Civil and Political Rights: 'Political Development' (Routledge, 2007), Chapter 5

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The link between political development and civil and political rights is a basic one. At one level the presence of and respect for civil and political rights indicates that the political community in which they exist also respects its citizens as valued members of political society who should be free to participate in political life and who should not be restricted from political participation. This society also offers certain guarantees to its citizens, especially in relation to the application of law. Similarly, if the application of democratic principles is understood as a political ‘good’, then civil and political rights are fundamental to the application of that good and in a number of respects comprise part of it. At another and somewhat more complex level, in that a political community in which such rights exist acknowledges and supports them, its society has probably engaged in discussion and debate around their value and necessity and, through a rational process, has concluded that such rights should exist. That is to say, the political society in question has engaged in and advanced its own thinking about difficult if also fundamental political issues, concluded that the application of civil and political rights is appropriate to its own citizens, and in principle to all others. Both of these exercises are themselves significant markers of political development.

In relation to democracy and processes of democratization, recognition and acceptance of civil and political rights are perhaps the key marker of liberalization, and demonstrate the extent to which transition from an authoritarian or non-democratic regime has taken place. It is possible to respect civil and political rights under an authoritarian or non-democratic regime. But to do so, such a regime would necessarily be benign to the point that it could potentially comply with the will of the majority and would in any case be highly unlikely. Beyond this, conceptions of civil and political rights are a reliable marker of the extent of consolidation of democracy via the necessity of their application to allow basic democratic conditions. In that there can be claimed a standardized understanding of the meaning of ‘democracy’ and that variations of it do not undermine its key principles, democracy can be said to have a potentially universal quality. That is, democracy might not obtain universally or be universally the same in its application, but its key principles are universal. Otherwise, it is not democracy in any meaningful sense of the term.

Assuming a high degree of potential capacity for political activity in any system that claims for itself the title of ‘democracy’, the prevalence of political and civil rights are both the method and guarantee of such potential activity. The ‘positive rights’ of freedom of speech,
communication and assembly are fundamental to political organization and the development of and contest between political ideas, which in turn provide the basic building blocks of a democratic society. Similarly, the 'negative' freedoms from arbitrary arrest, detention and torture are the means by which, having exercised 'positive rights', political participants are not intimidated or otherwise restricted from continuing such activity.

Commonality

Contrary to some claims, conceptions of human rights (of which civil and political rights are seen as the 'first generation') are neither culturally specific nor especially recent. Moreover, while the codification of human rights ensures there is a specific set of criteria by which they can be measured and applied, human rights do not necessarily rely on codification in order to retain validity. The conception of 'natural rights' applies here, parallel to natural law (for example, see Hobbes 1962, Locke 1960, Rousseau 1973), as those rights which pertain in a range of circumstances in which each are interpretations of the same or a similar original first principle. Such rights are claimed to exist as a consequence of freedom in a state of nature, which implies a natural moral order under God, whose human creations are equal in a state of nature, as the application to others of self-regard (moral coherence and consistency) or, most forcefully and without reference to God, as a practical consequence of human reason which implies a capacity for ethical reason (for example, see Kant 1997, Locke 2006).

The earliest debates about or claims to human rights were not codified, and where codification began to exist, it often did so in an indirect or incompletely articulated sense. Religion was a principle area in which conceptions of rights were largely indirectly codified, but which categorically required adherence to particular responsibilities. This in turn implied rights for others, as did some of the earlier formalized philosophies. The Decalogue (20:1-21) of the Bible and the Torah, for example, imply the right to protection from arbitrary killing, adultery, theft or defamation, while Exodus requires justice (22-26) and fairness (22:20-27, 23:6-7), as does Leviticus (19:13-19, 33-37). Buddhism requires good works for others, with the Bodhisattva (person who has attained living Buddhahood) being infinitely compassionate, while those striving for such attainment do so through earning 'merit' or good deeds. According to the Qur'an, Islam requires its followers to show mercy, undertake good deeds, respect the rule of law and place limitations on warfare. In less metaphysical terms, the Greek Stoic philosophers Epictetus and Hierapolis promoted the idea of 'universal brotherhood', which implies equality of treatment among humankind. Socrates similarly advocated a common good, Plato promoted justice (1955:V) and democracy, which in a way that echoes to this day he defined as liberty and equality (IX::6), while Aristotle promoted the 'virtuous mean' (1953:IV). In Antigone, Sophocles (1947) advanced the idea of a 'right', while Cicero promoted the conception of the citizens' republic and rule of law (1998). Further afield, Confucius' Analects arguably oppose the claims made for them by apologists for contemporary authoritarian governments (see Leys 1997). Confucius formulated the Analects in response to the political turmoil of the Chou Dynasty period in which he lived (circa 551-479 BCE). Within the Analects can be found a prevailing humanist theme (Ping-Chia 1965: 19-23; Schurmann & Schell 1977: 10-11, 48), which was noted by scholars of Enlightenment Europe such as Voltaire (1979: 78-95). Confucius has been regarded as a social reformer (as illustrated by the Analects 1995: iii) who was in favour of dissent (Leys 1997) and hence the legitimacy of plurality, rather than a supporter of an authoritarian status quo.

