

MORAL CLAIMS, HUMAN RIGHTS, AND POPULATION POLICIES

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ON DECEMBER 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. The Declaration was to be "a common standard of achievement for all peoples." From the beginning, however, it was bedeviled by the ambiguous nature of this "common standard."¹ Its preamble, in fact, appeared to define the standard as an ideal guide for future action, rather than to establish in it a base line of inviolable protection against the arbitrary behavior of governments and individuals. Indeed, the Declaration was to serve as a curriculum guide for "teaching and education to promote respect for these rights" and a political platform for "progressive measures, national and international, to secure their universal and effective recognition and observance."²

Because of these educational and policy-making intentions, the Declaration has seemed from the very beginning to be inefficacious. An amalgam of rights, taken, on the one hand, from the liberal democratic traditions and, on the other, from newer socialist societies, it was incapable of eliciting the consent necessary for a document to be an effective expression of universal moral purpose. Socialist countries recoiled from initiating bourgeois political freedoms which might jeopardize redistribution of wealth and the establishment of a minimum standard of well-being for their people. The U.S. was scandalized by this "complete blueprint for socializing the world."³ The Federal government was warned against the use of the UN accords on human rights as "a Trojan Horse by those who would continue the social and economic revolution in this country by extraconstitutional means."⁴

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¹ "Universal Declaration of Human Rights," in *Human Rights: A Compilation of International Instruments of the United Nations* (New York: United Nations, 1973) preamble, p. 1.

² *Ibid.*

³ U.S. Congress, Senate, Committee on the Judiciary. *Treaties and Executive Agreements, Hearings before a Subcommittee on Constitutional Amendments*. S. J. 1. 84th Cong., 1st Session, 1955, p. 210.

⁴ *Ibid.*, p. 246. See Vernon Van Dyke, *Human Rights, the United States, and the World Community* (New York: Oxford, 1970) chap. 7, "Should Additional International Obligations Be Accepted?" pp. 129-56, for a history of reactions in the U.S. to ratification of UN covenants on human rights.

American reaction to treaty obligations for the implementation of human rights, however, was by no means limited to this kind of nativist isolationism. President Truman anticipated American ratification of covenant obligations after arduous negotiations to overcome differences of culture and legal system. John Foster Dulles argued: "We must go on with the drafting of a Covenant which will seek to translate human rights into law. It does not minimize our own Declaration of Independence to recognize that the Constitution and its Bill of Rights were required to establish the body of law necessary to achieve practical results. So with the Declaration before the Assembly."⁶ Nonetheless, opposition to ratification of implementing agreements has prevailed. As of December 31, 1972, neither the International Covenant on Economic, Social, and Cultural Rights (1966) nor the International Covenant on Civil and Political Rights (1966) and its Optional Protocol had been put into effect.

At the time of the adoption of the 1948 Declaration, Teilhard de Chardin wrote that in 1789 "the rights of man were mainly assertions of the desire of the individual for independence."⁶ In 1948, however, he saw a different spirit at work: "Whether we like it or not, humanity is collectivizing itself. . . . Hence the new conflict in every human heart, between the human unit, who is ever more conscious of his individual value, and his social ties, which are becoming ever more exacting."⁷ As part of the United Nations' Second Development Decade, the World Population Year brings to a head the enormous tensions latent in the convergence of liberal individualism with popular socialism in the delineation of human rights.

The application of Jay Forrester's "world dynamics" in *The Limits to Growth* has shocked policy-makers, the educated public, and church leaders into awareness of the stresses which the intensification of the worth of the individual and the integration of a convergent world bring to bear on all those who are concerned with the human shape of the future.⁸

⁶ John Foster Dulles, "The Future of the United Nations," *International Conciliator*, no. 445 (Nov. 1948) 585.

⁶ Pierre Teilhard de Chardin, "Some Reflections on the Rights of Man," in *Human Rights: Comments and Interpretations*, a symposium edited by UNESCO, with an introduction by Jacques Maritain (New York: Columbia Univ., 1949) p. 105.

⁷ *Ibid.*

⁸ See Donella H. Meadows *et al.*, *The Limits to Growth* (New York: New American Library, 1972) pp. 26-29; Jay W. Forrester, *World Dynamics* (Cambridge, Mass.: Wright-Allen, 1971). On the implications of Forrester's systemic analysis for the churches, see "The Churches at the Transition between Growth and World Equilibrium," a talk to the Division of Overseas Ministries of the National Council of Churches, Nov. 4, 1971; and for the rationale of this approach, see his "Counterintuitive Nature of Social Systems," *Technology Review* 73 (1971).

It has highlighted the ambiguity of exponential demographic expansion.⁹ On the one hand, it has shown that limitation of the rate of population growth is essential to the ability of the poor nations especially to bring about a minimal standard of well-being for their people, and, on the other, that economic growth can no longer be relied upon as a means for providing just distribution to the poor. The conflict between the self-fulfilment of persons and groups and the interests of a just global order is the chief issue in human development. In particular, the question is this: How are the prerogatives of the family and of ethnic minorities enshrined in international accords on human rights to be adjusted with the equally sanctioned rights of persons to be provided with housing, health care, education, and economic security?¹⁰ Ten years from now, what values will be found unshaken and unshakable? What institutions and ways of life will be found intact, which discarded or dismantled? What structures and habits now at the periphery of life will be found at the center? Figure 1 is a selection of scenarios of human rights, let us say in 1984, arranged around permutations of population control. The sole purpose of these scenarios is to clarify the relative importance of values under certain conditions.¹¹

⁹ On the projected effects on the world system of the prolongation of recent demographic trends, and the projected impacts of changes in these patterns, see *The Limits to Growth*, pp. 41-45, 95-134.

¹⁰ The dignity and rights of the family are espoused in the following UN documents: Universal Declaration of Human Rights (1948) arts. 12, 16, 25.2, 26.3; International Covenant on Social, Economic, and Cultural Rights (1966) art. 10.1-2; International Covenant on Civil and Political Rights (1966) art. 23; Proclamation of Tehran (1968) art. 16; Convention on Consent to Marriage (1962); Recommendation on Consent to Marriage (1962); Declaration on the Rights of the Child (1959). All may be found in *Human Rights* (n. 2 above). On socioeconomic rights see Universal Declaration of Human Rights, arts. 17, 22, 23.1-4, 24, 25.1, 26; International Covenant on Economic, Social, and Cultural Rights, arts. 1.1, 7, 8, 9, 11, 12, 13; Proclamation of Tehran, arts. 12-15.

¹¹ This projective analysis does not intend to make values contingent on certain future social settings, only to clarify the strong and weak values implied in policies. Most of the positions analyzed here have proponents in the literature. For advocacy of coercive measures, see Paul Ehrlich, *The Population Bomb* (New York: Ballantine, 1968), and Garrett Hardin, "The Tragedy of the Commons," *Science* 162, 1243-48. Bernard Berelson, "Beyond Family Planning," *Studies in Family Planning* 38 (Feb. 1969), reviews various proposals for population control and finds coercive methods morally unacceptable. Robert M. Veatch has assessed proposals for government incentives in "Governmental Incentives: Ethical Issues at Stake," in *The Population Crisis and Moral Responsibility*, ed. J. Philip Wogaman (Washington, D.C.: Public Affairs, 1972) pp. 207-24, and in "A Proposal for Taxing Childbearing: Can It Be Just?" a privately circulated working paper (Hastings, N.Y.: Institute of Society, Ethics and the Life Sciences, 1971). Daniel Callahan has advocated the primacy of freedom in population policy in "Ethics and Population Limitation" (New York: Population Council, 1971). Ivan Illich, in *Tools for Conviviality*

ALTERNATIVE POLICIES,

Beyond family planning: coercive	Beyond family planning: incentives and disincentives	Voluntary family planning
Licensing; compulsory sterilization-abortion for violations	Tax benefits withdrawn from families; tax and other disincentives	Contraception; women's rights; abortion on demand
Survival of species at high level of well-being	Prevent disaster without affront to human rights	Personal freedom and responsibility
Individual and familial procreative rights; justice	Justice; freedom to choose alternate social states	Survival; justice (in consequences for society)
Fiction of society	Flexible margins of social control	Defenses for human self-determination
Legal privilege	Procreate within limits	Choice of number and spacing of children
High standard for survivors	Granted only to allotted children	Information and means of control; only aids to freedom
No risk in the population area; risk loss of free society and value of justice	Subtle but effective erosion of freedom; injustice to poor	Risk survival at high level; risk minimum standard for poor

Figure 1

For the purposes of this essay, it will be sufficient to analyze one policy to see how the choice of any policy involves adopting a constellation of values, granting relevance to some values and grading others into irrelevance. Let us take the third option, voluntary family planning. This policy chooses family planning as the sole means of population limitation, and so opposes any intervention by government to control reproduc-

(New York: Harper & Row, 1973), stresses that population control should be part of a multiple balance which must begin with control of technological supergrowth. A pronatalist survival argument may be found in Seymour Siegel, "Group Competition and Survival," in *The Population Crisis and Moral Responsibility*. The argument of this essay favors the "developmental" model, which looks for a synergy of socioeconomic development with population stabilization.

