if governments are indeed instituted among men not to give them rights but to secure the rights they already have, then the first—indeed, the only—business of government is to see to that end."

assumption, of course, but let us do so all the same. In making rights a function of development, the burden, if rights are to be ensured, is placed upon continuous development; for without it, there would be no rights. This means, however, that if individuals are to have "rights" they will be obligated to contribute to this centrally planned development, however out of their hands the decisions and planning of the development may be. What started out as a *right* to work, then, has suddenly become a *duty* to work. Indeed, as has often been noted, the central moral problem with the socialist system is that it *uses* people. It treats individuals as means, not as ends—to be used in carrying out the Party's development plan.

The socialist system thus violates the cardinal principle of ethics, as articulated by John Locke, by Immanuel Kant, by every great religion, that the individual is not to be used, is not to be treated merely as a means, but rather is to be treated as an end in himself. He has a right to be so treated, a right to what is his, a right to chart his own course through life, a right not to be chained to the pursuit of someone else's vision, whether Marx's, or Lenin's, or Stalin's, or the Central Committee's, or whomever's. To so chain him, to so use him in

pursuit of the chimera of development is to deny him his right to choose for himself, to strip him of his inherent dignity, to deny him his fundamental right to be free. Is it any wonder that around the world people are fleeing from socialist systems? For in the end, individuals cannot but choose for themselves. Either they flee, often at great, even tragic personal cost. Or they resign themselves to lives of quiet desperation, serving a master they did not choose, leading a life they could not wish.

Democratic Socialism

These two systems, then, democratic capitalism and nondemocratic socialism, are polar opposites in that under the former, in its ideal form, the logically most fundamental of rights, the right to live one's own life, is respected; whereas under nondemocratic socialism, again in its ideal form, the individual is subjugated to the group, conscripted to lead a life chosen for him by the few who rule. But cannot the socialist system be saved simply by making it *democratic* socialism? We come, then, to a model that seems to stand between these two ideal types—along with nondemocratic capitalism, about which more shortly—and to the political issues, especially the issue of democratic process, that I have set aside until now.

Let us notice first that the problem of economic efficiency will not be resolved simply by moving from the nondemocratic to the democratic form of socialism. Whether the people plan the economy or the party does, the same knowledge or information problems will remain, for the knowledge on which "the people" act, as a collective, is hardly the knowledge on which people act, in their private capacities. Indeed, one could argue that as they go about trying to plan "their" economy, the people, burdened by the need for procedural correctness, would be even more inefficient than the party. At the least, however, they are no better situated than the party to replicate the functions performed in a capitalist system by the pricing mechanism and private decision-making.

But under democratic socialism “the people” never do plan their economy, of course, as the Public Choice literature has repeatedly demonstrated. The economy instead is planned or controlled by those with the greatest incentive to manipulate the levers of political power. This observation leads, however, to the nub of the *moral* matter—indeed, to the moral problem that besets *all* democratic systems of decision making, in socialist and capitalist economies alike. For the virtue of democracy was never thought to rest in its tendency to produce good results: if that were the case, then rule by the king, if his subjects were generally happy, would be legitimate too. No, the putative virtue of democracy rests in the idea of *self-rule*. Under democratic systems of decision making, *the people* rule, the people control their destinies. There precisely is the source of democracy’s claim to legitimacy. But if it turns out that in a democratic system the people do not rule themselves—not simply as a practical matter, as the Public Choice literature has shown, but in principle—then democracy’s claim to legitimacy is seriously eroded. Let us look closely and systematically, then, at the hard facts of democratic legitimacy.

There is all the difference in the world, of course, between people ruling themselves, as individuals, and “the people” ruling themselves—it is the difference between individualism and collectivism. Clearly, the argument for democracy must begin with the individual, with his right to rule himself: the essence of “self-rule,” after all, is the individual ruling himself—and himself alone. When we move from individual to collective rule, however, two criteria must be satisfied if the rule is to be legitimate. First, since collectives can have only those rights their constituents first give them, whatever right to rule the collective may have must be derived from the rights the individuals who constitute it first have to yield up to it and in fact have yielded up. Second, the argument must move from individual rule to collective rule—to rule by “the people”—without violating any individual rights in the process. If it succeeds, it will have answered the fundamental question of political philosophy:

By what right does one man have power over another? Obviously, that answer must point to some form of consent if individual rights are to be respected. The Declaration of Independence says as much when it says that government derives its *just* powers *from the consent of the governed*. By implication, those powers not so derived are not just.

