

## Chapter One



# *Human Vulnerabilities* On Individual and Social Rights

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The debate about the status and purpose of individual rights as against social rights depends a great deal on how we define these terms. Although it is difficult to come to a definitive philosophical or jurisprudential conclusion about social versus individual rights, textbooks on human rights recognize the difference between the two traditions (Gearon 2003). Furthermore, the difference between these two traditions is consequential in the real world. For example the so-called twin covenants embrace this distinction. There is the International Covenant on Civil and Political Rights (ICCPR), which was promulgated on December 16, 1966, and came into effect on March 23, 1976. There is the parallel International Covenant on Economic Social and Cultural Rights (ICESCR), which was promulgated on December 16, 1966, and came into effect on January 3, 1976.

The ICCPR is often seen to embrace the classic liberal “negative freedoms,” namely a set of rights that are “freedom-from rights,” essentially freedom from oppression. By contrast, the ICESCR is regarded as embracing those rights and entitlements that have underpinned welfare systems in both liberal democracies and socialist regimes. They are the “positive freedoms” that provide people in need with resources to achieve certain desirable outcomes. These two covenants became somewhat entangled in cold war ideological conflicts between liberal capitalist democracies and socialist states. The controversial nature of the two covenants is illustrated by the fact that, while they were presented to the UN General Assembly in 1966, it took a further decade before they could be ratified in order for them to come into operation.

It is often said that, while the West has recognized the ICCPR because it is compatible with liberal ideology, socialist states have felt more comfortable with the

ICESCR. For example, China has found it easier to support social and economic rights that are seen to be more consistent with its own emphasis on development. The ICESCR came into force in China on June 27, 2001, but as of 2005, the ICCPR had not been ratified. If we take the view that economic development is a necessary precondition for the enjoyment of rights, then China has made great progress towards establishing a human rights regime.

Whereas somewhere around 22 million people had died of starvation during Mao's Great Leap Forward (1958–1960), China has subsequently managed to feed its own people, which represent 22 percent of the world's population on only 7 percent of the world's arable land. This economic growth is compatible with the notion of a right to development that was accepted by the Vienna Declaration in 1996 (Goldman 2005). Other authors have tried to conceptualize the distinction between authoritarian Asian regimes that often prefer to support social rights and liberal individualistic capitalism by recognizing that in Asia the responsibility of the state to its citizens can be understood in terms of "enforceable benevolence" or "patriarchal benefice" (Woodiwiss 1998). Therefore, attempts to conceptualize the difference between social and individual rights often implicitly or explicitly articulate ideological differences between socialism and capitalism, and hence the conceptual distinction is overburdened by history and ideology.

By contrast with China, the United States has championed the idea of personal liberty and individual rights, and it has therefore been reluctant to support social rights, remaining deeply suspicious of the human rights revolution (Ignatieff 2001). As a result, the United States has found itself isolated internationally, being often hostile to the United Nations and to specific UN institutions. For example, in 1997 the United States refused to join the international community in banning the use of antipersonnel land mines, and in 1998 the United States voted against the creation of the International Criminal Court. The dubious status of Guantanamo Bay in international law in the context of a war on terror has only reinforced this gap (Butler 2004). The situation has been summarized by Geoffrey Robertson (1999, 72) in his *Crimes Against Humanity* when he noted that "the nation with the most to offer the human rights movement in the twenty-first century will, it appears, do so only on the strict condition that other countries are the targets" of human rights legislation.

The United States has been specifically hostile to any formulation of social and economics rights that might limit the functioning its own version of capitalism or question its ideology of individualism. It has consequently opposed the ICESCR. The ideology of individualism is deeply suspicious of state involvement in social benefits and therefore often antagonistic to the development of social welfare rights. While individual rights such as freedom of conscience and freedom of religious belief have been defended, social rights—especially economic rights relating to unionism and labor laws—are regarded as aspects of international socialism. For example, in 1948, the American Bar Association's House of Delegates opposed the Declaration of Human Rights because it contained social and economic rights; the Eisenhower administration attempted to downplay the importance of the twin covenants on rights; and following action by Secretary of State Dulles, the United States did not ratify the Convention on Genocide (Galey 1998; Henkin 1998). The American political elite opposed the Declaration of Human Rights on the grounds that its social provisions smacked of

communism, and with the fall of the Soviet Union in 1992, American conservatives were able to celebrate neoliberal economic policies as the only viable global strategy. They proclaimed the “end of history,” insisting that Western-style democracy was the only regime worth defending.