VALUES, AND RIGHTS

Developmental: synergy of justice with population control	Controlled technology	Population growth	POLICY
Women in work force, health care, education, old-age benefits, and family planning	Nonspecialized community health care with family planning	Incentives for large families	MEASURES
Justice and human dignity	Realization in community	Survival and dominance of group or nation-state	PEREMPTORY VALUE
Survival and degree of individual freedom	Technological and organizational expansion	Justice, global survival; individual and outgroup freedom	RELATIVE VALUE
Intrinsic to human nature	Social relation	Self-interest	CONCEPT OF RIGHT
Procreate within limits	Procreate within limits	Procreate without specific limit	FAMILIAL RIGHT
Economic security and health care for all	Econ. security, health care limited by convivial technology	Security based on growth for group alone	SOCIAL RIGHT
Ineffective due to time lag: both population control and social justice	Risks certainty of control; entails decline for developed nations	Leads to uncontrollable problem; global imbalance and injustice	RISK

tive patterns. Couples are to be responsible for the number and spacing of their children. The means of fertility control is for them to choose, and their right to education in reproductive physiology and contraceptive technology is affirmed. The preemptory value under this alternative is personal freedom. Responsible parenthood is expected, but responsibility in justice to the members of a given society or to the world community for the burdens of excessive population growth is subordinated to the value of freedom. Species survival is downgraded even more as a direct consideration. Justice and survival may be risked, freedom may not.

Voluntary family planning implicitly holds the theory that rights are defensive perimeters for the protection of private citizens against the incursions of the state. Family rights consist in the procedural preroga-

tives of free choice in the number and spacing of children. Other rights are intended only to foster the primary one of self-determination, such as the right to information and open access to means of fertility control, including abortion. There is a reluctance to give material support on a broad scale to families under the title of rights. As a result of this priority of values, voluntary family planning risks eroding the possibility of granting even a minimal living standard to the world's poor. It takes rights to be a defense against arbitrary government regulations, and so it neglects those socioeconomic rights which would respond constructively to human dignity through co-operative effort. Failure of this approach to control the population growth of the poor, moreover, would risk species survival. A constellation of values in which freedom stands at the center, therefore, subordinates socioeconomic justice to self-realization in freedom and consigns concern for species survival to the margins of conscious responsibility. Should either justice or survival be taken as the primary value, other constellations of values and rights would follow, with different values relativized or marginalized according to the aims of the policy. Subordinate values and rights will change as the concept of right alters with each outlook.

Given a range of alternative population policies, no consistent definition of human rights seems to apply to the conditions set by the proposals. The term "human rights" is an umbrella for diverse interests having different weight in different societies and under different policies. Though consistency may be an inappropriate standard in the articulation of rights, one difficulty with the application of the term in the present problem is the relative incompatibility of sets of rights with one another. The reason why human rights remain inchoate, why covenants and protocols to enforce them lie unratified, and why action to implement them is suspended is the incoherence of the concept of right. What seems incoherence from one angle of vision, however, may from another seem a fruitful ambiguity. The injustice to humankind in abandoning socioeconomic security for civil liberty, or liberties for the sake of a minimum standard of living, would be unpardonable. In the face of this dilemma, the task is to articulate an understanding of rights which distinguishes and relates the stable and inviolable element of rights vis-à-vis their mutable and instrumental aspect. What follows is an attempt to draw on the resources of four traditions of rights theory to come to some conclusions about the relative mutability and essential stability of human rights. How, we will ask, is human dignity related to instrumental rights belonging to the legal order?

HUMAN RIGHTS IN THE UNITED NATIONS TRADITION

One commentator has suggested that in the mind of the world community human rights have the status of Santa Claus in the thoughts

of a child who doubts his existence.¹² They are something the community of nations wishes might be, but which in its realism it knows to be the projection of kind but impractical souls. They lack the metaphysical backing which was claimed for "natural rights" in the eighteenth century. They lack legal force, because the appropriate covenants have not been ratified.¹³ Human rights, therefore, remain simply *prima-facie* claims on individuals, associations, and states. To what common principles do the proponents of human rights appeal, in the absence of metaphysical and legal backing, for support of the Declaration?

The preamble to the Universal Declaration cites three major reasons for recognition of "the inherent dignity and of the equal and inalienable rights of all members of the human family." The first is that acknowledgment of such rights "is the foundation of freedom, justice and peace in the world." A second set of reasons concerns violations of fundamental rights as the cause of war, and the occasion of "rebellion against tyranny and oppression." Third, the Declaration makes explicit reference to the UN Charter. It argues that in the Charter "the peoples of the United Nations have. . . reaffirmed their faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and have determined to promote social progress and better standards of life in larger freedom."

These three preambulatory arguments represent two types of reasoning. The first is empirical and consequentialist. Revulsion against Nazi war crimes in the immediate past, and the avoidance of war and revolution in the future, point to the relevance of recognizing the claims of men and women to just treatment. The second argument is legal; it appeals to the Charter. At other places it is unclear whether consequentialist arguments are being advanced or moral principles are being enunciated. In context, the linking of justice, freedom, and peace to human dignity and inalienable rights is an example of this ambiguous sort of argument. Nowhere does the preamble clearly argue from moral principle to support human rights.

What force is there in the two arguments which are more readily identifiable: the empirical and the legal? The key to understanding the empirical argument, it seems, is the factual assertion of moral outrage at Nazi barbarities. The intense and seemingly unanimous response to the disclosures of German concentration camps was the single great motive for the Declaration. The strength and universality of the condemnation of Nazi war crimes constituted an unparalleled moral consensus. Such common judgments, however, are exceedingly rare. The more distant the

¹² The metaphor comes from Iredell Jenkins, "From Natural to Legal to Human Rights," a paper delivered before the American Section of the International Association for the Philosophy of Law and Social Philosophy, Feb. 1970.

¹³ *Ibid.* p. 14.

present stands from the destructive moments of the past, the less control the sensitivities acquired at those times exercise over human conduct. The ephemerality of moments of universal moral agreement denies both moral and legal force to human rights. Indeed, this has been the fate of the Declaration: it remains an empty proclamation.

The legal appeal of the Declaration is made to articles 55 and 56 of the UN Charter. Article 55 reads: "With a view to the creation of conditions of stability and well-being . . . the United Nations shall promote: a) higher standards of living, full employment, and conditions of economic and social progress and development; b) solutions of international economic, social, health, and related problems; . . . and, c) universal respect for, and observance of human rights and fundamental freedoms." Article 56 commits member states to separate and joint action in promotion of these goals. Two comments seem pertinent: (1) commitment under the Charter is to "promote" human rights, not to enforce them in any specified fashion; (2) although the subsections of article 55 seem to distinguish socioeconomic goals from human rights, the practice of the UN has been to subsume those goals under the title of rights.

The framers of the Declaration appear to have regarded the articles of the Declaration as specification of Charter article 55. Realization of rights will depend, they argued, on common understanding of the terms of those rights. Since adoption of the Declaration, many nations have contended that their commitment to the UN does not bind them to further specification of goals cited in the Charter. This has been U.S. policy, with respect not only to the UN but to other international guarantees as well, e.g., the Inter-American Charter of Social Guarantees adopted by the Organization of American States in 1948. In effect, the only way in which the "promotion" of human rights has been interpreted is to prohibit action adverse to human rights. This interpretation was applied to justify sanctions against Rhodesia and South Africa, where racial policies regressed from earlier standards.¹⁴ There are no established standards for affirmative action.

Already the want of binding standards of positive achievement has been a source of contention in the formulation of the shape of UN population policy.¹⁵ Activist interests, including the U.S. delegation and the World Bank, favored direct technical intervention to curb "the drag of excessive population growth" on Third World development.¹⁶ Many representatives of the developing nations, however, were opposed to

¹⁴ Van Dyke, *op. cit.*, p. 108.

¹⁵ See Richard Symonds and Michael Carder, *The United Nations and the Population Question* (New York: McGraw-Hill, 1973) pp. 180 ff.