In contemporary society, the competing claims against human rights are many, with each reflecting assumptions about an ideal social organization. Utilitarianism supports rights on the basis of their majority utilitarian value, but may reject rights where they impede utility (or, with technocrats and bureaucrats, degrees of administrative convenience), broadly defined as the 'greatest good for the greatest number'. Communitarians assume a bonded identity,
opposition to which is less tolerated, or which may be tolerated by way of an overarching, community-centered relativism that can include the abrogation of individual rights.

Tensions within rights

Civil and political (first order human) rights are generally divided into ‘positive and ‘negative’ rights, or rights ‘to’ (for example, freedom of expression, gathering, political activity) and rights ‘from’ (such as arbitrary arrest, detention or torture), and between natural (implied) rights and positive (codified) rights. These correspond to the capacity for and potential restrictions upon agency, although it is easy in a theoretical discussion to overstate the practical implications of the distinction. Freedom from limitations creates the practical opportunity of freedom to engage in activity. Noting this value of protection from (negative rights) to allow the opportunity to (positive rights), Weinstock noted that ‘citizens need a bundle of rights that ensure that their freedom will not be encroached upon [negative rights] in ways that make the realization of their projects [positive rights] impossible.’ (Weinstock in Weinstock and Nadeau 2004:2)

These rights reflect the wide potential capacity of the quality of being human, to determine within or to choose to act beyond the constraints of structure, and the compulsion of oppression. In this, human rights cannot be qualified by structural exigencies, which may vary from place to place and time to time according to the preferences of power holders. Such variables may include, but not be limited to, economics, political institutionalism (institutions, parties, systems) or ‘culture’, assuming that this can be understood as a static, reified and hegemonic - or imposed - word view.

It has been a basic assumption of democratic government, in which the interest of the majority prevails (if not at the absolute expense of the minority) that it should pursue policies that produce the most favorable outcome for the greatest number of people. This position of pursuit of broadly favorable outcomes, or ‘public good’, assumes the existence of an overarching political unity, usually understood as ‘nation’, which is intended to secure and preserve the interests of the nation (that is, the ‘national interest’) within the context of a bounded and institutionally capable territory (the ‘state’).

Such good can be construed in purely material terms, such as economic benefit, security of economic conditions, strategic (sovereign) security and access to the benefits of the state, such as a consistent and equitably applied law, infrastructure and social services such as education and health. This good may also be construed in terms of security of political benefit, including political participation and representation, and the associated rights to freedom of speech and communication, and assembly, and from arbitrary arrest, detention, torture and so on. However, in a generally open society, the public good of rights that secure political goods may be in tension with the public good of rights that secure utilitarian goods. That is, political debate in favor of some economic redistribution might potentially limit absolute economic growth. The two may coexist and indeed in most rights-based societies do so with relative equilibrium between them, but they do so only in an unending contest for supremacy based on orderings of individual and group interest.

The fundamental assumptions underpinning utilitarianism are that there is a political cohort to which its value applies and that the utility applies to most of the people in a given community most of the time. This in turn assumes a unity of purpose, which in a fully realized form may constitute a nation within the institutional context of a state. This is not to suggest that the nation, the state or the ‘nation-state’ are a political ideal or absolute political ends in themselves. Rather it suggests that the fully realized form of a bonded political community may be called a ‘nation’, but may potentially be less or greater than contemporary conceptions, being less than represented by a state or by being spread across states. A nation may be a devolved or relatively evolved political community, either less or
greater than the rather static interpretations of nation (and also state) that tend to currently apply. By way of illustration, the Russian Empire (1721) evolved to become the Soviet Union (1917) but later devolved to become the Commonwealth of Independent States (1991), while Yugoslavia (1918) devolved to its constituent parts (1992). Conversely, the evolution of groups of nations has tended to be in primarily economic organizations such as the European Union (informally from 1951, and formally from 1992), although with a popular rejection of the EU constitution, curtailing its political organization (2005). Other examples include the North America Free Trade Agreement and the Association of Southeast Asian Nations. The greatest example of an evolved political community, however, is the United Nations. For all its failings, the United Nations has been held as the principle arbiter of global affairs since its inception (1949). The general tendency, then, has been for specific political unities to devolve to their constituent parts, while larger unities have tended to form as the result of perceived or actual economic or security benefit. The idea of nation, then has tended to reflect a devolution, or largely a return to aspects of primordialism, rather than evolution, and as such reflect vertical rather than horizontal interests.

Assuming a common bonded political identity, that is, a nation, the focus on the welfare of the community supports the utilitarian proposition. However, the degree to which the community is bonded may not apply equally to all elements of the community. To ensure the good of the constituent community members must allow all individuals the opportunity to express their preferences (where there is no harm to others) and protect them from the potential imposition of a singular communitarian will.

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\text{Interest}\n\begin{align*}
A \\
B \\
C
\end{align*}
\]

Figure 1. Overlap of common interest.