Although there has been much opposition to both covenants, it is necessary to provide a definition of social and individual rights, or at least to offer an analysis of the problems that are entailed by such a definition. Consequently, this chapter is concerned with understanding the differences between the social rights of citizens and individual human rights. Briefly, social rights are those entitlements that are enjoyed by citizens and are enforced by courts within the legal framework of a sovereign state. These social rights may be called “contributory rights,” because effective claims are associated with contributions that citizens have made to society through work, war (or a similar public duty), or parenting (Turner 2001). In this model, rights and duties are closely connected.

A system of universal taxation is an obvious indication of the obligations of citizenship. In return for taxes, citizens expect certain benefits, such as security and welfare. By contrast, human rights are rights enjoyed by individuals by virtue of being human, and as a consequence of their shared vulnerability. Human rights are not necessarily connected to duties and they are not contributory. There is, for example, no corresponding system of taxation relating to the possession of human rights. There is as yet no formal declaration of human duties—although there has been much discussion of such obligations. The UN Educational, Scientific, and Cultural Organization (UNESCO) encouraged an initiative for a charter of the duties and responsibilities of states, but these initiatives have yet to have any practical consequence. While states enforce social rights, there is no sovereign power uniformly to enforce human rights. Social rights of citizens are national; human rights are universal, but it is often claimed that these are not “justiciable” and have no “correlativity” with duties.

This apparently neat division becomes blurred in practice, especially in the United States. Because Americans tend to regard the Constitution as a universal declaration of democratic rights, having universal implications for everybody, Americans have often resisted the idea that human rights treaties apply to them. The retention of the death penalty in the United States is in contravention of UN declarations, and the practice of “extraordinary rendition” is contrary to UN norms surrounding arbitrary arrest and unfair trial, as outlined in Article 8 of the Declaration of Human Rights. The U.S. government tends to resist such constraints, either from political expediency or because the Constitution trumps all competing international laws. In popular discourse in the United States, there is therefore a tendency to confuse the civil liberties of Americans (such as the right of black Americans to have the franchise) with human rights, partly because the Constitution is implicitly regarded as a universal legal code.

It is, however, important to retain the distinction. The bottom line is that the social rights of citizens are given (and taken away) by states, but human rights are not given by state legislatures and they cannot be taken away by states. Human rights are frequently the last line of defence against rapacious, arbitrary, and corrupt states.

Hannah Arendt presented an especially challenging criticism of “the rights of Man” in *The Origins of Totalitarianism* (1951) when she observed that these alleged

inalienable rights were supposed to exist independently of any government, but once the rights of citizenship with the support of a government had been removed, there was no authority left to protect them as human beings. Human rights without the support of a sovereign state, she argued, are merely abstract claims that cannot be enforced. Critics argue that it is impossible to define what they are or to show how they add much to the specific rights of citizens of national states. The right to rights makes sense only for people who are already members of a political community. Against Arendt, it is important to protect the idea that there is a right to resist arbitrary governments and that the role of legitimate opposition (in a system of political parties) has to be protected. Human rights abuse is characteristically a product of state tyranny, dictatorship, and state failure as illustrated by civil wars and anarchy; a viable state is important as a guarantee of rights. There is a valid argument therefore that the liberties of citizens and their social rights are better protected by their own national institutions than by external legal or political intervention. The often chaotic outcome of human rights interventions in East Timor and Kosovo might force us to the conclusion that any government that can provide its citizens with security, but with weak democracy, is to be preferred over bad and ineffective government (Chandler 2002).

The history of social rights is essentially the history of citizenship. Historians have recognized the growth of citizenship in ancient Greece but also noted its restriction by birth to men, the exclusion of women, the presence of class divisions, and dependence on slavery (Finley 1983). Max Weber (1958) emphasized the importance of Christian universalism in the growth of citizenship in which faith rather than blood was recognized as the basis of community. He contrasted the autonomous city in Europe with the city in the East as a military camp. Although we can detect the ancestry of citizenship in the urban institutions of classical Greece and Rome, there is little evidence of *social* citizenship until the modern period. Because women were excluded from participation in public life, we should hesitate in assuming that citizenship was fully developed in ancient Athens and Rome. It is more accurate to argue that classical citizenship was limited in its scope, and therefore we might suitably call this classical form *political* citizenship, asserting that the revolutionary struggles that produced modernity also produced modern or *social* citizenship. Modern citizenship has two important characteristics: (1) It developed a notion of membership that is not in formal terms dependent on gender and ethnicity; and (2) it is closely connected with the rise of the welfare state.

