

BASIC HUMAN RIGHTS/NEEDS: Some Problems of Categorical Translation and Unification.

By Reginald Herbold Green

On a cloth untrue,  
With a twisted cue,  
And elliptical billiard balls.

- Gilbert and Sullivan

We who are only undefeated  
Because we have gone on trying.

- T. S. Eliot.

#### Semantics or Substance

To choose to write on basic human rights from the entry point of categories may seem either grimly fatalistic or aridly pedantic. If the reductionist structuralist case is correct, linguistic study will indeed throw light on the realities of the debate but also on its predetermined inability to alter conceptual or external reality to alter conceptual or external reality. At the opposite extreme if one believes sustained attention to definition is a barrier to (or an excuse for not) getting down to substance, then yet another exercise in categorisation is at best banal and at worst noxious.

However, there is an intermediate position - language influences perceptions of what is being discussed but is largely subject to control by the discussants. If that is so, human rights categories do need critical review.

At present they tend to divide various 'types' of rights from each other and rights from needs or duties in ways which often seem ideally designed to create conflict among those who are basically on the same side.

It is quite reasonable that some individuals and groups should have the greatest concern and expertise with the right to freedom of expression and others with the right to eat (or, to translate, the need to communicate freely and the need to have food). What is neither reasonable nor necessary is that these differences in personal/institutional expertise and concern become through existing categorisation transmuted into divisions preventing coherent, combined action against 'principalities and powers' which recognise neither right and perceive their self interest in frustrating each need.

#### Individual, Social and Communal rights

It is often suggested that the traditional civil liberties are individual rights and the social and economic rights are communal or social. On examination this division disintegrates.

The right to freedom of expression to go very far requires the right to act in groups to communicate (indeed any communication requires a group of at least two). One outcome - not an unusual one - of the right to communicate and to organise is the claim for autonomy or sovereignty which is exercisable only through rather large social groups.

On the other hand the right to eat is hardly self evidently

communal as opposed to individual. Human beings as well as communities of human beings are hungry - human beings (rarely whole communities) starve. Action may well need to be social and communal if the right to eat is to be made effective, but that is just as true for the more traditional civil liberties.

#### Positive or Negative?

The positive vs negative division is surely a presentational one. Freedom of personal security and dignity can be expressed as freedom from torture, arbitrary arrest, etc. The right to pure water can be expressed as freedom from lack of water or polluted water.

In general the negative formulations are used to attack a particular existing reality. They are more specific and have sharper cutting edges for that purpose. The positive formulations are more often used to set out goals, test programmes, set as a yardstick to measure change. They can be more inclusive and more effective in organising for construction (or reconstruction if they follow more precise negative formulations cased in a struggle to overcome a previous order which made positive construction impossible without prior 'demolition and removal' operations).

#### Costless versus Costly?

It is sometimes argued that traditional civil liberties are

costless and economic/social rights costly. This is surely a rather startling proposition from the point of view of states - including ones whose leadership is committed to increasing basic human rights.

One cannot convince a dictatorial government that the right to criticise and the right to organise will be costless to it. More critical, a government facing real, externally formented and backed subversion which does entail high costs and real dangers to the survival of the state will also view the 'costless' line of argument with not wholly unwarranted reserve.

Further to render the right to communicate effective - even by wall newspapers, local print shops, access to radio time and radios - takes real resources. A right to communicate when there are virtually no channels beyond word of mouth is not much more effectual than a right to pure water which in practice amounts to digging one's own well. Making any basic human right effective has real costs and - with a very few exceptions - real costs to individuals and communities who are beneficiaries of more human rights, not simply those who benefit from restricting them. \*

#### Sequential or Interacting?

The argument that traditional civil liberties can be established immediately but that economic and social rights must come over time is a variant of the cost

categorisation. Some rights can be, in resource terms, and should be, in moral terms, established immediately. Examples are freedom from torture and freedom from starvation. Not lack of resources but entrenched ignorance, apathy and evil are the barriers to implementing such rights now.

However, each of these is in fact a first step toward a fuller right - to personal security and dignity, to an adequate diet which can only be achieved over time and which do raise severe resource allocation and technical/institutional obstacles to be overcome. In general the progress toward one right both depends on progress toward certain others and makes progress toward other rights easier. For example, pure water and health interlock with each other and with the production side of an adequate diet. That whole cluster require (or at least are strengthened by) progress toward effective rights to participate in decision taking and in self organisation to implement decisions.

Therefore, a sequential view of the road toward basic human rights is at best partial. While what can be achieved now is a contextual question limited by time and place, the general approach is interactive. Destruction of one right usually leads to erosion of others; strengthening of one can lead to greater effectiveness of and opportunities for strengthening others.