¹⁶ The citation is from Robert McNamara and appears in Symonds and Carder, p. 183.

direct action through the UN. Instead, they favored the traditional policy through which the UN provided advice and information to recipient states for use in the formulation and execution of their own demographic goals. In effect, the activists were seeking specification of population policies for the sake of "solutions of international economic, social (and) health. . . problems," as prescribed in article 55b of the Charter. Though their nations in many cases had demographic policies, the traditionalists were responding in part to the habitual resistance of member states to prescription of socioeconomic goals from without. There was also much suspicion, however, that "population growth problems were artificially emphasized by the developed countries as an excuse for them to escape from their obligations to the international community."¹⁷ Specificity in population control was being sought at the expense of specificity in control of economic overdevelopment and underdevelopment.

On human-rights grounds, moreover, there were still stronger reasons to oppose activist population policies with their stress on governmental regulation and intervention. Article 16 of the Proclamation of Tehran (May 1968) recognized "the protection of the family and the child" as an international concern. It went further than previous guarantees, however, in stating as a basic human right the prerogative of parents "to determine freely and responsibly the number and the spacing of their children." The Tehran Conference also supported the right of couples to adequate education and information on how to carry out this responsibility. Forty-nine delegations, including the Vatican, endorsed these propositions. Any government program which would choose positive state action rather than offer assistance in voluntary family planning would be in tension with the stipulated rights of parents. UN policy is presently under tremendous pressure to seek strict regulation of population growth for the sake of socioeconomic development. At the same time, there is less pressure to regulate technological and economic supergrowth for the sake of the same general welfare.

What may be concluded from this brief review of human rights in the UN tradition? There is ground for two judgments. First, because of the lack of legal and other backing, human rights have the status of *prima-facie* claims. As a result, their chief appeal is the moral appeal to conscience. This conclusion will be examined in some detail below. Second, there is an unusual ambiguity in formulating rights in very particular fashion, as the UN documents do, when nations are unwilling to endorse them as standards for the performance of their governments

¹⁷ *Ibid.*, p. 182.

and subordinate units. Such ambiguity is amplified in the matter of population control, where the need for specific standards is matched by government resistance to outside interference and explicit international pledges for the protection of the family.

THE UNITED STATES CONSTITUTIONAL TRADITION

Perhaps uniquely among the nations of the world, the U.S. is identified in its origin with the successful assertion of "rights." The Declaration of Independence, after announcing its framers' purpose in a single sentence, moves immediately to the most simple and direct statement of natural rights to be found in the annals of political protest: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are Life, Liberty, and the pursuit of Happiness." With these words the natural-rights philosophy of the eighteenth century had been carried out of the realm of theory into the battleground of political action.

Still, slightly more than a decade later, when some of the framers of that Declaration were given the opportunity to carry the rhetoric of protest into the articulation of the actual legal framework which would govern a newly-independent people, they drafted a document bereft of a single reference to rights. A one-sentence preamble which announced their intention to insure domestic tranquility and provide for the common defense also sought to establish justice and secure the blessings of liberty. After this brief exposition of goals, the Constitution lapses into a delineation of the powers granted to the several branches of government. Even the writ of habeas corpus, a basic right in the British tradition, was characterized as a privilege; provisions for its suspension were specified. To be sure, this document was quickly amended to include the Bill of Rights. We will not comprehend the American rights tradition, however, unless we first understand the absence of rights language in that original constitutional document.

It has been observed that "rights are rooted in the various needs and deprivations, the threats and insecurities, that weigh upon men."¹⁸ When the British retreated from Yorktown, they took with them the source of the deprivation and insecurities which had generated the bald statement of rights in the Declaration of Independence. But the British withdrawal was not the only cause for a disregard of rights in the Constitution. Americans entertained a distinctively eighteenth-century world view. They shared the English rationalist and French physiocratic notion that the most effective mechanism for establishing equitable, rights-enhancing relationships, particularly economic ones, was to permit

¹⁸ See Jenkins, *art. cit.*

the "natural identity of interests" to emerge by restricting governmental interference and disallowing the development of any concentrated centers. This philosophical attitude found a fertile social environment in which to take root on the eastern frontier of a fathomless continent. Frontier life fostered the feeling that social co-operation could emerge without government intervention. If the *de facto* abrogation of natural rights was the result of these two factors, the sole task of legal structure was to keep power dispersed and governmental intervention circumscribed. The explicit return to rights language in the Bill of Rights represented no retreat from that view, but a specification of it. The rights defined there assure the right of individual self-determination (liberty). They did not aim at social co-operation. With rights so conceived and generated, we may better understand three characteristics of the original American rights tradition: rights are protections; they are procedures for applying and specifying the implementation of individual liberty; and there is no specification of duties corresponding to rights.

The Bill of Rights explicitly guarantees rights which are defensive. They are primarily concerned with protecting persons *from* various threats. They do not enable them to accomplish definable purposes. Virtually the only source of threat was governmental incursion. The rights which became legal ones, then, specified limitations on those types of activity which the government might undertake to curtail self-determination. Hence governmental action to establish religion, abridge free speech or a free press, limit peaceful assembly, conduct unreasonable search, carry on capricious prosecution, arbitrarily take life, liberty, or property, or appropriate property without just compensation is specifically proscribed. The right to private property served a special role in the preservation of individual self-determination. It was private property which, in the Lockean tradition, had provided the "tangible subject of an individual's powers and attitudes."¹⁹ Thus property allowed persons the opportunity to make their individual freedom concrete and real. The institution of property was the primary guard to "the boundary between individual man and the state."²⁰ Rights protected persons. Also, since "natural identity of interests" functioned in a land where individual initiative could pull from limitless natural resources the wherewithal for self-development, no further specification of what constitutes the human person was required.

If the defensive rights just described had been the only rights which the American Constitution allowed, its rights tradition would long ago have

¹⁹ Peter Laslett, "Introduction," *John Locke's Two Treatises of Government* (New York: New American Library, 1965).

²⁰ Charles A. Reich, "The New Property," *Yale Law Journal*, April 1964, p. 733.

collapsed. But built into the framework were three procedural provisions of extraordinary importance: provision for constitutional amendment, provision for judicial review, and the assertion in the Ninth Amendment that the "enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."²¹ In these three provisions lies the special genius and perhaps the special contribution of the American rights tradition.

Two aspects of this procedural contribution deserve attention. First, through the complicated interaction of constitutional amendment, legislative enactment, and judicial review, both newly-recognized legal rights and the range of their application have been specified. We may distinguish two kinds of such rights. For the most part, these have been rights which extend and clarify the essentially protective rights described above. For example, the right to personal privacy has been seen to be implicit alternatively in the First Amendment, in the Fourth and Fifth, in the Ninth, and in the Fifteenth. Many rights and guarantees have developed and many more need to be developed, as Charles Reich has pointed out, to assure the protections which the property right aimed to preserve.²² While this system of revision has worked well for defensive rights such as property, it has worked less vigorously for another class of rights. This class would guarantee such goods and services as would enable persons to achieve a material status sufficient for them to sustain self-determination. Here the relative justice which a "natural identity of interests" was to have assured, but has not, continues to exert an influence. But without a normative definition of the human person and/or human dignity, concepts which the constitutional framers believed they did not have to define, a coherent development of such rights is disallowed. Therefore, the legalization of such rights has been avoided whenever possible as being a capricious process governed by the interaction of special interests, which otherwise would be guided by an invisible hand. Nevertheless, the Ninth Amendment, when combined with due process and equal protection, allows for such development, and the right of certain levels of material sustenance is being urged in the tradition of the right to education.

An example of the second major aspect in which the American tradition on procedural rights makes a contribution is in the area of a guaranteed process of redress and review of governmental activities. Without such provisions as due process and equal protection, legal-rights guarantees lack concrete impact. The right of a person to call for the repeated re-examination of laws, administrative procedures, and judicial

²¹ The provision for judicial review was first specified as the right of "due process" and later, in the Fourteenth Amendment, enlarged to require "equal protection."

²² See Reich, *art. cit.*

proceedings, to determine whether they violate rights already recognized, is perhaps the major instrument by which those rights are taken from the arena of a simple claim and made actual in the lives of persons.

The lack of a normative definition of persons or personal dignity, as we have noted, is the primary deterrent to the development of a social-rights component in the American constitutional tradition. One reason why this normlessness is significant is that it disallowed the development of a coherent understanding of duties. Where rights are protective only, they specify what one person or institution may *not* do to another. But where rights make a claim on resources or requisite activity, they involve duties. These are demands on specified persons to undertake certain responsibilities in reply to the rightful claim of others. This concept of duty is foreign to the American constitutional framework. While contracts may bind, no person or group has a duty of any sort, except to government. This holds even when the agent in question has the capacity to render the service required by another's right. In recent years, enactment of Good Samaritan laws by several state legislatures suggests that perhaps legal precedent for natural duties has begun to emerge. But so long as there is not a coherent understanding of duties, the development of social rights will be halting at best.