Citizenship in the context of liberalism is also closely associated with the growth of individualism. However, the modern notion of individualism as subjectivity, the self, and privacy is more or less the opposite of the classical world. In classical Greece, private affairs were often negatively defined in opposition to the public sphere and public duty. The private arena was associated with deprivation (*privatus*) and the public sphere was one of freedom and reason, where citizens congregated for political debate, economic exchange, and entertainment. The autonomous individual could exist and develop only in the public domain. In the “quarrel between the ancients and moderns,” Benjamin Constant compared respect for public institutions in the ancient city with the emphasis on conscience and individual subjectivity in modern society.

The liberty of the ancients, which arose from their active engagement in politics, required them to sacrifice their personal interests in their service to the polis. By

contrast, the moderns are encouraged to pursue their personal pleasures, regarding politics as merely a means to protect and enhance their private lives. It was only when men left the privacy of the household that they emerged from these biological necessities to participate in politics as free individuals. This distinction was formulated in Aristotle in the contrast between *zoe* (biological life) and *bios* (the cultivated form of life). Men could rise to *bios* only through politics and the public sphere. In modern America, the great emphasis on the emotional integrity of the private individual is the exact opposite of the Aristotelian idea of politics and virtue (Brogan 2005). In modern society, human beings are bound together, but the common threads are paradoxically the private desires of consumption and a common mass culture.

### NATIONAL CITIZENSHIP AND THE WELFARE STATE: T. H. MARSHALL

As we have seen, there is a common intellectual tradition that locates the origins of citizenship in the ancient *polis*. It is, however, sociologically more appropriate to treat citizenship as a product of three political revolutions—the English Civil War, the American War of Independence, and the French Revolution. These revolutions were the cradle of both modern nationalism and citizenship as the rights and duties of a person who is a member of a national community. The creation of European nation-states from the seventeenth century necessarily involved the creation of imaginary communities that assumed the existence of, and went a long way to create, homogenous populations. The Treaty of Westphalia in 1648 was the origin of the modern world system of nation-states, and state formation involved the creation of nationalist identities on the basis of a double colonization, both internal and external. This process was the cultural basis for the creation of national forms of citizenship.

National citizenship was politically important because it incorporated the working class into nascent capitalism through the creation of welfare institutions. In practice, welfare capitalism achieved the subordination of the working class with relatively little concession to the fundamental issue of inequalities in wealth and political power. Citizenship left the class structure of capitalism intact, and welfare states avoided the revolutionary conflicts of the class system that were fundamental to Karl Marx's vision of capitalist crises. However, there was great variation within different capitalist regimes. While in Germany Bismarck developed social rights through welfare legislation, political rights were underdeveloped. Neither fascism nor authoritarian socialism supported civil and political rights, although they did develop welfare institutions and social rights.

In the twentieth century, the understanding of citizenship was dominated by the sociological theory of T. H. Marshall (1950). Citizenship expanded through three stages: The growth of legal rights in the seventeenth century produced habeas corpus, the jury system, and the rule of law; political rights in the nineteenth century resulted in the parliamentary system, free elections, and the secret ballot box; and social rights in the twentieth century were associated with social security and the welfare state. Marshall argued that citizenship was a status position that ameliorated the class inequalities

that arise from a capitalist market. The British welfare state can be regarded as the practical expression of the sociological theories of Marshall, the economic analysis of J. M. Keynes (1936), and the social policy of Richard Titmuss (1958).

In substantive terms, the mass mobilization of the population for warfare was an important condition for the growth of postwar social rights, but Titmuss also traced the origins of the National Health Service to the medical inspections of the South African Boer War, when the British working class was deemed unfit for combat. The expansion of social rights in the twentieth century was closely connected with military discipline and combat requirements, and subsequently with postwar social reconstruction.

Marshall's account of British social citizenship helps us to identify important differences between the development of citizenship institutions in Britain, the United States, and continental Europe. In British society, citizenship evolved through the nineteenth and twentieth centuries as an amelioration of the negative effects of social class and the capitalist market. Citizenship provided individuals and their families with some degree of social security. The tension in British citizenship is that it assumed significant state intervention in the regulation of the market, but also emphasized individualism, initiative, and personal responsibility. In the United States, citizenship is associated with political membership and assimilation in a society constituted by migration and race rather than with welfare rights and social class. The citizenship debate in the United States is still dominated by the legacy of Alexis de Tocqueville's *Democracy in America* of 1835 and 1840 and the theory of associational democracy. For Tocqueville (2003), the lack of centralized, bureaucratic government in America had encouraged individual initiative and voluntary associations rather than state intervention to solve local, community problems.

