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The Meek Shall Inherit a Global Bill of Rights

What used to be a dream is emerging as a necessary reality of world order

by Lung-chu Chen

The peoples of the world, whatever their differences in cultural traditions and institutional practices, are increasingly demanding to participate in the shaping of the world they live in. They demand a voice in decisions that affect their lives. They do not want to be discriminated against on grounds irrelevant to their personal capabilities. They demand full participation as persons in the processes of authoritative decision making and effective power sharing.

They seek freedom to acquire, to use and to communicate information and knowledge. They seek health, safety and comfort. They seek access to goods and services. They demand the freedom to discover, to mature and to exercise latent talents. They seek the establishment and enjoyment of congenial personal relationships.
Today, people want an effective role in formulating the value system under which they live. They want to be heard when clarifications are given to such values as human respect, power, enlightenment, well-being, wealth, skill, affection and rectitude.

But a cursory look at daily events around the world shows that deprivations and nonfulfillments still characterize the life of vast segments of the population. The nature, scope and magnitude of the values at stake differ from one community to another and examples are dramatic.

In the area of human respect, the demand for freedom of choice and for equality meets with persistent discrimination on such invidious grounds as race, sex, religion and political opinion. In many countries, there has been a massive invasion of the autonomy of the individual and an effort to curtail the freedom to form, maintain and express norms of responsible conduct.

The people's demand for power sharing is often answered by an increase in totalitarian regimes, one-party rule and military dictatorship. There exist arbitrary arrest, detention, imprisonment and torture in many police states; restrictions on emigration for Soviet Jews; mass expulsion of Asians in Uganda; and abuse of power exemplified by the Watergate syndrome.

The search for enlightenment encounters suppression of political dissent, widespread practice of censorship and systematic indoctrination as an instrument of social policy.

The quest for physical well-being is blunted by hunger in many parts of the world; risk of death due to war and terrorist activities; ecocide; genocide.

A striving for wealth is an upstream battle in many developing areas and there exists a widening gap between the rich and the poor. The risk of nationalization without adequate compensation discourages the investment of private resources in beneficial societal projects.

The demand for skill development must cope with the consequences of skill obsolescence due to technological advances, the brain drain, unemployment and underemployment.

Pursuit of congenial personal relationships meets with prohibition of interracial and interreligious marriages; homelessness for millions of refugees; and mutual suspicion and fear generated by networks of secret police and informers.

Longings for a moral integrity meet with denial of freedom of worship; intolerance and persecution of religious minorities; and warfare involving religious conflicts (as in the Near East and Northern Ireland).

The conditions which have resulted in these great disparities between the rising common demands of people for human dignity values and the degree of their achievement are both environmental and predispositional. Both sets of factors are in constant interplay.

Among the most important environmental factors are population, natural resources, and institutional practices. The implications of the population explosion affect the quality of life and the application of any value system. The natural resources of the world are diminishing in quantity and deteriorating in quality, as dramatized by the energy and ecological crises.

The world's resources are unevenly distributed, with glaring discrepancies in the pattern of resources consumption. The institutions and practices of humankind appear to be inadequate to meet today's unprecedented challenges. Geographically, value institutions and practices are too state-centered; functionally, they are too tradition-bound.

The predispositional factors which affect human achievement include the expectations of the peoples of the world. Too often they demand that their special interests be satisfied at the expense of their common interests. Although some people identify with humankind as a whole, the syndrome of national parochialism remains vigorous. In an insecure world, the expectations of national conflicts remain high. The elites of the world tend to be preoccupied with calculations of short-term payoffs, rather than planning for long-term aggregate gains.

The interdependency of the world's social processes is not well understood and, at any rate, is not taken seriously as it affects human rights. Yet the quality of life of every individual now depends upon many factors operating beyond his local community and national boundaries. In an earth-space arena in which the means of mass destruction threaten all humankind, no people can be secure in their rights unless all peoples are secure.

One important factor contributing to the transnational community's failures to protect human rights is simple intellectual confusion.

Little effort has been made to develop a comprehensive formulation of the totality of human rights. Human rights are often discussed as operating within a national or subnational context, without reference to any larger community context, regional or global.

The very concept of human rights often is left obscure or warped. In some conceptions, human rights are defined only as those rights which the state protects; in others, they are thought of as arising from some heavenly font, wholly outside the protection of states.

The widest focus of human rights attention in the literature has been on what is called the problem of implementation. Even on this problem, however, the scope of concern has been partial, and fragmented into suggestions of isolated sanctions and technical procedures. Little effort has been made to explore the topic systematically. What is needed is an examination of the interpenetrating constitutive processes (global, regional and national) which project basic community policies, establish necessary structures of authority, identify decision-makers, define bases of power, and provide for essential decision functions.