Another area in which the protective conception of rights has impeded the evolution of American rights tradition is the adjudication of rights in conflict. There has always been tension between the individual's rights and the government's need to fulfil its functions. Conscientious objection to conscription for national defense is a classic example. But when rights are expanded, their potential for conflict increases dramatically. If the issue is choosing one right over another, the courts develop precedents and the determinative right is specific. Increasingly it is being seen, however, that so long as rights are viewed as discrete and reified, and unrelated to a more overarching purpose, e.g., the dignity of man, the adjustment among rights will be a disjointed process. Such disjointed development leads to extreme determinations. Surely the widely-felt malaise about American morals results, in part, from the belief that a pattern of rights could be legalized in which there would be a minimum of conflict because they would be adjusted by a natural process. That natural identity of interests industrial society has now made irrelevant.

Where does this leave the American rights tradition in relation to the issue of restraining population growth? The right of privacy has consistently been held to extend to activities relating to marriage, procreation, and family relationships.²³ It seems clear that this right will continue to be maintained. Whereas some governmental incentives to

²³ For the most recent Supreme Court decision on the right to privacy, see *Roe v. Wade*, U.S. (1973).

limit population size might be acceptable, it may be supposed that these will be greeted with intensive efforts in the courts to reassert the unalloyed right to personal privacy in procreation. The rights of procreation, therefore, will be set over against whatever law or administrative procedure attempts to establish incentives. The courts' attempt to balance various interests will continue. Whatever the outcome, the constitutional rights tradition mandates that the points at issue will be discrete provisions in discrete procedures or laws which will allegedly violate discrete rights in their pursuit of discrete social-policy aims. A protective rights tradition which makes no real provision for duties and which is unprepared to resolve rights in conflict by any overarching concept of the end for which they were promulgated is unprepared to seek a more comprehensive set of rights such as the population crisis now poses. Yet, whatever its weaknesses, it does provide essential elements for a just population policy: procedures for overcoming its own weaknesses by emendation, and a means of assuring that results of that amendment process will not be applied without due process or equal protection.

MARXIST THEORY OF HUMAN RIGHTS

The sources of a socialist theory of human rights are found in a combination of Marx's thought with the articulation of constitutional and civil law by modern socialist nations. For Marx, the fundamental fact of man is that he produces the means for his life by adding the value of his labor to natural conditions. In production, man distinguishes himself from other species. He produces objects which are means of subsistence. He produces consciousness of these objects, of fellow producers, and of himself. He produces history. But as life is made, it is also lost: to the objects, which become an alien power, to social structures which crystallize that power, and to corresponding distortions of human awareness. Man's actual self-activity slips away from him in practice. In consciousness, however, the alienating power is attributed to the sacred order of reality and to "rights."²⁴ Marxism distinguishes two conceptions of rights: rights as a cover for human exploitation and rights as the fullness of human nature. According to Marx, the civil society of egoism and exploitation, capitalism, dreams a political dream of freedom, equality, and human dignity.²⁵ In fact, he claims, this means only the

²⁴ Karl Marx, *Economic and Philosophic Manuscripts of 1844*, ed. Dirk J. Struit (New York: International Publishers, 1964) p. 150. See Marx, *Early Writings*, ed. T. B. Bottomore (New York: McGraw-Hill, 1964): "On the Jewish Question," esp. pp. 37 and 39, and "Contribution to the Critique of Hegel's Philosophy of Right: Introduction," pp. 43-59, esp. 43-44.

²⁵ Marx, *Early Writings*, pp. 28-31. For a Marxist critique of republican politics from the

freedom of the great majority to own no property, the equality of the progressively immiserated workers and peasants, and the "dignity" of being "things" and not men.²⁶ The beautiful words of bourgeois rights-language cloak an ugly reality. When the process continues, however, the cloak is thrown off and the workers understand themselves as the proletarian class.²⁷

As this last class universalizes itself, man reappropriates the nature he has humanized, the goods he produces and the means for producing them, and his power of self-creation. When all men appropriate human nature for themselves, each man understands the object he produces as an expression of his personality. He apprehends others' enjoyment of his product in his satisfaction at filling human needs and objectively expressing human nature. He humanizes society through work which fulfils the needs of others. His value is affirmed in the others' love, and his social being is confirmed both in the productive activity and in the total social appreciation of his personhood.²⁸ This realization of human nature in society and self through and in socialism composes the concrete rights of man.

The rights provisions of modern socialist constitutions embody these understandings of history in general and capitalism in particular, and the goal of human personhood in communist society. Rights are not peremptory claims against government. They are social *objectives* to which the state is committed and social *means* which the state obligates itself to provide in pursuance of these material ends. In many socialist states these commitments are modeled on the language of the Russian Constitutions of 1936 and 1918. The latter itself stems from the "Declaration of the Rights of the Peoples of Russia" (November 1917) and "A Declaration of the Rights of the Laboring and Exploited People" (January 1918). Emancipation "from the hateful shackles"²⁹ of bour-

viewpoint of the theory of class struggle, see Karl Marx and Frederick Engels, *Selected Works* (Moscow: Progress Publishers, 1968): "The Eighteenth Brumaire of Louis Bonaparte," pp. 97-180; "The Civil War in France," pp. 263-313; also Marx and Engels, *Basic Writings on Politics and Philosophy*, ed. Lewis S. Feuer (New York: Doubleday Anchor, 1959): "The Class Struggles in France, 1848-1850," pp. 281-317. For the critique of bourgeois rights language as inappropriate to scientific socialism, see "Critique of the Gotha Program," *Basic Writings*, pp. 112-32, esp. 115-20.

²⁶ Karl Marx, *The Grundrisse*, ed. David McLellan (New York: Harper & Row, 1971) pp. 128-31; also "Alienated Labor," in *Economic and Philosophic Manuscripts of 1844*.

²⁷ *Selected Works*, "The Manifesto of the Communist Party," pp. 35-63, esp. 35-53.

²⁸ Paraphrase of Karl Marx, *Marx-Engels Gesamtausgabe*, Part 1, Vol. 3 (Berlin, 1932) 546 ff: original translated and quoted in Iring Fetscher, *Marx and Marxism* (New York: Herder and Herder, 1971) p. 37.

²⁹ "Declaration of the Rights of the Peoples of Russia," in *International Conciliation*, no. 136 (March 1919) 417.

geois tyranny is an objective, a process, and a means to socialist life. Any "right" in contradiction to the production of collective life is a self-contradiction. Hence the state "deprives all individuals and groups of rights which could be utilized by them to the detriment of the Socialist Revolution."³⁰ All *real* rights are held to be equal and compatible with collective interest. They are shared entitlements of man.³¹

A variant of the constitutional paradigm, the Chilean *Unidad Popular* "Program of Government" (1969), documents what the late Salvador Allende termed "the second model of transition to socialist society."³² This democratically elected Marxist party gave specificity to substantive rights. "The social aspirations of the Chilean people are legitimate and possible to satisfy." In fact, such "just desires" as those for sewers, sidewalks, and social security "are really rights that society should recognize."³³ While popular Marxism also added to procedural political assurances "the delivery to social organizations of the real means to exercise them,"³⁴ it did *not* deprive political rights of their traditionally peremptory stature. Political rights were not subordinated to socio-economic ones. Older socialist regimes treated political rights as instrumental to a just society during periods of transition. Allende attempted to offer a model of socialism in which political rights would not be sacrificed in the quest for social justice. Perhaps his failure shows the accuracy of the Marxist critique of bourgeois rights as the shield of exploitative interests. As a result, there is yet no adequate socialist theory of rights in the period of transition to the classless society. Rights have their existence only in a future in which all men and women will recognize the identity of interests they share.

In socialist civil law "the recognition of a right by the state is but the institutional recognition of the lawful nature of an interest."³⁵ The fundamental law is the exercise of rights in conformity with their function. This rule of instrumentality carries three consequences. First, the pre-eminence of autonomous personhood demands that the rights of the individual worker be broader than the rights of juristic persons. This pre-eminence upsets legal autonomy of corporations, which capitalist

³⁰ The 1918 Constitution of the Russian Socialist Federated Soviet Republic, art. 2, chap. 5, sect. 23, in *International Conciliation* (n. 29 above) pp. 489-90.