This figure is intended to illustrate the elements of overlap of common interest which might lead to recognition of advantage in political bonding. Assuming, for example, that Interests A, B and C equate with specific language, economic and security concerns, these might collectively comprise sufficient common purpose to agree to the idea of a bonded political community (nation). This could be understood in particular in the case of a post-colonial state in which neither language, economy or security are absolute unifiers in themselves, but which through sufficient proximity (perhaps borne out of colonial geo-spatial organization)
identify enough in common to maintain the value of the point of overlap. This could be said to imply a tendency towards vertical social integration, with the areas where there is no overlap comprising assertions of local identity or, potentially, vertical disintegration.

Alternatively, assuming that these interests are all economic, for example around sectors of capital, technology and labor, but with a common language and security focus. There might be greater common ground to form a single community, creating the horizontal conditions for national identity, but a particular point where unity of purpose is contested by specific interests. The points at which these respective interest groups do not overlap suggest a probable desire to preserve or promote specific interests, and the capacity to be able to do so. Given the tendency of the center or middle ground to act as a median point of interest, utilitarianism would assume that the greatest number of people receive at least some benefit, while relatively few are disadvantaged. This implies mutual acceptance of legitimate plurality.

Assuming that each interest group will assert their primary interest, or at least assert a claim to what constitutes a fair balance of interests, the middle ground and definitions of ‘greatest good’ become contested. Even where there is agreement about the greatest good, there may be instances where the greatest common good remains deleterious to constituent members. That is, it may be necessary to sacrifice the interests of a few for the greater good of many. This then suggests an inconsistent application of agreed codes (law) or the expedient abrogation of the interests of some members of the community for the benefit of others. Due to either the inconsistency of this application, or the institutionalization of expediency, this is likely to lead to social discord, potentially at high and destabilizing levels. Ensuring that both judicial inconsistency or institutionalized expediency are constrained therefore requires the institutionalization of a counter-balance, that is, the rights of the constituent member to freedom from such impositions and the freedom to fully engage as an equal in the process of determination of the common good.

The contrary position to community rights and interests, then, is to assert the ‘right’ of the social constituent - the individual - against the presupposed uniformity of interest, or the overarching welfare of the community. This then sets up a competition between community rights and individual rights. In putting forward a claim to individual freedom, Bentham (e.g. 1781:chXVI) and Hobbes (1962:ch21) argued that every law diminished freedom, even if the purpose of such law was to prevent a greater loss of freedom. Yet recognizing the practical value of majority claims, especially in a functioning democracy, the rights of an individual must on occasion be required to give way. Rejection of this compromise of absolute individual rights neglects the reality that individuals live within communities, and the rights of all cannot be compromised without exception by the rights on one.

This then posits liberalism - a preference for freedom - against libertarianism, - an absolute freedom - particularly in the economic sphere, and recognizes that the rights of one are bounded by their capacity to negatively impact on others. That is, freedom, which rights are supposed to make available, does not equate to freedom from law (see Larmore 1996:108), but rather freedom under law for all. The rights of a community are best preserved by guaranteeing the rights of its constituent members, but not without regard for the rights of others. O'Donnell and Schmitter referred to the process of positively redefining and extending rights as the substance of liberalization (O'Donnell and Schmitter 1986:7), which is a step in the direction of political development. As noted by Berlin, in arguing for a balance between rights, 'every law curtails some liberty, although it may be a means to increasing another' (1958:123, nb xlix). Similarly, Rawls did not see freedom (or 'liberty') as an absolute but as 'a certain pattern of social forms' (Rawls 1971: 63), or as what might be described as the positive right of rational individual autonomy along with freedom from domination or unnecessary or unwanted interference. Indeed, not only is the idea of individual rights not contrary to a sense of community, and hence certain utilitarian values, but as Larmore suggest, the community is the safest place in which rights can reside. 'Take our fate out of
the hands of individuals,' he said, 'and give our immunity to interference an impersonal or collective basis' (Larmore 1996:114).

In this, there is a parallel between the somewhat artificial separation of positive and negative rights and the distinction between the individual and the community. A community is nothing more than a collective of individuals, just as an individual is nothing more - or less - than a constituent of a community. A conceptual differentiation may be required of both for theoretical purposes, but in practice the community and individuals overlap and live within each other. As the individual goes forward, so too does the community; when the community regresses, so do the individuals who comprise it. The political development of one implies the political development of the other.

Relativism and rights

The arguments in favor of the relativism of civil and political rights - the exceptionalism of particular cultures, nations, states or regimes - are generally put by two groups of people. The first group includes academics who have a particular focus on culture (largely but not exclusively anthropologists and other social theorists) who wish to defend the cultural particularities of their site of interest from a more generalized absorption into Western or global culture. The second main group, who are sometimes uncomfortable bedfellows with the first, comprises political figures who use culturally relativist arguments about rights to sustain unequal power relationships or to excuse otherwise inexcusable abuses. Such individuals or groups may draw on pre-existing conceptions of power relations which may, in the absence of alternatives, be 'naturalised' so as to preclude the conception that another possibility could exist (Lukes 1974).