Basic Human Rights or Needs?

A peculiarly counterproductive debate has arisen over whether basic human requirements which any decent society has an obligation to supply, any decent human being a duty to cooperate in achieving any decent state an obligation to respect/promote should be termed rights or needs.

Assuming need is reasonably strictly defined (not as equivalent to desire or wish) a basic human need logically gives rise to a right (need for food/right to an adequate diet) and vice versa (right to freedom of expression/need to participate in decision taking).

The debate seems to have arisen for four reasons:

- (a) the basic human needs formulations sprang largely from Third World Development thinking and practice and were not directly addressed to defining rights.
- (b) their standard five categories of needs: to a minimum, socially defined standard of personal consumption; to access to basic communal (public) services; to employment productive enough and fairly remunerated enough to allow purchase of the personal consumption needs; to effective participation in decision taking and execution; to have a social and economic structure at society level capable of meeting the four prior categories is - at first glance - 'biased' toward social and economic needs/rights. However, it is quite practicable to articulate all of the traditional civil liberties

from it and quite unrealistic not to see its inbuilt normative structure.

- (c) the World Employment Conference formulation concentrated on the first three sets of needs (the last two had only passing reference) and the Basic Needs (human dropped) approach in some variants is almost totally technocratic and subject to distortion into 'Bread and Circuses', 'Price and Basketball Courts' or 'Black Beans and Football Stadia.'
- (d) advocates of traditional civil liberties have sometimes been rather slow to see the need to view economic rights as essential to human beings and also as necessary (parallel) conditions for achieving effective civil liberties.

This set of misperceptions is dangerous. There are differences in visions of how rights interact and of emphasis in the initial steps toward advancing them. But Basic Human Needs and Basic Human Rights advocates are basically on the same side and their tendency to suspect serious divisions plays into the hands of those who reject that side whether formulated in terms of rights or of needs. As to the dangers of distortion and misappropriation these are common to almost all worthwhile formulations or programmes - the flattery vice pays to virtue.

#### Rights and Duties

If there is a right there is a duty to implement it. For example, if there is a right to fair wages or a just price, there is a duty to pay the one and to charge the other. Why, then,

the problem most advocates of rights (including the author) have with formulations which include duties - e.g., the interesting (and hopefully influential) Organisation of African Unity Draft Charter of Human and People's Rights?

The answer is not hard to find. Duties are usually defined by a state and are very frequently so defined and enforced as to deny basic human rights. However, that does not solve the problem that an effective right (or need) of a human being (whether individually or communally) must impose duties on other human beings, social groups and states to respect and to implement it. For example, the right to freedom from torture imposes a duty on the state not to torture and to take action against torturers (whether in the public or private sectors, at least logically including wife and child beaters and the hired 'enforcers' of unjust landlords, employers and lenders).

One approach is to ground the justification for duties squarely on basic human rights, and therefore as duties a state, a social group or an individual owes to other human beings. The duty may be through or enforced by the state, but it is not to the state as a subject with rights other than those pertaining to and flowing from the individual and communal rights of human beings.



A slightly different position can be argued for internationally. If there is a right to 'just prices' and/or 'resource transfers' by the people of peripheral economies and a duty on the people of industrial economies to negotiate/provide them, the right and duty must in practice be effected between states. Similarly, fair business practice, consumer protection, renegotiation of oppressive contracts and disclosure are fairly well established as rights in some industrial capitalist economies. Internationally they are enforceable only if each state has the accepted right to enact such statutes and the duty to cooperate in the enforcement of those of other states. Without this, Third World states cannot assert any such rights on behalf of their citizens because in these areas the home governments' normal attitude to their TNCs is 'my citizen, right or wrong, is to be protected' even when the conduct challenged would be patently unlawful and likely to be acted against if committed at home.

Enforceability and Morality.

The concept of a human right or a human need is ultimately founded on a view of human nature and usually on a normative judgment. One can go a surprisingly long way in justifying basic human rights on a pragmatic level, e.g., Milton's Aeropagitica, the ILO's Employment, Growth and Basic Needs, the Brandt Report. To do so may - or may not - gain adherents who do not accept a normative case or accept it in principle but are worried about its cost in practice. But any such case is founded on an underlying view of human and of social nature and most - including the three cited - probably flow from their author's convictions about what is right as well as about what 'will work.'