³¹ The 1936 Constitution of the Union of Soviet Socialist Republics, chap. 1, art. 12; cf. National Council of American-Soviet Friendship, *Constitution (Fundamental Law) of the Union of Soviet Socialist Republics* (New York, 1941) p. 7.

³² North American Congress on Latin America, *New Chile* (Berkeley and New York, 1972), Allende's first address to Congress, quoted p. 3.

³³ *Unidad Popular Program of Government* (1969), quoted in *New Chile*, p. 139.

³⁴ *Ibid.*, p. 135.

³⁵ Gyula Eörsi, *Fundamental Problems of Socialist Civil Law* (Budapest: Akademiai Kiado, 1970) p. 46.

societies rest on a fictive juristic personality. Second, rights preclude freedom to damage other persons. Third, rights are often general obligations to activity. Because action for others is also for the self, and the ground of real right, "benevolence" and even "heroism" are duties. Labor, domestic, and farm-cooperative rights are usually duties as well.³⁶

The Marxist attitude to population control brings the comprehensive theory of rights to a concrete issue. The Marxist historical analysis of population growth affirms that the poor understand demographic increases to be in their interest. Marxist political analysis points out capitalist economic interests protected by population-control policies. It labels such policies unjust because they cannot distribute burdens and benefits equally. Sterilization of welfare mothers, e.g., is an infringement of human rights because it is exploitative. Socialists stress the need for transformation of socioeconomic conditions as the basis for nonexploitative population policies. From the viewpoint of capitalist theory, such an approach is regarded as excessively "expensive." The socialist approach, however, is at least partially supported by the fact that collectivization restrains population growth and creates the conditions for nondiscriminatory implementation of subsequent population controls.

Marxist theory transforms the conflict of rights, which is the central political problem of the liberal state, into a conflict of material interests.³⁷ In the realization of communist man, this conflict is to be overcome by linking the fulfilment of material needs with the obligation of all to act for the benefit of all. There is a crucial time of transition, however, between capitalism and communist society in which this integration of need and obligation has not yet been achieved. Consequently it becomes the function of the state to mediate the interests or material needs of its members. Here a secondary, nonbourgeois concept of rights emerges. By nature men long for emancipation from alienated forms of labor and for fulfilment in direct, unalienated production, expression, and consciousness of their worth. If the state becomes tyrannical by opposing the movement of the people toward this communist, classless society, the objections of the people will be expressed in the language of sacred values or "rights." Such rights, rooted as they are in the dynamic movement on the material level toward genuine socialism, are a legitimate basis for criticizing the conduct of the state. They protect against a false and tyrannical form of statism.

This Marxist concept of rights implies that population policy must not rely uncritically on the power of the state. The role of the state must be

³⁶ *Ibid.*, p. 94.

³⁷ For an empirical Marxist study of the causality of population growth, see Mahmood Mamdani, *The Myth of Population Control: Family, Caste, and Class in an Indian Village* (New York: Monthly Review Press, 1973).

restricted within certain perimeters determined by the real needs of men. If state policies for population planning were to ignore the socioeconomic needs of the present and focus exclusively on fertility control, they would be in violation of the Marxist conception of rights.

HUMAN RIGHTS IN MODERN CATHOLIC SOCIAL THOUGHT

The Roman Catholic theory of rights presented here is that found chiefly in the papal social encyclicals of the period from 1891 to the present.³⁸ Since these documents have a practical rather than a systematic intent, this summary is an attempt to make explicit the theory of rights which is operative in modern Catholicism.

First, the encyclicals see all rights as categorical expressions or embodiments of the fundamental moral characteristic of every human being: his or her human dignity. This dignity has reality independent of the willingness of other persons to recognize it. Dignity is not bestowed on persons by the family or society or the state. Rather, it makes a claim on the persons and societies. This demand is the foundation of all moral obligation. Catholic social thought offers two warrants for the validity of this foundational principle. The imperative arising from human dignity is based on the indicative of man's transcendence over the world of things. The ability of persons to think and to choose, their hopes which always outrun the historical moment, and the experienced call to discriminate between good and evil actions—these indicate that persons are more than things. This warrant is accessible and plausible apart from the claims of the historically particular religious doctrines of the Christian faith. The doctrines do provide, however, a second, explicitly Christian warrant for human dignity. The beliefs that persons are

³⁸The principal documents cited here are: Leo XIII, *Rerum novarum* (1891), in Etienne Gilson, ed., *The Church Speaks to the Modern World: The Social Teaching of Leo XIII* (Garden City: Doubleday Image, 1954) pp. 200-244; Pius XI, *Casti connubii* (1930), *Quadragesimo anno* (1931), *Divini redemptoris* (1937), all in Joseph Husslein, S.J., ed., *Social Wellsprings 2: Eighteen Encyclicals of Social Reconstruction by Pius XI* (Milwaukee: Bruce, 1942) 122-75, 174-234, 339-74; Pius XII, *The Major Addresses of Pius XII*, 2 vols., ed. Vincent Yzermans (St. Paul: North Central Publ., 1961); John XXIII, *Mater et magistra*, tr. William J. Gibbons, S.J. (New York: Paulist, 1961), *Pacem in terris*, tr. NCWC (Washington, D.C.: National Catholic Welfare Conference, 1963); Paul VI, *Populorum progressio*, tr. NCWC (Washington, D.C.: National Catholic Welfare Conference, 1967). Several documents which are not papal encyclicals but contain material of equal or greater importance for the Roman Catholic teaching on human rights are Vatican Council II's Pastoral Constitution on the Church in the Modern World (*Gaudium et spes*) and the Council's Declaration on Religious Freedom (*Dignitatis humanae*), in *The Documents of Vatican II*, eds. Walter M. Abbott, S.J., and Joseph Gallagher (New York: America Press, 1966) pp. 183-316, 672-700, and the document of the 1971 Synod of Bishops, *Justice in the World*, tr. USCC (Washington, D.C.: United States Catholic Conference, 1972).

created in the image of God, that they are redeemable and redeemed by Christ, and that they are summoned by God to a destiny beyond history serve both to support and to interpret the meaning which is present in the human reality. The theological doctrines both illuminate general human experience and are themselves illuminated by such experience. With this as the basic relationship between the theological and philosophical approaches to the presence of human dignity, the Catholic tradition does not hesitate to claim a universal validity for its basic moral category.³⁹ To do otherwise would be to admit that theological principles are extrinsic to the human reality.⁴⁰

This reliance on the concrete realities of human existence as a constitutive element in moral obligation has more than polemical importance; for it implies that human dignity is neither a timeless principle beyond history, nor a disembodied spirit separated from the forces of physical and biological process, nor a private inner ghost independent of social interaction. The realization of human dignity in the concrete historical, natural, and social relationships of a particular culture calls for definite forms of behavior and social organization. Such particularized demands of human dignity are called rights. Rights are the historical, natural, and social body of transcendental dignity. Dignity is always present in persons.

Clearly, some rights are of greater importance than others, for they describe conditions which are more crucial for the realization of human dignity. Further, not all human goods, whether they be of benefit to individuals or to societies, can be classified as rights. There is a gradual shading off from the core of rights deemed absolutely inviolable and inalienable to those which are vaguely perceived at the fuzzy penumbra of the circle of rights. Also, rights can be categorized as core personal rights, social rights, and instrumental societal or political rights. This latter categorization, implicit in the development of the papal tradition, is very useful in the attempt to relate the Catholic theory of rights to any complex social and political question, including that of population. Core personal rights specify those claims which rise directly from the dignity of the person as such. They are unmediated. However, since personal existence is also always mediated by the copresence of persons in society, a second set of rights, which we will call social, arises. Finally, since neither personal nor social rights can exist without institutional,

³⁹ For two recent treatments of this point, see Bruno Schüller, S.J., "Wie weit kann die Moraltheologie das Naturrecht entbehren?" *Lebendiges Zeugnis* 1 (1965) 1-25, and Jean-Marie Aubert, *Pour une théologie de l'âge industrielle* 1 (Paris: Cerf, 1971) chap. 7, "Vers une herméneutique du droit naturel."

⁴⁰ A helpful summary of the Catholic position on the dignity of the human person can be found in *Pacem in terris*, nos. 9 and 10.