Contemporary sociological research has found that Americans were alienated from politics at a formal level, but their commitment to society was expressed through a multitude of local and informal associations (Bellah et al. 1985). Both British and American approaches are distinguished from continental European traditions, where historically citizenship is connected with culture and civility and the civilizing process. The bourgeois citizen was an educated and cultivated private person who depended on the state to guarantee freedoms and to sustain a moral public order against the threat of an uneducated and uncultured working class and peasantry.

The entitlements (or contributory rights) of Marshallian citizenship were conditional upon work, war, and reproduction. A person became an active citizen by contributions to the economy, wartime service, and parenthood. These social conditions have been eroded by the casualization of employment, the termination of conscription and compulsory military service, the transformation of family life through divorce, and the emergence of the lone-parent household. The economic foundations of traditional citizenship were based on a Fordist economy, which has been disrupted by the globalization of the economy. The neoliberal revolution of the late 1970s created a political environment in which European governments were no longer committed to the universalistic principles of the traditional welfare state. Thatcherism in Britain rolled back what she disparagingly had called "the Nanny State" and promoted private initiatives in an enterprise culture. In Tony Blair's government, New Labour policies adopted a "third way" strategy that encouraged joint ventures between public and private sectors in health

care and education. Community enterprise was intended to replace the traditional voluntary associations in delivering services in the third sector. The economic results have been overshadowed by growing income inequality, the decline of the National Health Service, and an intractable pension crisis (Blackburn 2002).

## THE FABRIC OF AMERICAN SOCIETY

The paradox is that human beings need to be protected from corrupt or failed states by human rights legislation, but they also need social rights to protect them from such conditions as old age, disability, and sickness. Because the United Nations is not a global government with unchallenged sovereign powers, citizens must rely on governments to provide them with a safety net of services: police, education, and health. Of course, the neoconservative criticism of this argument about the role of social rights is to argue that individuals should be expected and encouraged to provide for their own welfare through personal health insurance, installing security devices in their own homes, carrying a gun for personal protection, and so forth. This neoconservative position fails essentially to take notice of the vulnerability that is the common lot of humanity. The dominant U.S. liberal theme of the inviolable rights of (isolated) individuals does not take into account the inequalities and disadvantages that people inherit at birth—we don't start life with equal assets, either social or natural.

Furthermore, the aging of the U.S. population, the inevitable increase in disability and physical immobility, and the isolation and vulnerability of the elderly will produce a large cohort of U.S. citizens whose lives are highly precarious (Turner 2006). There is a tendency in neoconservative views of individual responsibility to “blame the victim” (Ryan 1971). This issue occurred in American public life with the infamous Moynihan report on the alleged inadequacies of the black family to cope with modern urban life (Katzmann 1998). While there may be a tendency to blame single black mothers for welfare problems, how can we blame the elderly for growing old or the disabled for their impairments? At present U.S. institutions are simply not geared up to cope with the consequences of aging populations, shrinking families, poor pension schemes, inadequate health insurance, and the isolation of elderly men in particular in deprived inner-city areas (Klinenberg 2002). In international terms, the United States does not compare favorably with the Scandinavian countries, Japan, and much of northern Europe in terms of life expectancy, health care of children and the elderly, or death rates (from drugs, suicide, or car accidents) among young men (Kawachi and Kennedy 2002). Despite the liberal vision of an egalitarian society in the United States, income inequality remains the principal determinant of life chances: The more affluent live longer with healthier lives (Daniels, Kennedy, and Kawachi 1999).

The social rights that are installed in the Universal Declaration of Human Rights are intended to give protection to the vulnerable, the weak, and the dependent in order for them to live lives with some dignity. Human rights provisions relating to women are especially important, since without healthy mothers we cannot have healthy children. Article 25—Everyone has a right to a standard of living adequate for health and well-being—is one obvious illustration. Against such human rights,

neoconservatives might claim that single mothers, dropouts, drug addicts, and the unemployed are just shiftless, feckless, hopeless people, but aging and attendant disabilities are the common destiny of us all, both rich and poor. Therefore, we need social rights and adequate support to enjoy a modicum of dignity (in old age, in sickness, and in isolation).