Many critics of human rights, especially in developing countries, oppose universal conceptions of human rights as being specific rather than universal and as reflecting a type of cultural imperialism (for example, see World Conference on Human Rights 1993:3, Suh 1997). These critics claim that rather than being universal, human rights generally and civil and political rights in particular are a reflection of particular cultural values and, as such, amount to the imposition of an alien culture. This argument is usually advanced in association with claims to other forms of imperialism or neo-imperialism, such as unbalanced economic or strategic relations. Notably, the issue of perceived or claimed imposition of an alien culture of human rights alone reflects cultural insensitivity, which calls for rejection on such grounds alone. Arguments about the imposition of human rights, as with the imposition of democracy, contradict the underlying intentions of civil and political rights, so that such imposition becomes the enemy of the human rights it is trying to support. The claim to cultural relativism as a method of rejecting civil and political rights is, however, more difficult to sustain.

There is an inherent assertion of equality amongst those who attempt to legitimate claims against conceptions of universally valid human rights. That is, detractors of universal civil and political rights argue that their view is of equal validity to views expressed in support of such rights. Yet implicitly, a relativized understanding should not logically accept such equality of the value of assertions. To accept such equality accepts the equal legitimacy of the right to express it as a freely held value. This in turn implicitly supports the case in favor of universal civil and political rights.

The only circumstances under which claims to relativization that propose an inequality of values can be sustained is where there is an ordering or hierarchy of value claims, for example that the individual is less important than the community, or that some individuals have less value than others. While hierarchical ordering has the potential to separate and privilege particular value claims, and thus avoid the egalitarian principles that underpin universal claims, there is nothing in this which presupposes that claims against universal civil
and political rights would be sustained. Indeed, the argument in favor of the value of one set of cultural claims over another underpins the assumption of cultural superiority that helped to rationalize much of the European colonial expansion of the late 18th century. It has similarly helped to rationalize other acts of aggression, based on an interpretation of social Darwinism, perhaps the most extreme example of which was the Nazi occupation of Europe, in particular the Nazi plan to establish a leibenstraum in the western Soviet Union. The ‘Slavic’ peoples were, according to this plan, to become slaves or otherwise dispossessed and forced to survive for themselves. This was the fate, under Nazi philosophy, of ‘culturally inferior’ peoples. In this, the ordering of the value of cultures, and the consequent assumptions of superiority (or the dehumanization associated with ‘inferiority’), have been a key motivating factor in numerous conflicts, from Cambodia’s attack against Vietnam in 1978 to the 1994 Rwanda genocide and the Islamist-inspired terrorism of the early 21st century. That is, cultural relativism opens the door not just to difference, but to persecution rationalized by such difference. The argument of a particular ordering of human value based on cultural specificity is logically weak. The underlying assumptions are too heavily interest driven and thus compromised and unsustainable on their own grounds. Conversely, if the argument for human rights according to cultural specificity is predicated not upon legitimacy, which assumes broad social acceptance, then it must be based on coercion or force, which implies the capacity to impose universal civil and political rights! However, as noted, the imposition of such rights remains contrary to their underlying principles and is likely to call forth rejection based on the fact of the imposition, rather than for the inherent quality of the rights in question.

Beyond this, if one wishes to assert the claims of relative values but by defending their legitimacy on the grounds of ‘difference’, that legitimacy can only be sustained by the complete separation of values, in which values are not understood as actually relative to each other, but in which there is no dialogue between values. Not only does this contradict how the world actually works - that there has always been communicative permeability and that this is rapidly increasing - it also assumes there is or could be some intrinsic value in such splendid isolation. However, while this latter scenario makes little sense in theory and does not apply in practice, claims to the relativism of rights continue, if decreasingly at an official level. Like claims to democracy, the widespread acceptance of the terminology around civil and political rights has on the one hand tended to be devalued and on the other hand has been all too often observed in the breach. But despite such rhetorical if not actual acceptance of civil and political rights, there continue to be moments where, especially in specific cases, arguments are put to ‘explain’ the special circumstances of particular cases. Atrocities against civilians in conflict zones are a principle example of ‘explaining’ such ‘special circumstances’.

Assuming the claim for the relativisation of civil and political rights overcomes these hurdles, this claim then implicitly raises the question of different sets of rights for different people in different circumstances. That is, it assumes cultural or state specific rights, rather than rights predicated upon the universal quality of existing as a human being. Yet the universalist claim of civil and political rights pertains not to the specificity of one’s circumstances but to the quality of being human, which is a commonality (consensus gentium) not defined by time, place or culture (for discussion on ‘generic humanity’, see Geertz 1993:43, 50, 60, 350-1, Geertz 1989:15, 70, Todorov 1986:374).

This then raises the issue of the moral basis of rights. Assuming that human rights are predicated upon certain moral principles, as asserted by Howard and Donnelly[2] (1996), there is equally a claim that different moral values will produce different understandings about rights. This then undermines the claim to the universality of human rights and indeed the status of rights altogether (see MacIntyre 1981). Apart from the theoretical arguments surrounding this issue, this claim to the validity of moral relativism is based on a weak
practical argument. If morals are based on codes of behavior that reflect how individuals wish to be treated, there is a demonstrable commonality among humans to be treated with a degree of dignity and to be accorded the opportunity, where materially possible, to live without undue hardship or under oppressive or unnecessarily interfering rule[3]. No-one enjoys or accepts torture or arbitrary imprisonment, and around the world individuals and groups overwhelmingly choose, where they are given the opportunity, to contribute to decisions that directly affect their personal well-being and that of their loved ones and community. To this end, the moral basis of human rights reflects rational morality predicated upon the utilitarian value of protecting others as the best guarantee of protecting oneself, and the emotional good of doing so.