“All the ‘democratization’ in the world will not address the problem of Soviet economic inefficiency, however relentless or sincere Mr. Gorbachev’s efforts. Indeed, the Soviet economic problems are due in the end not to the lack of democratization but rather to the lack of privatization.”

Plainly, then, majority rule alone will not do the job. For whether the majority amount to 50 percent plus one or to 99 percent, they merely stand in the place of the king—albeit ruling the minority, whereas the king ruled the majority, but ruling still without the minority’s consent, which is just what being in the minority means. The classical social-contract theorists recognized this point, of course; they realized that there was no moral magic in the numbers, which is why they called for a two-tier system of consent. The minority could be bound by the majority only if *all* had consented *previously* to be bound to the process and hence to whatever outcome it produced. Prior unanimous consent was necessary, then, to get the whole political enterprise going. And indeed our Constitution recognizes this expressly, as between the states, when it says in Article VII that “the Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution *between the States so ratifying the Same*.” By implication, those states not ratifying the Constitution could not have been bound by it.

This much should be sufficient, however, to bring to the surface the fundamental moral problem with democratic rule, namely, that for nearly all of us that prior consent just never was given. If tomorrow a majority vote

to deprive us of one of our rights, they cannot then point, by way of justifying their action, to any consent we gave to be bound by their decision. Nor will it do to point to the argument from "tacit consent": You stayed, therefore you are bound. For this last refuge of social-contract theorists is a viciously circular argument. It puts us to a choice between two of our entitlements: our right not to come under the will of the majority and our right to stay where we are. The right to leave is admittedly a very valuable right, as those around the world who do not enjoy it would attest, if they could. But it will justify the "right" of the majority to do what they will with the rest of us only on pain of begging the very question at issue, namely, where did they get such a right in the first place, since individuals have no such right to begin with?

"The socialist system violates the cardinal principle of ethics, that the individual is not to be treated merely as a means, but rather is to be treated as an end in himself."

We arrive at the disturbing conclusion, then, that democracy has going for it only the virtue that it enables more individuals to have more of a say in their public affairs than any other form of political organization: for Americans, at the national level, perhaps one one-hundred-millionth of a say every two years. We should not underestimate that virtue: to the extent it does enable broad participation, democracy is a morally better system than any other. But we should not overestimate that virtue either. In fact, we need to recognize what we have too little recognized, namely, that democratic processes are not equivalent to moral processes; nor do they necessarily yield moral results. As Montesquieu, Tocqueville, and many other classical theorists clearly saw, majorities can as easily ride roughshod over the rights of minorities as kings or dictators—indeed, can sometimes more easily do so since they act with an aura of legitimacy about them.

The prescription that follows from these reflections is straightforward; in fact, it was

recognized explicitly by the classical theorists when they spoke of government as a "necessary evil" and called, as a result, for *limited* government. If *all* government, even democratic government, is inherently illegitimate, owing to the impossibility of satisfying the consent requirement, then a decent respect for the rights of individuals suggests that only what is necessary be done through government, that as little as possible be done in the public sector and as much as possible be done in the private sector, where individuals can act *as* individuals, not as tiny cogs in a massive collective engine. The problem with democratic socialism, then, is not simply that it replicates all the inefficiencies of nondemocratic socialism but that even at its theoretical best—where majorities actually do decide, rather than special interests—the individual is consigned to a vast public undertaking in which he has no meaningful say, but to which he is bound all the same. It is a far cry, in sum, from leading one's own life.

