

USING THE METHOD OF POLITICAL ECONOMY TO EXPLORE PROBLEMS IN THE REALIZATION OF INDIVIDUAL AND COLLECTIVE RIGHTS

**REJECTING NEOLIBERAL ANALYSIS AND
SEEPAGE OF NEOLIBERAL IDEOLOGY
INTO THE FIELD OF INTERNATIONAL
HUMAN RIGHTS**

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What Political Economy Brings to the Study of Individual and Collective Human Rights

- Takes into account who exercises power and over what (*e.g.*, knowledge, science) and how that determines outcomes. The role of the state, public ownership, the commons, and privatization brought into human rights analysis.
- PE method interrogates whether economy increases equality. Reduction of inequality is essential for realization of human rights. Neoliberalism views inequality as natural, rejects human rights and economic democracy.
- Human rights are to promote human dignity. To realize rights economies must be organized to satisfy needs, allow flourishing of life. (Efficiency valid insofar as it supports human rights.)

Concepts of human rights affect claims, advocacy and jurisprudence- 1

- Political economic component of rights analysis permits critique of liberalism, the dominant Western perspective on rights and focus of Western-influenced institutions, including NGOs.
- Liberalism has skewed international law: focus on civil and political rights; ignorance and neglect of social, economic and cultural rights; denial of collective rights, e.g., rights to peace and development. (See Rosalyn Higgins, *Problems & Process: International Law and How We Use It*, Oxford, 1994.)
- Liberalism has rejected decolonization and eradication of neocolonialism and uses human rights to sell war. (See Jean Bricmont (trans. Diana Johnstone), *Humanitarian Imperialism*, MR Press, 2006.)

Concepts of human rights affect claims, advocacy and jurisprudence- 2

- Western states' attempts to enforce private property interests over human rights. Need to interrogate any right to property.
- 1948 Universal Declaration of Human Rights (UDHR) articulated a right to property (Art. 17), individually and in association with others, and a prohibition against arbitrary deprivation of property.
- 1966 International Covenant on Civil and Political Rights (ICCPR) did not incorporate any article similar to UDHR Art. 17.
- Inter-American system recognizes collective right of Indigenous Peoples to their property- traditional land and territories- through exercise of the right to self-determination.

Categorizing Rights as Individual, Group, Collective- Why do this? What does it mean?

- Problem of associating “generations” of human rights with hierarchy of rights and progress. Beyond liberalism, need multicultural approach to reconstruct the field of human rights. (See Makau Matua, *Human Rights: A Political and Cultural Critique*, Penn, 2002.)
- Rights are universal, interrelated, interdependent, and indivisible. A balancing of rights is required. Rights have correlative duties.
- Individual (human person) rights claimed of state. Divided by cultural, economic, social, civil, political categories. Group rights claimed of state, within a state, *e.g.*, people subjected to racial discrimination (ICERD), children (CRC). Collective rights are claims on a state, states, *erga omnes*.
- Human rights system challenge: people(s) excluded, not served by state(s).

Exceptions to general rule that all rights are equal in international human rights law regime

- Human rights can be non-derogable (right to life, Art. 6, ICCPR) or derogable. See Art. 4, ICCPR.
- *Jus cogens* (peremptory norms) have supremacy over other rights. Norms mostly about abstention. (See Hugh Thirlway, *The Sources of International Law*, Oxford, 2014.)
- *Jus cogens* norms recognized in cases before International Court of Justice: prohibitions on genocide, slavery, racial discrimination, use of force, torture.
- Genocide, slavery, and racial discrimination: *Barcelona Traction, Light and Power Company, Ltd.*, fn. 14, on *erga omnes* duties of states (1970).
- Use of force: *Military and Paramilitary Activities in and against Nicaragua* (1986), involving US aggression, contra war against Nicaragua.
- Torture: *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (2012).

Realizing Individual Rights- 1

- A state is obliged to respect, protect and fulfill all human rights. It must regulate and enforce laws to govern private actors such as corporations. Governments have both positive (e.g., funding) and negative (restraint) duties with respect to a human right.
- ICESCR allows “progressive realization” of economic, social and cultural rights. This was adopted to relieve economic burden on LDCs in the short term. Affluent states, *e.g.*, USA, have failed to treat ESC rights equally with civil and political rights. USA has not dedicated “maximum available resources” for social, economic and cultural rights as required by Art. 2(1).