The issue of cultural relativism is difficult in relation to human rights generally and civil and political rights in particular. As discussed, claims to cultural relativism tend to argue that as human rights reflect a particular world view they are culturally specific and may not accord with other world views. The emphasis within human rights on claims to free expression and assembly are seen in some political environments as not just challenging the status quo but as creating an unstable political and economic environment and inciting already restive populations to illegal activity. In circumstances where the state is struggling to construct basic institutions, to provide services and to head down one consistent development path, such political distractions are often unwelcome and are arguably unhelpful. There are, however, internal contradictions within most culturally based objections to human rights.

A relative conception of rights assumes that what is understood by one might not (or cannot) be understood by another, and that neither understanding is privileged over the other. No particular meaning can assert its authority if meaning is constantly deferred via a chain reaction of questioning away from the source. Initially there is an internal contradiction of deconstructing relativism's own proposition and its implicit lack of engagement with demonstrable realities. Beyond this, where such relativism (or relativisms) acknowledges and respects difference, it could be understood as 'positive relativism', and would be the type favored by most intellectual advocates of 'difference', such as Foucault (1982), Derrida (1980, 1997) and Lyotard (1984), and linguists who broadly follow the Whorf-Sapir (1956-1955) incommensurability hypothesis of the ultimate inability to translate language. 'Positive' relativism in this approach implies an affirming quality, in that such difference seeks liberation from imposition. Assuming that positive relativism involves acceptance of plurality (or pluralities) it positions individuals or groups in ways that cannot be regarded as the same. This then differentiates within groups, with the further assumption being that all individuals are both somewhat different but- if they are not to comprise a fundamentally differentiated and hence totally fragmented or atomized and internally alienated society- must be regarded as forming part of an overarching cohesive whole.

More disconcertingly, though, the deferrals of meaning implied in relativism can also be adopted to support 'negative relativism'. Negative relativism implies negation and, embracing nothingness, a nihilistic intellectual and human wasteland. As such, it positions people according to a subjective cultural or physiological scale, at the far end of which blurs the categories of value of existence ('there is no truth', 'the other is subjectively imagined', etc). Regarding all constituent citizens as of equal political and judicial value is the only alternative to employing a categorization of individual human worth. Without a consistent judicial process (that is, convicted criminals lose some equal value as citizens for the period of and sometimes after their sentence), individual measurement would be impossible to construct and thus administer. and, in both its theoretically questionable and practically unachievable modes, horrific in its application. Institutional racism (the hierarchical formalization of valuing ethnicity), of course, has done just this on the basis of group rather than individual identity. In this, racism assumes a profoundly subjective and hence inconsistent assessment of general human value and is, at best, an actor by actor and often victim by victim response. Such responses may be able to be applied in gross numbers as part of a specific program,
the Holocaust and Apartheid being cases in point, but which beyond a rationalization for 
amoral power still suffers from arbitrary categories of victims which can, logically, change, 
including the program turning upon itself or elements of itself. Aspects of this latter 
phenomenon can be seen under Stalin's rule in the USSR, Mao's purges in the 1950s and 
again during the Cultural Revolution, in Nazi Germany and with Cambodia's Khmer Rouge. 
Despite targeting others as well as ultimately their own members, these events demonstrated 
more an acute psychopathology rather than internally consistent political programs. That is 
to say, if relativism is consistent it must respect difference, or else devour itself.

**Other objectors**

Another rejection of human rights derives from a particular interpretation of leftist 
revolutionism, although this, too, suffers from internal contradictions. Communism tends to 
reject rights as a bourgeois sham within the context of an ideal (utopian) state. Other than 
using such rights as an anti-bourgeois ruse, it is regarded as an impediment to the 
dictatorship of the proletariat in the attainment of a utopian state in which rights are implicitly 
atained (For example, see Campbell 1983). This, broadly, equates to the 'efficiency' 
argument for bureaucratic authoritarianism, in which the end justifies the means. Conversely, 
the radical left's claim to egalitarianism implies a right to material and political equality, in 
which attempts to disadvantage the 'right to equality' of one must be resisted by all, which in 
turn implies the right to assemble, protest and free speech, and presumably the right to not 
be arrested, detained or tortured for engaging in such activity. Assuming the validity of these 
implicit rights, which any self-respecting revolutionary would assert in the face of oppression, 
it makes little sense to cast such rights away upon attainment of just the first step towards 
the socialist utopia. Indeed, apart from history's many specific object lessons, the principle of 
bottom-up solidarity would seem to require retention of that 'reserve power' in case the road 
to 'utopia' is paved with other than good intentions, for example, in Stalin's USSR.