Now it may be objected that surely there are democratic socialist regimes in which the violations of rights to which I point do not occur. Let me respond by noting that all rights are logically related in the sense that all are derived from our basic right to enjoy what is ours consistent with the equal right of everyone else to do the same, which means, among other things, that we have a right to enjoy the fruits of our labor every bit as much as we have a right to enjoy the integrity of our persons. Thus, if an individual's labor is taxed at 70 percent, he is surely not as free to plan and live his life as he would be if he were taxed at, say, 10 percent. That he is not subject to violence is not the point: indeed, he *would* be subject to violence if he failed to pay his taxes. Nor is the point that he may have been in the majority that voted for the regime that created so large a public sector as to call for that rate of taxation. Rather, the point is that even if he was in the majority, and could thus claim, by virtue of his consent, that *his* rights were not violated, he could not credibly go on to say that he had a right to impose that arrangement upon the minority. Similarly, any other

measure the majority undertakes, through the political process, that amounts to restricting or conscripting the rightful liberties of the minority, whether through laws regulating private behavior, or business activity, or whatever, is an undertaking that violates the rights of those in the minority. If we are serious about the rights of the individual, we have to take that seriousness to its logical conclusion. We have to stand up for the rights of the minority, even that smallest of minorities, the individual, and even when the minority's rights are being violated not by a tyrant but by a democratic majority.

Nondemocratic Capitalism

Let us turn briefly, then, to nondemocratic capitalism, the other system that seems to stand between the two extremes I earlier sketched. Here the moral problem will not be on the substantive side, not if the capitalism is far-reaching—which of course is rarely the case in the real world. Rather, the problem will be on the process side. For as a practical matter, even in a regime in which most activities are private, there will have to be a public sector. Even in the minimal state of classical liberal theory, dedicated to the sole task of securing our rights, there must be constables, or police, and judges, and whatever other ministers and ministries are necessary to carry out this responsibility. Moreover, the theory of rights shows that a full explication of the law that reflects these rights requires not only a judicial, reason-based definition of rights but, eventually, a legislative, will-based definition as well. Yet this public sector, small though it may be, belongs to *all* the people: it is *everyone's* government. Accordingly, just as everyone has a right to control what is his, so everyone has a right to control his government—however imperfect the exercise of that right of necessity must be. Whatever its shortcomings, democratic process permits everyone to participate, at least to some extent. (I ignore the problems that arise when that participation yields broad, will-based law, as too often happens, rather than law based upon principles of reason; in such cases, process rights become

the vehicle by which the majority trample on the substantive rights of the minority.)

The moral problem with nondemocratic capitalism, then, even in a regime with a very limited public sector, is that individuals have no say over *their* government. Even in a regime in which the government regulates only a small part of an individual's life—but a very important part, to be sure—that regulation is not just effectively but absolutely out of his control. To the extent that he does not control that part of his life, even through imperfect and attenuated democratic processes, the individual's rights are being violated.

"There is all the difference in the world between people ruling themselves, as individuals, and 'the people' ruling themselves—it is the difference between individualism and collectivism."

But is an individual better off living under nondemocratic capitalism than under democratic socialism? That question cannot be answered in the abstract. Under nondemocratic capitalism the scope of the government's power is limited but uncontrolled by the people, which means that government power is potentially unlimited even in scope. Under democratic socialism the scope of the government's power is vast but controlled by the people, at least in principle, which means there may be some constraint. In keeping with their respective characters, nondemocratic capitalist regimes tend to limit the individual's political activities, democratic socialist regimes tend to limit his economic activities. Beyond these general observations, however, we have to take regimes one at a time when we criticize or compare them, such are the variations in the real world.

Political Taxonomy

Of what use, then, are the terms "right" and "left" when we start to sort out regimes? Plainly, they are of little use, especially when we recall that Hitler's fascism was ordinarily placed on the "right" while Stalin's commu-

nism was placed on the "left." Yet one was national socialism while the other was international socialism: both, that is, shared the same genus, and much else besides. Are the terms "right" and "left" intended primarily to signify economic arrangements or political arrangements? What arrangements then stand in the "virtuous" middle—assuming that is where virtue indeed resides?

"It is the individual who is the focus of our attention, the individual whose dignity and integrity are our concern, the individual who is the fundamental unit of both the private and public spheres of society."