Furthermore, an appropriate problem-solving approach is lacking. Problems are not formulated...
When control does not accompany decision, human rights protection is a mockery precisely. Nor are adequate intellectual procedures devised to assess the consequences of a particular option.

Major jurisprudential approaches have made many contributions to inquiry about human rights, but they have also contributed to existing inadequacies. The natural-law approach talks about human rights in terms of transempirical absolutes and relies upon syntactic derivation. The historical approach confines human rights to the demands which particular peoples actually make at a certain time, it is highly deterministic and nationalistic in outlook.

Under the positivist approach, human rights are conceived as merely the rights which a system of law in a particular state in fact projects but the rights legally protected may be highly inimical to human dignity. The Marxist (Communist) approach talks about human rights in terms of dogma and inevitability; a persistent theme of this approach is that human rights belong not to the individual, but to the collectivity known as the nation-state. The social science approach is primarily interested in scientific inquiry, but it has been slow in developing a comprehensive social process map of human rights.

A policy-oriented approach is needed which is contextual, problem-solving and multi-method. Such an approach would offer a comprehensive map of what is meant by human rights in terms of the shaping and sharing of all values. It would specify in detail the role of decisional processes at all community levels in securing these rights. It would mobilize and integrate appropriate intellectual skills for the protection of these rights.

The broad outlines of this policy-oriented approach, as developed and employed by Professors Myres S. McDougal, Harold D. Lasswell and myself include: (a) the establishment of an observational standpoint; (b) the delimitation of the focus of inquiry; (c) the explicit postulation of public order goals; and (d) the performance of intellectual tasks.

A. Our observational standpoint is that of a citizen of the world community who identifies with the whole of humankind. As scholarly observers, we seek to clarify the common interest in the defense and fulfillment of human rights on a global scale.

B. In delimiting our focus of inquiry, we seek to be both comprehensive and selective. We observe that there is a human rights dimension in every social interaction and in every authoritative decision.

The value-institutional categories we find convenient for our inquiry are the eight values mentioned earlier: respect, power, enlightenment, well-being, wealth, skill, affection and rectitude. There is no magic in these particular terms, of course. Any equivalent terms would suffice.

In regard to each particular value process, we find it useful to categorize the outcomes in the following terms:

1. A basic share of participation and enjoyment;
2. Positive opportunity for further participation and enjoyment, free from discrimination for reasons irrelevant to capabilities;
3. Further recognition or reward for actual contribution to the common interest;
4. The largest possible aggregate shaping and sharing.

A policy-oriented approach will characterize law not merely as rules, but as decision which embodies both perspectives and operations. Such an approach will be especially concerned with authoritative decision, that is, decision in which elements of authority and control are properly balanced. In the absence of decision characterized by authority, human rights are at the mercy of naked power. When control does not accompany decision, the protection of human rights may become mere illusion and mockery, as in some modern constitutions.

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In an interdependent world, the degree of protection of human rights a particular individual can enjoy does not depend merely upon the social and decision processes within any single territorial community. It also depends on the operation of such processes within a whole hierarchy of interpenetrating communities—from local or national to regional and global. It is important to grasp the dynamic interplay between transnational and national processes of decision and their reciprocal impacts.

C. The comprehensive set of public order goals we recommend for postulation, clarification and implementation are those which today are commonly characterized as the basic values of human dignity, or of a free society. This is not an idiosyncratic or arbitrary choice but a product of many heritages.

D. The intellectual tasks essential to this policy-oriented framework of inquiry about human rights include a detailed clarification of goals, a description of past trends in decision, an analysis of conditions affecting decision, projection of probable future developments, and the invention and evaluation of policy alternatives. These tasks are distinct yet interrelated. Each affects and is affected by the others. It is important that all these tasks be performed systematically and contextually in relation to specific problems. Work on these tasks has only begun.

Through the adoption of the Universal Declaration of Human Rights in 1948,9 the entry into force of the International Covenant on Civil and Political Rights and its Optional Protocol and of the International Covenant on Economic, Social and Cultural Rights in 1976,10 the workings of customary law, a comprehensive global Bill of Human Rights is emerging. This global Bill of Rights,11 which originated with the United Nations Charter and has been sustained by a multiplying host of specific human rights conventions, authoritative decisions and expressions, represents a tremendous collective effort. It has already assumed the attributes of customary international law.

The contemporary global human rights movement is heir to other great historic movements for human dignity, freedom and equality. It expresses the enduring elements in most of the world’s great religions and philosophies. It builds upon the findings of modern science about the close link between respect for human dignity and all other values, between human rights and peace. It can safely be predicted that, barring nuclear or ecological destruction, this movement will continue to gain strength.