In other potential or actual objections, egalitarianism tends to impose restrictions on 
individual accumulations of various kinds, thus restricting choice and capacity. Neither 
specifically left nor right, libertarianism proposes certain rights to, but does not protect others 
with rights from; there are no effective boundaries between 'right to' and 'right from', with all 
having the basic 'right' to survive (or perish) as best they can. All of the political models 
noted above, then, suggest limitations to or restrictions on aspects of human rights, even if 
each potentially promotes a particular right or set of rights.[4][4] As Lukes (1993) proposed, 
each of these forms and their respective criteria can overlap on the grounds of respecting the 
claims of each other while acknowledging the legitimacy of (positive) difference. Lukes' 
suggestion, acknowledging the potential for disagreement, is to propose a 'reasonably short 
and reasonably abstract' model of rights that emphasizes basic civil and political rights, rule 
of law, freedom of expression and association, equality of opportunity and the right to a basic 
level of material well-being. He constructs this model as an 'egalitarian plateau', providing 
the field upon of which contests of ideas, including about rights, can take place. It is, in a 
sense, a proposition about rules for civilized behavior in which competing ideas can be 
discussed and negotiated without resort to the barbarities that continue to plague many 
countries of the world, and which act as a barrier to - or destroyer of - political 
development.

**Rights and political development**

As noted at the outset of this chapter, the link between civil and political rights and political 
development is a basic one. One could even argue that they are but differing interpretations 
of or orientation of focus towards the same basic quality. That is, it is not so much that 
political development cannot be achieved without due regard for civil and political rights, but 
as a central component of political development, the presence of civil and political rights is a 
key marker of the extent to which political development exists.
There are various interpretations of what constitutes civil and political rights, but the United Nations Declaration of Human Rights is the most broadly supported and widely adopted version, with the International Covenant on Civil and Political Rights having been signed by most countries, if in many cases with specific qualifications that usually pertain to constitutional or legal issues (UNTC 2002). There are a total of thirty articles outlining people's human rights, but the central and arguably most important principles are the right to life [5], liberty [6], property [7] and security of person [8] (s), freedom [9] from torture [10] or cruel, inhumane treatment or punishment, freedom of thought [11], conscience and religion [12], and freedom of expression and opinion [13] and assembly.

The rights to life [5], liberty [6], property [7] and security of person [8] are at the most basic end of the scale of rights and, at first glance, say little more than each person who is alive retains the right to stay that way and to own property. This then also goes to the issue of personal security. The question of property, however, becomes more problematic, not so much at the point where it refers to simple ownership of a home or the goods for a home, or tools or other means of making a living, but where the right to property for one impinges on the right to property of others. This potential caveat applies particularly to the individual or corporate accumulation of very large quantities of property. Hence, given the capacity for competing interests, the claim to property is left intentionally ambiguous.

The issue of freedom of thought [11], conscience and religion [12] is closely associated with freedom of expression and opinion [13], in that the capacity to hold independent thought can only be manifested through expression. Conversely, if such thoughts are not expressed, they cannot in a practical or legal sense be held to exist. The capacity to think, and in a related manner to express oneself though language or other symbolic forms, is fundamental to the condition of being human.

The issue of religious freedom is closely linked to freedom of thought and expression in more overt political areas, with all world religions containing a normative world view expressed as a moral philosophy, and often a code of formal behavior up to and including rules for social organisation [5] [14]. For these reasons, religious belief is not only about how individuals relate to each other and to understanding their place in the universe and in relation to a metaphysical existence, but it is also about politics, including challenges to the political status quo. In China, for example, the Falun Gong organization is proscribed, while the theocratic Iranian state has persecuted followers of the Baha’i faith. This is not to mention the status of state religions prior to the separation of church and state and their frequent lack of tolerance of difference.

Beyond religion, at least as an exercise in metaphysics, assuming that a person has more material interests, which also appears to be a consequence of the condition of being human, that person will consciously consider those interests, and more than likely articulate them in support of their claims. It is at the point where the articulation of those interest claims clashes with the claims of another who is able to compel the circumstances to his favor that he may wish the former claimant to desist with his claims, and with expressions of his claims. This reflects the primacy of might over what could otherwise be a legitimate claim or a more equitable distribution satisfaction of interests.

In more concrete example, a person or group of people who have an interest-bearing claim, say over a form of economic equity, will seek to discuss their claim among themselves by way of clarifying the legitimacy and practicalities of the claim and organizing to address it. The right to speak to this issue is fundamental to sharing such concerns or claims. The related right of assembly is also critical to such communication, especially in societies prior to access to mass communication but also as a physical expression of solidarity.

In contemporary societies in which mass communication has become the norm (in effect, this
includes all but the most remote or underdeveloped societies), freedom of speech has evolved into the idea of a free media, media diversification and public access to that media. The idea of a free media is one that does not labor under censorship or restrictions on its ability to report, analyze and comment on public affairs - its 'watchdog' role - and is generally accessible to most people most of the time. In developing countries, apart from government control or censorship, the principle restriction on public access to the media is cost, particularly in relation to print media and television, and literacy, in relation to print. Assuming literacy, most print media is too expensive for people living at or under the poverty line, although it does have the advantage of being able to be shared.