PERSONAL, SOCIAL, AND INSTRUMENTAL RIGHTS: AN INTERPRETATION OF PACEM IN TERRIS

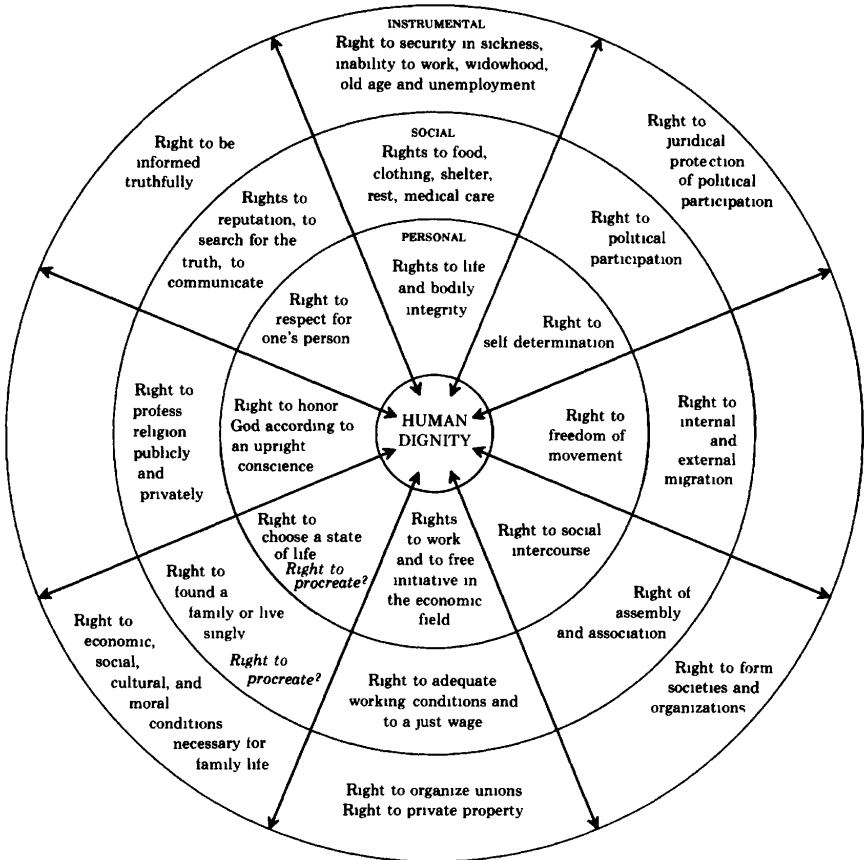


Figure 2

political, and juridical support, the Catholic tradition affirms a set of societal and political rights which we will call instrumental. Figure 2 is an attempt to interpret schematically the set of human rights affirmed in *Pacem in terris*.⁴¹ The center of the diagram represents the central moral concept of the Roman Catholic tradition: human dignity. The subsequent circles represent the personal, social, and instrumental rights which are entailed by human dignity and which, in turn, serve to protect it.

The theory presented in the encyclicals is personalist, not individualist, and it recognizes that persons are essentially social beings and institution builders. Consequently, the personal rights which belong to

⁴¹ *Pacem in terris*, nos. 11-27.

every human being in an unmediated way create duties which bind other persons, society, and the state. These duties are not simply interpersonal bonds which exist within families and other primary groups; they are also social and political. In consequence, a recognition of the full richness of human dignity creates a demand in the human community that the social and instrumental rights in the outer two circles be recognized through appropriate structures.⁴² However, the advantage of distinguishing the three levels of rights is its acknowledgment of the differing degrees of historical contingency and variability which govern the three types of rights. While the core personal rights have been consistently defended in this tradition's documents, there have been major shifts in its understanding of the appropriate form for instrumental rights. For example, the right to private property has been progressively restricted in scope, from a near absolute defense of it in *Rerum novarum* to the assertion in *Populorum progressio* that "all other rights, whatever they are, including property rights and the right of free trade, must be subordinated" to the core personal rights. "It must be considered a serious and urgent social obligation to refer these [instrumental] rights to their original purpose."⁴³ The Roman Catholic tradition thus recognizes that rights have a history, for man's personal existence in society is itself historical and developing. Furthermore, this history has a direction. The social and institutional configurations of human existence are increasingly important to the attempts to preserve human dignity in general and core personal rights in particular. *Mater et magistra* and the Second Vatican Council both name this process "socialization."⁴⁴

⁴²This view is the basis of the concept of a form of justice which operates through social and political structures and is called "social justice" in *Quadragesimo anno*, no. 71. For a helpful clarification of this concept, cf. the commentary by Oswald Von Nell-Breuning, S.J., *Reorganization of Social Economy: The Social Encyclical Developed and Explained*, tr. Bernard W. Dempsey, S.J. (New York: Bruce, 1937) pp. 170-82.

⁴³*Populorum progressio*, no. 22. This encyclical goes on to say: "The earth belongs to all, not to the rich. These words declare that private ownership confers on no one a supreme and unconditional right. No one is allowed to set aside solely for his own advantage possessions which exceed his needs when others lack the necessities of life. . . . The common good, therefore, at times demands the expropriation of an estate if it happens that some estates impede the common prosperity" (nos. 23-24). Compare these statements with the following from *Rerum novarum*: "We have seen that this great labor question cannot be solved save by assuming as a principle that private ownership must be held sacred and inviolable. The law, therefore, should favor ownership, and its policy should be to induce as many as possible of the people to become owners" (no. 46). There is not complete discontinuity here, but the contrast of approaches clearly indicates that the property right has been reconceived.

⁴⁴*Mater et magistra*, nos. 59 and 60; *Gaudium et spes*, no. 25. See also *Populorum progressio*, no. 3. This view is in continuity with the stress on the need for "social justice" in earlier encyclicals, but represents a new emphasis in the tradition beginning with John

It is also important to note that a particular social right provides the social context for an interrelated group of personal rights, and particular instrumental rights support clusters of both personal and social rights. The realization of human dignity and the appropriate interrelation of rights is possible only through a constant struggle to achieve a form of integrity which keeps many factors in a living unity with one another, a struggle for "integral development."⁴⁵ Thus, just as the instrumental right to form labor unions protects and embodies not only the core right to work but other core rights such as the right to self-determination and the right to social intercourse, so instrumental rights concerning family life are necessary for the realization of such social rights as those to food, shelter, political participation, and adequate working conditions, as well as the rights to found a family and to procreate. Discerning how conflicts are to be resolved depends on two principles. The first, justice or equity, affirms that all persons have an equal claim to have their personal rights respected in society and in the institutions which affect them.⁴⁶ The second principle, love, is also a universal moral principle of social morality. Love apprehends the condition and needs of other persons and experiences the call of their dignity concretely. It is seen by the Catholic tradition as an essential element of social decision-making, as a human response which integrates and vivifies all the institutional structures of rights and justice.⁴⁷ The schema of rights and the standard of justice provide principles of discernment,⁴⁸ but since they are partially abstract reifications of human copresence, they cannot serve their purpose without the living interrelationship of love. One of the clear consequences of this stress on the concrete needs and dignity of persons is the conclusion that instrumental rights and state intervention should be particularly oriented to enhancing the dignity of those who are poor or socially powerless.⁴⁹

A final note on the right to procreate is in order. This right has been

XXIII and coinciding with the initiation of the Christian-Marxist dialogue. For perceptive discussions of this development, see Jean-Yves Calvez, S.J., *The Social Thought of John XXIII: Mater et magistra*, tr. George J. M. McKenzie, S.M. (Chicago: Regnery, 1964) chap. 1, and *idem*, "Possibilities of Freedom in Tomorrow's Complex Society," in *Freedom and Man*, ed. John Courtney Murray, S.J. (New York: Kenedy, 1965) pp. 168-82.

⁴⁵ *Populorum progressio*, no. 14. Cf. *Pacem in terris*, no. 150.

⁴⁶ *Mater et magistra*, nos. 68-72.

⁴⁷ *Pacem in terris*, no. 167.

⁴⁸ John Courtney Murray points out that this use of principles characterizes the method of *Pacem in terris*. See his commentary, "Key Themes in the Encyclical," appended to the America Press edition (New York, 1963) pp. 57-64.