Realizing Individual Rights- 2

- An individual right is interdependent and interrelated with other individual rights. Example: Social/economic right to health (Art. 12, ICESCR) in relation to civil right to life (Art. 6, ICCPR), cultural right to enjoy the benefits of science (Art. 15, ICESCR), and the right to equality and equity (common Art. 2 of ICCPR and ICESCR).
- Human rights are indivisible. States may not accept some rights and reject others. They may not defeat the object and purpose of a treaty by rejecting articles or imposing too many conditions on acceptance. Example: RUDs* of USA to ICCPR Art. 20 (1) prohibition on propaganda for war, (2) advocacy of national, religious, racial hatred constituting incitement to discrimination, hostility and violence.

*RUDs=reservations, understandings and declarations made by state ratifying a treaty

Realizing Individual Rights- 3

- States cannot pick and choose some principles upon which rights are based and reject the principles they find difficult in order to avoid their obligations to respect, protect and fulfill human rights.
- Example: the Right to Health Care, a component of the Right to Health (Art. 12, ICESCR, etc.), requires a state to respect, protect and fulfill all component principles, which are 1) universal access to all health goods, facilities and services; 2) availability of health infrastructure and services; 3) acceptable and dignified care; 4) equality and non-discrimination; 5) highest quality; 6) participation; 7) transparency; 8) accountability.

Realizing Individual Rights- 4

- Example: the Right to Health Care (continued)- Economic duties of states for ensuring realization of health care principles
- Sufficient budget appropriation for all residents to have access, not, *e.g.*, a smaller per capita appropriation for Indian Health Service in USA. (See OHCHR report, *Realizing Human Rights Through Government Budgets*, HR/PUB/17/3, 2017.)
- Commit maximum available resources. Art. 2(1), ICESCR. (See report, Radhika Balakrishnan et al., *Maximum Available Resources and Human Rights*, Center for Women's Global Leadership, Rutgers, 2011). Funding for war, not for fulfilling right to health, violates MAR, as well as diversion of funding away from people's needs.
- Remove privatized, unnecessary systems, *e.g.*, profits of insurance companies, which by design supersede human right to health care. Institute a national, public system of social insurance, free at the point of access. (See initial attempts to address health privatization, *General Recommendation No. 37*, CERD/C/GC/37)

Collective Rights

- International human rights law recognizes as collective rights:
- Self-Determination of Peoples
- Right to Peace
- Right to Development
- Right to a Clean, Healthy and Sustainable Environment
- Self-determination and the right to peace have an older lineage of international norm-making than rights to development and a healthy environment. For example, a milestone in the recognition of the collective right to peace was the Treaty Providing for the Renunciation of War as an Instrument of National Policy, (also, Pact of Paris or Kellogg-Briand Pact), which came into effect in 1929 and had 66 parties, all of whom ratified without reservation.

Collective Rights and the Relationship between Collective and Individual Rights- 1

- Collective rights belong to a group, which is composed of individuals. A collective right cannot be realized individually because it requires sharing of benefits to fulfill. Individually, it may not be meaningful.
- Collective rights require systemic change, including economic. They challenge national sovereignty and the status quo state system. Also, US hegemony, corporate control, capitalism-
- Common Western response to collective rights: 1) try to avoid, treat claims by focusing on and recognizing aspects as individual rights, or 2) deny existence, using rationales of collective rights as overly comprehensive, vague, difficult to enforce, etc. Argument: not really rights but aspirations.

Collective Rights and the Relationship Between Collective and Individual Rights- 2

- Human rights advocates may want to deploy strategies using both individual rights, especially sources which support system change, and collective rights.
- Example of linkage
- Individual rights-Article 23, UDHR, the right to an adequate standard of living (original source of the right to health), Article 11, ICESCR, right to an adequate standard of living, Art. 25, ICESCR, protecting the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources, Art. 28, UDHR, the right of everyone to a social and international order in which rights and freedoms can be realized
- Collective right- Right to Development