There is, by contrast, plenty of evidence to demonstrate that neoliberal global economics have resulted in many societies in increasing poverty, poor health, and declining life expectancy (Coburn 2000). Welfare regimes have been profoundly altered by the Anglo-American neoconservative revolution of the late 1970s, which created a political framework in which governments were no longer committed to such principles as a comprehensive welfare state and full employment. Neoconservative economic strategies were either emulated by or imposed on governments throughout the 1980s and 1990s. These global redistribution strategies that promoted welfare for work saw a reduction of state intervention, deregulation of the labor and financial markets, implementation of free trade, reduction in personal taxation, and fiscal regulation of state expenditure.

New Right theorists argued that judgments about human needs should be left to the operation of the market, not to governments. The historical period of Keynesian redistribution was replaced by more aggressive neoconservative regimes in which the enterprising, greedy, and self-regarding consumer became the driving force of the economy. The free market was claimed to be a necessary condition of personal freedom. Although these doctrines are called either neoliberal or neoconservative, they may well be thought as a return to the doctrines of the eighteenth century, in which private vices such as greed were assumed to produce public goods such as wealth.

However, the problem facing contemporary American society is that, notwithstanding the claims made on behalf of American civil liberties, there are high levels of child poverty, inadequate medical and pension cover, and massive income inequality. Given the ideals of the American Bill of Rights, Americans often have difficulty understanding why the rest of the world rejects or questions their democratic credentials and their generosity. One problem concerns the myth of U.S. international beneficence. Of the 0.10 percent of GDP that the United States spends on foreign aid, virtually all of it goes for direct military aid. Of course this leaves us with an even deeper sociological question: Why do Americans remain loyal to the liberal creed? One explanation is the effective manipulation of the media in the aftermath of 9/11. The Bush administration has been successful in using the media to exploit the terrorism threat, showing that there is no foreign policy alternative to the invasions of Afghanistan and Iraq. Only on rare occasions is the fragile nature of American civil society exposed, for example by traumatic events such as Hurricane Katrina (Blau and Moncada 2005).

## CONCLUSION: LIBERTY AND EQUALITY

While the French Revolution promised to give us liberty, equality, and solidarity, many contemporary social and political theories tend to confront us with a choice: liberty

(the individual rights of liberalism) or equality (the values behind ICESCR). American individualism often presents the dichotomy in even starker terms: Do you want communist authoritarianism or American liberties? In this conclusion, I want to suggest, albeit briefly, that this is a false dichotomy. Apart from anything else, the dichotomy is extreme. Of course, if I am faced with a choice, my rational response is to choose my freedom against welfare benefits, but individual and collective rationality do not always coincide. What is good for me and what is good for the collective often involve very different logics. However, this naive presentation of the choice merely reflects the ideological remains of the cold war.

The threat to liberty from authoritarian governments is nevertheless real, but communism does not have a monopoly over authoritarianism and arbitrary rule. Extraordinary rendition and imprisonment without trial are not the hallmarks of a democracy. We also have to recognize that liberal philosophies in Europe and in America have very different historical locations, accents, and significance. In Europe, twentieth-century liberalism was opposed to both fascism and communism as authoritarian states. Refugees from the catastrophe of fascism and genocide inevitably championed the rights that were inscribed in the ICCPR, namely the negative freedoms from oppression, and they were less interested in social rights.

Intellectuals such as Isaiah Berlin, Leszek Kolakowski, and Ernst Gellner supported individual rights opposing the determinism, reductionism, and social doctrines of both Marxism and sociology. They were concerned like Franz Neumann (1957) in *The Democratic and the Authoritarian State* to understand the roots of political violence, and in the process became suspicious and critical of mass society, the rights of man, and the classless society.

We need, however, to move beyond a cold war framework to think about how the individual rights of liberalism might be married to the social rights of the Universal Declaration. A comprehensive sociology of rights needs to find conceptual solutions to any separation of individual from social rights or to any elevation of one set of rights over another. In this commentary I have proposed that the concept of vulnerability can serve as a foundation for human rights and that analytically the integration of both types should rest on the resolution of the traditional sociological problem of agency and structure. We should not suppress the idea that human beings can be held responsible for their actions, but we need to recognize that social structures (of economic poverty, cultural deprivation, and political oppression) can also rob individuals of their dignity and autonomy. Combining individual liberties with social rights also requires the integration of rights and duties, since without the concept of human responsibility, social rights (indeed any rights) will remain partial and incomplete.

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