⁴⁹ *Rerum novarum*, no. 37; *Quadragesimo anno*, no. 25; *Mater et magistra*, no. 150; *Populorum progressio*, no. 86.

strongly defended in the encyclicals.⁵⁰ Few persons would deny that the freedom of a couple to decide the number and spacing of children touches on the self-determination which is one of the core qualities of human dignity. If procreation is considered as the personal act intimately linked with personal and family identity, then it cannot be classified as a strictly instrumental right. However, it can be seriously questioned whether the right to procreate should be granted the status of a core personal right. The Catholic tradition is ambivalent about its status. To be sure, the right to procreate is seen as inalienable. But at the same time the encyclicals repeatedly link procreation and family life with social realities beyond the individual person and the family. The family is seen as the foundation of society, the community in which persons are introduced into the knowledge of social rights and duties and in which they learn both love and justice.⁵¹ In a world undergoing rapid population growth, procreation is clearly linked systematically with humanity's ability to protect such core personal rights as the right to life and bodily integrity, the right to political participation. Consequently, it would be both appropriate and not inconsistent with the totality of the Roman Catholic social tradition to classify the right to procreate as an intermediate or social right. This does not mean that the right is dispensable, even under the pressure of the present population situation. The right to procreate may not be isolated as the sole target for social limitation, since rights are organically interrelated in the response of world society to the population problem. However, like other social rights, it may be subjected to a kind of control by society and the state, so long as such control remains consistent with the continued existence of the right itself. From the viewpoint of the Roman Catholic rights tradition, the goal of integral development shared according to justice and equity remains the central organizing frame of moral reference.

CONCLUSION

Human Rights as Moral Claims

For twenty-five years the UN has been unable to assemble effective international support for the Universal Declaration of Human Rights. Aside from a few noncontroversial conventions, such as that against genocide, the nations of the world have been unwilling to come to

⁵⁰ *Rerum novarum*, nos. 12-14; *Casti connubii*, nos. 18 and 69; Pius XII's 1942 Christmas Address, in Yzermans 2, 61, and 1952 Christmas Address, in Yzermans 2, 166-67; *Mater et magistra*, nos. 188-92; *Populorum progressio*, no. 37; *Gaudium et spes*, no. 52.

⁵¹ As sample texts only, see Leo XIII's *Libertas*, in Gilson, no. 270, and *Gaudium et spes*, no. 257.

practical agreement on common standards of observance and mechanisms for their enforcement. In the absence of practical resolution, three alternatives remain. The first, as the preamble of the Declaration points out, is the use of force to redress grievances. The second is to isolate one's nation, thereby to reduce human rights once more to the status of civil prerogatives exercised solely by the citizens of a given state. The last alternative is to search for areas of theoretical agreement, so that the assumptions which guide alternate evaluations and ways of implementation of rights can be adjusted to one another.⁵² Although from a practical point of view revolution, violence, and intimidation may be the only way to obtain recognition from reluctant powers, this option would seem unacceptable to the signatories of the UN Charter; for one of the motive reasons for international agreements on rights is precisely to avoid the use of force. The reasoning of the Charter and especially of the preamble to the Declaration seems likewise to exclude isolation as an acceptable option. The drafters of those documents knew that violations of human rights are an occasion of war, even for securely isolated states. Accordingly, by defaulting on the promotion of human rights, the international community will sacrifice the very goals it meant to gain in the drafting of a Universal Declaration. If those goals are to be made practicable, therefore, it becomes all the more important that all parties arrive at some clarification of theoretical agreements in the area of human rights. Ordinarily, theory plays a small part in human affairs. At times of transition, however, that modest role can be critical. The World Population Year may be such a critical juncture for the relations of the overdeveloped and underdeveloped nations. For this reason, we want to assess what common ground there is among the four rights-traditions for effecting universal human rights. That common ground, we believe, can be found in the application to international affairs of the notion of right as claim.

In the absence of legal sanctions, the proponents of human rights appeal to conscience to support the assertion of universal rights. It has already been noted how one massive expression of moral indignation is cited by the Declaration as a motive for its promulgation. The weakness of this argument from conscience, it was argued above, lies in the impermanence of public outrage. If moral purposes are to be realized, they cannot rely solely on exceptional moments of intense experience to validate them. Nonetheless, the argument from conscience remains, in the absence of other validation, the primary public rationale for human rights.

⁵² See Richard McKeon, "The Philosophic Basis and Material Circumstances of the Rights of Man," in *Human Rights* (n. 6 above).

Article 1 of the Universal Declaration reasons that all human beings "are endowed with reason and conscience and should act towards one another in a spirit of brotherhood," and the preamble speaks of the "inalienable rights of all members of the human family." The appeal to conscience seems in some fashion, then, to rest on the solidarity of humankind. In this context the appeal to conscience makes the assertion of a right a claim on someone who has the power to realize a specified good for the claimant. The person on whom the claim is made, moreover, is capable of understanding that in responding to this claim he is meeting a basic need of his fellow human, a need he himself shares. The claim is, then, that a certain action on the part of an agent is due in justice to another agent. That action, and so the good of the other person, depends on the one on whom the claim is made. The claim is placed because the well-being of the rights claimant is "in the hands" of another person.

To speak as we do here of "holding another person's life in one's hand" endows this metaphor with a certain emotional power. The emotional significance of the metaphor grows out of the contrast in the relationship to which it refers, namely, that we have the power to determine the direction of something in another's life . . . in an extreme case his entire destiny. . . . Wielding such power over another person is unreasonable because every person is an independent and responsible individual; yet we are to a large extent inescapably dependent on one another so that, whether what is at stake is our mood or our destiny, we are mutually and in a most immediate sense in one another's power.⁵⁸

The paradox of the rights claim as a moral phenomenon is that autonomous persons are mutually dependent on one another. Each needs the other; neither compels the other, because the right-claim is fundamentally a call to another's freedom.

This moral paradox of freedom in necessity is the reason persuasion rather than force functions as the *modus operandi* in ethics. Power, dependence, and freedom are reconciled by the claimant's acceding free consent in a demand vital to him or to the person on whom he makes the demand. Ordinarily, persuasion as a means of activation in ethical matters has been restricted to interpersonal relations. Most forms of political philosophy, that most common-sense discipline, have insisted that states may not respond to such appeals. They may act only from self-interest. When a problem such as world population growth presents itself, requiring complex and interconnected solutions, the inadequacy of theories which stress the sovereignty of individual states is apparent. The place of the population issue in underdevelopment and overdevelopment requires a moral solution—that is, one in which the

⁵⁸ Knud E. Løgstrup, *The Ethical Demand* (Philadelphia: Fortress, 1971) p. 29.

interdependence, relative power, and freedom of groups to assent to common goals are recognized. Accordingly, states and groups as well as individual persons should acknowledge moral claims placed on them by private persons, groups, and nations. "Moral claims" must lose the pejorative sense they have taken in political discussions. Moral suasion in politics is the only alternative to force and repression in addressing the issues of population and human development.

The recognition of the mutual dependence of claimants and those on whom claims are made reveals that rights are social realities. Their end is human dignity, not the unfettered autonomy of any individual or society. The recognition of material solidarity in the interconnected problems of ecology, population, and development requires a corresponding subjective solidarity.⁵⁴ Genuine freedom lies not in the absence of commitment but in "assuming the obligations of co-operative effort."⁵⁵ Three of the four traditions we have examined—the UN, the socialist, and the Roman Catholic—clearly recognize the social character of rights. The fourth, the American, by reason of exceptional circumstances, takes cognizance of the social dimension only obliquely. The American tradition, on the other hand, gives legal title to rights, and establishes procedures by which to insure that such titles are not infringed. The assurance of socioeconomic rights to all peoples in the future will depend on the application of legal title and due process to these rights too. The American tradition shows much the same watchfulness toward recalcitrant human nature as does Marxian theory, but it relies on the law to hold the wayward spirit in check. Binding covenants and protocols serve to strengthen the will to social co-operation.

While law is required for the effective observance and enforcement of rights, no person or government should rely too heavily on the law as an index of which rights are humanly needed. The reason for this caution is that the codification of rights tends to reify the good to which men and women lay claim. It steals away the living reality of their need and gives rise to the illusion that their rights in justice are exhausted by legal title. The need to speak of human rights at all is evidence that legal positivism is sterile in the absence of a richer theory of justice. The natural law on which human rights rest is "interior to the creature and precedes any explicit expression."⁵⁶ Consequently, "no declaration of human rights will ever be exhaustive and final. It will ever go hand-in-hand with the state of moral consciousness and civilization. . . . It remains thereafter a principal interest of humanity that such declarations be renewed from

⁵⁴ Salvador de Madariaga, "Rights of Man or Human Relations?" in *Human Rights* (n. 6 above) p. 48.

⁵⁵ John Lewis, "On Human Rights," *ibid.*, p. 55.

⁵⁶ Jacques Maritain, "On the Philosophy of Human Rights," *ibid.*, p. 77.

century to century.”⁵⁷ The temporal dynamism of human rights, therefore, is a way of rescuing public recognition of the dignity of human persons from being affixed to outmoded social conditions. The Roman Catholic tradition, we have seen, sustains this dynamism by giving priority to human dignity over instrumental rights. Temporal dynamism lies also at the heart of the socialist tradition with its stress on the unalienated society of the future. Insofar as all four traditions recognize reason, conscience, and the brotherhood of human persons, they all establish rights on the basis of a fundamental human responsiveness which keeps legal title the instrument of the dignity of persons.