Television is even more expensive, not only in the purchase of the receiver but also in terms of production and broadcast. This is particularly so in relation to television news and information programming, which is most relevant to the dissemination of information that addresses interest claims. Production costs also affect the quality of information, with the tension between audience retention and information provision generally being weighted in favor of programming that has higher audience retention at lower cost, which tends to preclude or limit information programming (especially at the 'quality' end of the information spectrum). Having noted these limitations, as developing countries climb the economic ladder, televisions are among the first consumer items to be purchased, and are very often shared by larger family or even community groups. Because of the lack of literacy requirement, relatively low cost and ease of access, radio has been a popular form of communication generally and in developing countries in particular. It is inexpensive to operate, relatively inexpensive to own and often reaches over longer or more inhospitable distances than either print or television media.

Beyond such issues, limited sources of information-, or restricted ownership of a number of media sources-, has considerable potential to limit the range of information and ideas that might be made available to the public. Diversification of media ownership has become a critical issue in many societies with the potential for or actual concentration of media ownership. It was no accident that Italy's most dominant media owner, Silvio Berlusconi, was also Italy's longest-serving post-war prime minister, as well as being that country's richest citizen. More conventional, however, are alliances between media owners and politicians, in which there is both a cross-over of interest and influence, and it is common for particular media to openly campaign on behalf of particular politicians or parties. Indeed, the origins of the print press, in the 17th century, were as partisan publications.

The issue of media diversification has been one that has not only troubled states generally, but it has troubled developing countries in particular. There has long been a concern on the part of many developing countries that they have little control over what is said about them, or from within them, to wider global audiences, and this has often been to their detriment. It is a fair assessment to say that what constitutes news is generally negative - disasters of one type or another - and that developing countries are very often only heard about when they are experiencing one form of disaster or another. This in turn creates a perception problem, which negatively influences economic matters such as loans, foreign investment and tourism. That global news media outlets are entirely owned by OECD countries, and largely located in the United States, further concentrates both the ownership of the global news media and also its perspective. This in turn restricts the capacity for communication, which in turn limits the right to meaningful free speech.

Developing countries have at different times attempted to control this situation, most notoriously through so-called 'development journalism', manifested in 1978 with UNESCO's introduction of the New World Information and Communications Order (NWICO). While its philosophical underpinning was generally sound, including the promotion of locally useful information and a balance of positive and negative information coming out of developing countries, the NWICO manifested as censorship and control. Despotic and authoritarian...
governments around the world leapt on the NWICO as an excuse to compel, or try to compel, the media to disseminate only positive information when there were genuine problems also to be reported, not least of which included human rights violations, corruption and generalized unaccountability. As a result, western journalists and media outlets generally responded to the pressure with some hostility and refused on principle to modify their reporting. This was one clear case where what was taken as compulsion in favor of what was probably a good and perhaps even necessary idea resulted in that idea being wrecked and then abandoned. Attempting to regulate media responsibility was akin to abrogating human rights in order to ensure they were respected.

Beyond a diversity of preference - or strict neutrality - expressed by the media, access to the media has also been asserted as of importance to the promotion of civil and political rights, particularly in case where where certain relevant opinions are perceived to be marginalized or censored. However, opening the media to everyone with a desire to have their views expressed is a long way from practical and, as shown by 'talk-back? radio', web logging and internet chat groups, often results in some not especially enlightening commentary. The point of mediation of tensions between inclusion and 'professionalism' is among the most contested sites of public life and a, perhaps the, prime foci of communicative efforts by interest and pressure groups, not to mention politicians and parties.

Freedom of speech, then, has evolved from being a simple right to express a particular view in a public place, to a much more complex and nuanced debate about ownership, control and 'gate-keeping' or censorship, technology, cost, quality and quantity of information and, perhaps most of all, access. Freedom of speech and its relationship with the mass media is widely recognized as being fundamental to contemporary politics and essential to an open political society, yet the balance within it remains contested and for many controversial. Given the centrality of this subject, the contest of ideas and interests over this subject is itself one of the points upon which contemporary politics turns. The way in which societies, and governments on their behalf, decide these questions speaks centrally to core issues of informed public participation, official transparency and accountability. How a society addresses elaborations of the first principle human right of free speech, then, is a central determinant of that society's political development.

Law

If the universal claims of human rights have a measurable basis, it is not so much in what people in common wish for, even though there is a high degree of commonality in basic aspirations. Rather, the most absolute point of consistency is in what people do not wish for, or, more to the point, wish to avoid at all cost. If there are quibbles about some universal claims, one that stands up irrespective of time, place, culture or other circumstances, is abhorrence of personal torture. That is, no-one likes it, no-one would willingly put up with it and everyone would wish that it did not exist should they be subject to it (see Singer 1979).

Similarly, being jailed is for most people a negative experience and few people would willingly surrender themselves to incarceration. This is particularly so if incarceration is outside of the due process of law and if it includes not the relative comforts and security of some of the more enlightened prison systems, but is constructed around the bare minimum to sustain life, and perhaps then not for the long term.