But a normative basis is not, in itself, enough to make a right effective. Enforceability - at least in substantial measure - and enforceability in practice as well as in principle, is necessary for that. Evidentially law and laws are - or can be - major instruments of enforcement and should be accessible for such use to individuals and groups as well as to the state. But actual existing laws are rarely enough. Laws and even the main body of the law may well be integral obstacles to achieving basic human rights (e.g., in the Republic of South Africa) or serious secondary obstacles because they have become fossilised in ways which simply do not correspond with concepts of rights which do have widespread

individual and state acceptance but no legal locus standi (e.g., in some respects, Tanzania).

Therefore, enforceability is a broader topic than human rights law. Use of existing law is one means and law reform another; but extralegal (social and communal) methods and illegal (including armed violence) are at times necessary.

#### Conflicts and Tradeoffs.

It is unwise to deny that there are ever conflicts among basic human rights at the level of progress toward their attainment in a given setting at a given time. To take that extreme a position is all too often a way to be pushed into defending 'freedom of speech with starvation' or 'freedom from hunger with dictatorship'. That usually is a false set of choices. For example, if there were freedom of expression and organisation in the Philippines, could there have been a breakthrough in food production (and into food exports) by mechanisms which also increased hunger and clinical malnutrition? Denial of a civil liberty and of an economic right are in this case Siamese twins.

But what of a weak but popular state subject to real dangers of subversion and destabilisation which has evidence to show a 60-40 chance that A, B, C are plotting action which, if unchecked, will have high social cost. Does one ignore that 'beyond reasonable doubt' standard in the courts? Detain without trial? Allow the action to proceed

further in hopes of getting better evidence even if, a) the likelihood is that innocent bystanders will be deprived of the right to life and b) the plot may then succeed? There are real abridgements of and risks to basic human rights whichever course is adopted.

Further, not all rights widely seen as basic human rights are so perceived by majorities in all societies. In one African state the proponents of the right to freedom from capital punishment seemed to be: the President, the Attorney General, one judge, two advisers, a handful of clerics. It is easy to assert the majority suffered from 'ignorance' or 'false consciousness' but less easy to argue that the 'right to life' should have been enforced, overriding the right to democratic decision taking in the hopes the law itself would educate the 99% who would have opposed it. Nor is there agreement on all contenders for the status of basic human rights. Abortion, euthenasia, private ownership of the means of production are candidates for the status of basic human rights, which equally sincere and by no means self evidently illogical rights advocates see as basic human wrongs. In addition, certain rights - e.g., the right to privacy - while perhaps universal, take such different forms in varying societies that general formulations seem well nigh impossible.

#### Toward a Holistic, Contextual Approach?

The purpose of this exploration of categories has been

to contend - and hopefully demonstrate - that the full range of basic human rights rest on similar needs and normative premises, have similar problems of achievement and effectiveness and are not merely compatible but basically part of a unifying self sustaining whole. The enemy of one right is usually the enemy of all or most, the advocate of one should logically be the advocate of all even if his efforts and abilities may quite reasonably be focussed on the one.

Equally, however, once one leaves the level of faith and proceeds to the level of the works without which that faith is dead, very real contextual diversities of approach arise. Different degrees of broadening (or defending and sustaining) rights are necessary and possible. Different interlocks of rights (e.g., right to organise and right to eat in much of South and Southeast Asia) are of special urgency. A universal set of norms and goals does not deny the need for varied formulations, still less for varied paths toward them, least of all for different emphases and efforts by different individuals and groups (e.g, for Amnesty and War on Want to duplicate each other's work, as opposed to appreciating the common base and the overlapping concerns, would hardly advance civil liberties or freedom from absolute poverty). In the house of basic human rights/needs, also, there are many mansions.

Note

Further torture and failure to follow due process may be unrelated to lack of resources to preserve security and to have prompt trials. The Indian blindings, mutilations and 'undertrial' prison hordes illustrate this. Because people do view security as important it is not surprising that there is some genuine sympathy with the police. Similarly in Tanzania the 1976 deaths under interrogation leading to subsequent trials for murder of senior police and prisons officers came in the context of a wave of 'witchcraft' murders in respect to which no hard evidence could be obtained by proper methods. To maintain the right to freedom from torture and also the normal human being's right to reasonable security from armed robbers and 'witches' does require quite costly police and court structures.

### Note on Author

Reginald Herbold Green is a Professorial Fellow of the Institute of Development Studies of the University of Sussex. He has been a student of the political economy of development for a quarter century, half of it in Africa. He is a member of the Advisory Group on Economic Matters of the World Council of Churches, the Education Committee of the Catholic Institute for International Relations and the Development Advisory Group of the British Council of Churches and is a Trustee of the International Centre for Law in Development. Among the bodies to which he has been or is adviser are SWAPO of Namibia, the government of Tanzania, the international foundation on development alternatives, the ILO and UNCTAD.