Principles of Practice

Application of the theoretical frameworks of rights discussed here to the totality of the population question and the Second Development Decade would be an immense task. Moreover, to draw simply from these moral bases a conclusion for the ideal shape of the World Population Plan of Action which is to be formulated at the World Population Conference in Bucharest this summer asks more of ethics than it can deliver. Our practical recommendations will be of a more limited nature. We will briefly examine a typical policy proposal with two purposes in view: (1) to determine if the rights traditions establish critical limits for population policy, and (2) to determine whether the traditions establish constructive directions for population policy. Our starting point will be such consensus on human rights as does exist or which we can reasonably expect to be brought into existence. This example of how rights criteria serve a critical function in evaluating policy may point the way to more positive approaches based on modest initial success at this rather crude and fundamental level.

Consider the following possible policy proposal, which is representative of many contemporary proposals:⁵⁸

The World Population Plan of Action will mandate that all nations adopt population policies which assure that the population be stabilized at its present level as soon as possible. It is recommended that every woman be limited to two children, with sterilization of either her or her spouse required in the event of the birth of a third child. Nations which fail to adopt such policies within a reasonable time shall be subject to censure. In the event that such censure is ineffective, economic sanctions in the form of trade, aid, and investment restrictions shall be imposed by the world community.

This proposal can be examined from a number of perspectives. First, it

⁵⁷ *Ibid.*

⁵⁸ For a review of a variety of suggestions for population control, see Berelson, *art. cit.* (n. 11 above).

is a policy aimed at limitation of fertility. From this point of view it is evident that the persons who will feel the squeeze of social control most will be the citizens of those nations which have high growth rates: the poor of the Third World. Compare the growth rates in 1970 for the following typical countries:

REPRESENTATIVE GROWTH RATES BY NATION, 1970

West Germany	0.17	South Africa	2.37
Great Britain	0.44	Afghanistan	2.40
USA	0.88	Nigeria	2.47
USSR	0.93	Tanzania	2.50
Rumania	1.15	Indonesia	2.89
Japan	1.20	Peru	3.07
Argentina	1.23	Mexico	3.21
China	1.78	Algeria	3.22
Ethiopia	2.06	Pakistan	3.25
South Vietnam	2.14	Venezuela	3.31
Zaire	2.17		

Source: *Demographic Yearbook of the United Nations* (New York, 1971) and *A Concise Summary of the World Population Situation in 1970* (New York, 1971).

Figure 3

If we add to this sample of the demographic data the UN prediction that in 1980 the total population of the developed nations will be 1,210 million, while that of the developing nations will reach 3,265 million, one fact stands out clearly. Though from a strictly formal point of view the policy proposal would apply equally to all countries, the burden of limiting world population growth will fall heavily on countries which are poor. Such inequality seems in direct conflict with the basic principles for the ordering of rights in all four traditions we have examined. None of these traditions is content to define equality of rights in the strictly formal way operative in the proposal. All four agree that material criteria of equal distribution of rights must be operative to some degree, especially when restrictions on self-determination imposed by positive social policy are involved. *Despite the diversity in the rights traditions, they are one in establishing the obligation to govern all proposals for the limitation of population growth not only by an empty standard of equality but also by one which takes into account the actual burdens such policies will impose on countries and their citizens.*⁵⁹ Equality must be realized in a fair distribution of the burden which is imposed whenever the exercise of any right is limited.

Second, this proposal can be examined from the economic perspective.

⁵⁹ On the distribution of benefits and burdens, see John Rawls, *A Theory of Justice* (Cambridge, Mass.: Belknap, 1971) pp. 108-14, 342-50.

The economic factor is necessarily present in all population policies, whether it is made explicit or not. It is the linking of population growth with the problems of economic development which has created the "population" problem, not population growth alone. Consequently, to choose a population policy is *ipso facto* to choose an economic policy. The economic aspects of our sample policy are clearly tilted in favor of the industrialized countries. This policy supports and even reinforces the patterns of technological growth in these countries. Support of technological growth is subject to serious questioning on environmental considerations, which provide a major part of the justification for vigorous action in the population area. Also, in reducing the number of children in poor countries without providing for compensatory economic change in the short run, the proposal withdraws a significant source of livelihood and social security from the very poor.⁶⁰ Thus the economic consequences of the proposal are not adequately dealt with. The policy treats the economic rights of countries in differing stages of development in a fundamentally unequal and unfair way. The threat of economic sanction strengthens this outcome. *Despite the diversity in the rights traditions, they are one in establishing the obligation to scrutinize population policies from an economic perspective. The economic consequences of all population policies must be evaluated against the standard of equality and substantive fairness.*

Third, population policies can be considered from the perspective of the rights of women. Here the policy once again reveals a fundamental tendency to unequal recognition of the rights of persons whom all four traditions judge to have a claim to equal respect. In cultures where the role of women is largely restricted to bearing and caring for children, and where children are valued highly as gifts of God, a basic restructuring of female identity and values is mandated by our sample proposal. Because of the economic shortcomings of the proposal, however, there is provision neither for self-determination nor for alternative ways for women to express love and care. Consequently, the proposal discriminates unjustly between the exercise of rights by men and by women in these situations. Furthermore, because female roles are changing more rapidly in overdeveloped countries than in the developing countries, the proposal creates a sex-linked inequality between the women of the two groups of nations more marked than that which exists between men. *Despite the diversity in the rights traditions, they are one in establishing the obligation to account for the implications population policies have for the*

⁶⁰ For an ethical analysis of population policies which is sensitive to the place of children in the lives of the poor, see Arthur J. Dyck, "Procreative Rights and Population Policy," in *Hastings Center Studies* 1, no. 1 (1973).

rights of women, both as linked to maternal identity and as interrelated with their economic and social rights.

Finally, this proposal threatens rights to the free exercises of religious belief. For example, the limitation of the number of children to two might conceivably be achieved within the limits of the official Roman Catholic position on the morality of various means of birth control. But the penalty of sterilization would be a direct violation of the religious beliefs of a significant group of persons, by no means composed solely of Catholics. In at least three of the rights traditions, the infringement of religious freedom provides a compelling criticism of the control policy at issue. A broader convergence, moreover, may be noted; for if the socialist rights position does not in all cases prohibit government from failing to affirm freedom of worship, some versions of Marxian theory do affirm the right to religious exercise.⁶¹ Where religion is the guardian of the dignity of human nature, the exercise of religion may confirm man's aspirations for the social conditions fundamental to the exercise of all rights. *Despite the diversity in the rights traditions, at least three of them, and all four if some interpretations of Marxism are accepted, establish the obligation that a world population policy must preserve the right of religious freedom.*

In summary, analysis of this test policy has revealed that grounds exist for the conclusion that various understandings of rights can agree on certain moral boundaries in the formulation of population policy with respect to human rights. All four traditions call for an integration of basic fairness concerning the concrete burdens of fertility limitation, some degree of substantive equality in the respect for economic rights, equal respect for the rights of men and women, and, in the case of at least three traditions, support for religious rights. By way of conclusion, we would like to specify a rule for the shaping of international population policy in the Second Development Decade. The rule specifies the principles of fairness and equality in the population-development question. *It requires that population control be applied synchronically with economic development for developing lands and with the limitation of technological supergrowth in developed ones.* This means that population policies in developing countries, if they are to be just in the distribution of burdens and benefits, may either proceed *contemporaneously* with programs of

⁶¹ Marxist civil law takes an ambiguous attitude to freedom of religion. Art. 2, chap. 5, sect. 13 of the Russian Constitution of 1918 reads: "For the purpose of securing to the toilers real freedom of conscience, the church is to be separated from the state and the school from the church, and the right of religious and antireligious propaganda is accorded to every citizen." In Chile the *Unidad Popular* government accorded "complete respect for all religious ideas and beliefs and guarantees of the exercise of worship" (see *New Chile*, p. 135).

economic development or follow *after* them. *In no case* may population control *precede* economic development and control of technology. The application of population-control measures in the absence of corresponding efforts to control developed economies and to provide minimal social security for the people of the developing world would be unjust. Practically speaking, a synchronic approach to population and development offers the best hope for a moral consensus resting on persuasion and common assent. Such consensus would acknowledge, implicitly at least, the mutual dependence and relative autonomy among individuals, groups, and states which is the foundation of moral claims and human rights especially.