The question of normative forms of and respect for civil and political rights is best addressed by being directly tested against a specific universal set of criteria, and whether political rule meets the test of legitimacy (see Morris 1998: 24, 105-11). Broadly, 'legitimacy', in the positive sense, complies with the exercise of power in accordance with a broadly accepted set of principles, procedures or method of conferral of authority. As this is generally codified in order to achieve some standardization of application, it implies the existence of law.
Indeed, the word 'legitimacy', like that of legal, derives from the Roman *lex* ('law'), and its original application did not distinguish between the legitimacy and legality of a regime; in order to be one it had to be the other, in contrast to arbitrary rule or tyranny. In later discussion, especially under the influence of Christian theology, the idea of legitimacy was linked to natural law, and through the Enlightenment gradually democratized. Weber's theory of legitimacy of rule canvassed different ideal models obtaining to different preconditions, but throughout asserted that legitimacy either arose through acceptance of a precondition, imitation, rational belief in its value, or its legality (Weber 1946:130). Another set of criteria might construe legitimacy as being comprised either of a normative natural order that translates as political order. For example, such criteria can be found in traditional forms of rule and elements of 'organic' political corporatism or in a liberal-minimalist model dependent upon a state's capacity to maintain peace under rule of law, characterized by the 'small state' approach of neo-liberalism. They can also be located in a democratic-proceduralist model of agreement between free and equal citizens, based on individual self-determination (as the only rational basis for morality) as outlined by and Kant and as social contract by Rousseau. It is also possible that claims to universalist legitimation may be abandoned in favor of relativism, as exemplified by the 'deconstruction' of the universal to the particular of Derrida, the anti-'grand narrative' approach of Lyotard, and the micro-power structure focus of Foucault.

There is, of course, a claimed paradox between conceptions of freedom and law: to the extent that freedom is understood as the absence of domination, just laws form its precondition (Larmore in Winestock and Nadeau 2004:105) Yet this 'sense of paradox is due to confusing the absence of domination with the absence of interference' (Larmore in Winestock and Nadeau 2004:106), which is most often associated with the utilitarianism of Bentham. Moreover, in ancient Greece, 'Demokratia was committed to the rule of law because it recognized that the rule of law protected the interests of the poor as well as the rich' (Ober 2000). This is to say, while law imposes some limitations upon freedom, normatively they are only the freedom to restrict the freedom of others. In that law normatively guarantees protection from such arbitrary restrictions, it enhances real freedom.

Freedom from arbitrary arrest, detention and torture are among the first generation civil and political rights, as legal protection from authoritarian excesses intended to quell challenges to the authority of an oppressive state. These freedoms 'from' are necessary rights alone, but are especially important as protective measures in concert with rights 'to' freedom of speech and assembly, and so on. Freedom from arbitrary arrest, detention and torture also imply the existence of the rule of law, which is an essential component of the process of political development. Beyond that, structures against the use of inhumane or degrading punishment, including torture, reflect the positive values of a society in relation to its own members, and imply a broadly benign approach and a degree of mutual respect as human beings, even for law breakers. Taken from a negative perspective, stricutures on the use of torture or other cruel, degrading or inhumane forms of punishment also reflects an awareness that it is not entirely possible to separate one aspect of a society's behavior from others, and that what occurs in prisons, and the means by which citizens might get there, says much about how a society more generally treats itself, its capacity for empathy and its sensitivity or otherwise to human suffering.

If political development is held to be a normative good, then it implies the capacity and intention for the improvement of peoples' lives based on a wide-ranging sense of inclusion and participation through practical recognition of the validity and implementation of civil and political rights that are essential to such development. The key components of civil and political rights, as both rights 'to' and rights 'from', ensure the capacity for constituent members of a polity to communicate with each other without fear over matters of individual or mutual relevance and importance. The right to meet, to discuss, to express views and to disseminate those views amongst one's community is basic not just to political freedom,
to the a full and fair manifestation of the human condition. The history of humankind has been one of gradual, non-linear improvement, with significant set-backs and developmental cul-de-sacs, but with an overall improvement in and increase of human awareness, understanding, organization and implementation. The Enlightenment tradition might have corresponded to a particular historical era, but its antecedents date back to the earliest philosophers and the best aspects of religious tradition. Its legacy, meanwhile, continues to inform the spirit of inquiry, of tolerance and understanding, and of seeking ways forward based on rational decision making among human beings of intrinsic equal worth.

But even though humanity is now is a very long way from where it has been, political development has been grossly uneven, and in some cases has not allowed even the beginning of the development of human potential. These basic abilities ‘to’, enhanced by freedom ‘from’, underpin any meaningful conception of political development, without which individuals could only be said to live in a state of political underdevelopment that is equivalent to economic underdevelopment for its poverty of freedom. To that end, we may have glimpses of what could constitute a free and fair society, but for many, and probably most people, that remains a distant dream. The full and equal implementation of civil and political rights, *primus inter pares*, recognizes their direct and central contribution to and underpinning of democratization in its most substantive sense. In this, there can be no political development without full recognition and implementation of civil and political rights, and such full implementation is itself the key criteria by which such political development must be measured.

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[1] Second generation rights include economic, social and cultural rights, with third generation rights including peace and a sustainable environment.

[2] Howard and Donnelly support universal human rights claims, but appear to have been unclear on the point of the universality of their moral assertion.

[3] This general assertion is based on personal experience in a range of geographic, cultural and political contexts.


[5] Islam, Christianity and Judaism in particular express such codes.