Clearly, if the rights and freedom of the individual are our basic concern, and are the criteria by which we judge regimes, then it would be far better to characterize and classify regimes or nations according to a continuum that runs from free to less free to unfree. Democratic capitalist nations would thus fall toward the free end of the continuum, whereas nondemocratic socialist nations would fall toward the unfree end. In the middle would be both the democratic socialist and the nondemocratic capitalist nations. Just where precisely on such a continuum any nation would fall, assuming it were possible to make such determinations precisely, would be a function of many factors, too numerous to enter into here. But at least some systematic rigor would frame our efforts to classify and compare nations.

Under our present taxonomy, however, "right" and "left" are pejorative terms; they are "extremes" bounding a "moderate" middle. Couple this with the moderate's felt need to be "balanced" in his criticism, and the nondemocratic capitalist regimes that are ordinarily placed on the "right" come in for equal criticism with the nondemocratic socialist regimes that are placed on the "left." Plainly, as we just saw, this cannot be justified on the merits—not, at least, if our aim is indeed to be "balanced," to criticize in proportion as criticism is warranted. We should indeed be urging nondemocratic capitalist regimes to democratize—

just as we should be urging democratic socialist regimes to privatize. But we should be urging nondemocratic socialist regimes to both democratize and privatize.

What are we to say, however, about a democratic socialist regime in which, let us suppose, 90 percent of the people want it that way? Or, by contrast, a nondemocratic capitalist regime that controls only 10 percent of its citizens' lives? These are tough ones to call—from ideal but from comparative standards. In the first case only a few people are oppressed but they are oppressed a great deal, we might assume. In the second case everyone is oppressed but only a little—assuming the repression is limited, as it might be, to manifestations of political competition with the ruling powers. Whether these examples are realistic is open to question, of course; in theory, however, they must be considered. Perhaps the most that can be said in test cases such as these is that the right to leave looms ever larger. Regimes that recognized that right would not thereby justify their respective forms of oppression, of course. But they would have a substantial leg up the continuum over regimes that did not recognize the right to leave.

Human Rights as Domestic Policy

This brings me to my final considerations, concerning the character and conduct of a human rights policy—the subject of another essay at least. Let me limit my remarks to but a few general observations.

The first, as should be plain by now, is that human rights is primarily a domestic, not a foreign policy, issue. It is a domestic issue in the most basic sense that it starts at home, with the way government as such is defined, the way government and its obligations are justified in the first place—with reference to the rights of the individual. If our Declaration of Independence gets it right, if governments are indeed instituted among men not to give them rights but to secure the rights they already have, then the first—indeed, the only—business of government is to see to that end. Every agency of government—domestic or foreign in orientation—every undertaking of gov-

ernment, must have before it the question: "Is this toward securing the rights of the people?" If not, then the government has no business doing it. For all government undertakings, we should recall, have an air of illegitimacy about them in principle, save for those exceedingly rare enterprises undertaken from unanimous consent. Every government program, then, must be judged not only by a cost-benefit standard but by a human rights standard as well: more fundamental than "Does this program cost more than it is worth?" is the question "Does this program respect the rights of the people it involves?"

When human rights becomes part of our foreign policy, however, it is also "domestic" in a rather different sense; namely, it concerns itself with the domestic policies of other nations—in particular, with how other governments treat their citizens. Nevertheless, the justification and contours of our human rights policy, considered as foreign policy, stem from the same domestic source, namely, from our government's obligation to secure our rights. We have a human rights policy, that is, not only or even primarily from humanitarian considerations—a not uncommon misconception—but as part of our effort to secure our own rights. For as history demonstrates, those regimes that respect the rights of their own citizens tend also to respect the rights of their neighbors. Our fundamental foreign policy interest is to see a world that is less threatening to ourselves. Toward that end, toward securing our own rights, and in light of the historical evidence, we do what we can to further the rights of others as well. But to do that well we must understand what those rights are, where they come from, and how they serve to order our political, legal, and economic arrangements. We have to understand, in short, just how it is that human rights serve as the foundation for human freedom.

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